

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 86/2025 OF 30TH JULY 2025

BETWEEN

CHARTFORD LIMITED APPLICANT

AND

THE ACCOUNTING OFFICER

THE KENYA POWER & LIGHTING COMPANY PLC 1ST RESPONDENT

THE KENYA POWER & LIGHTING COMPANY PLC 2ND RESPONDENT

SMART METER TECHNOLOGY LTD 1ST INTERESTED PARTY

EAST AFRICA METER COMPANY LTD 2ND INTERESTED PARTY

HEXING TECHNOLOGY COMPANY LTD 3RD INTERESTED PARTY

MAGNATE VENTURES LTD 4TH INTERESTED PARTY

INHEMETER AFRICA COMPANY LTD 5TH INTERESTED PARTY

HOUSE OF PROCUREMENT LIMITED 6TH INTERESTED PARTY

ABCOS INDUSTRIAL LTD 7TH INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Power & Lighting Company Plc in relation to Tender No. KP1/9A.3/RT/14/24-25 for Supply of Single-Phase Smart Meters. (Local Manufacturers And Assemblers)

BOARD MEMBERS PRESENT

- | | | |
|------------------------|---|-------------------|
| 1. Mr. Joshua Kiptoo | - | Panel Chairperson |
| 2. Eng. Lilian Ogombo | - | Member |
| 3. CPA Alexander Musau | - | Member |

IN ATTENDANCE

1. Ms. Sarah Ayoo - Holding Brief for Board Secretary
2. Ms. Evelyn Weru - Secretariat

PRESENT BY INVITATION

APPLICANT

CHARTFORD LIMITED

Mr. Pamba Ouma - Advocate, Limo & Njoroge Advocates

RESPONDENTS

THE ACCOUNTING OFFICER, THE KENYA POWER & LIGHTING COMPANY PLC & THE KENYA POWER & LIGHTING COMPANY PLC

Mr. Joseph Muchai - Advocate, Kenya Power & Lighting Company Plc

1ST INTERESTED PARTY

SMART METER TECHNOLOGY LTD

Ms. Desma Nungo - Advocate, NOW Advocates LLP

2ND INTERESTED PARTY

EAST AFRICA METER COMPANY LTD

Mr. Khayega Chivai - Advocate, Kipkorir Cheruiyot, Chivai & Kigen
Advocates LLP

3RD INTERESTED PARTY

HEXING TECHNOLOGY COMPANY LTD

Ms. Tuwei - Advocate, Kinyanjui Kirimi & Co. Advocates

4TH INTERESTED PARTY

Ms. Maureen Wakahia

MAGNATE VENTURES LTD

- Legal Manager, Magnate Ventures Ltd

5TH INTERESTED PARTY

1. Mr. Munene Njeru

- Advocate, Muriungi & Company Advocates

2. Ms. Faith Gichuru

- Advocate, Muriungi & Company Advocates

6TH INTERESTED PARTY

Mr. Seko

HOUSE OF PROCUREMENT LIMITED

- Advocate, Seko Minayo & Company Advocates LLP

7TH INTERESTED PARTY

Mr. Griffins Timbe h/brief for

Mr. Githui

ABCOS INDUSTRIAL LTD

- Advocate, CM Advocates LLP

BACKGROUND OF THE DECISION**The Tendering Process**

1. The Kenya Power & Lighting Company Plc, the 2nd Respondent and Procuring Entity herein invited sealed tenders in response to Tender No. KP1/9A.3/RT/14/24-25 for Supply of Single-Phase Smart Meters. (Local Manufacturers and Assemblers) (hereinafter referred to as the "subject tender"). The invitation was open to Local Meter Manufacturers and Assemblers in three (3) categories and was by way of an advertisement on 4th June 2025 on the Procuring Entity's website www.kplc.co.ke and on the Public Procurement Information Portal (PPIP) website www.tenders.go.ke where the blank tender document for the subject tender issued to tenderers (hereinafter referred to as

the 'Tender Document') was available for download. The mode of submission of tenders was electronic through the KPLC SAP tendering portal.

2. The tender's submission deadline was initially scheduled on 24th June 2025 at 10:00 a.m. The Procuring Entity issued 3 Addenda in the subject tender being Addendum No. 1 dated 13th June 2025 (hereinafter referred to as "Addendum No. 1"), Addendum No. 2 dated 16th June 2025 (hereinafter referred to as "Addendum No. 2"), and Addendum No. 3 dated 20th June 2025 (hereinafter referred to "Addendum No. 3") which made amendments to the Tender Document while extending the tender submission deadline to 1st July 2025 at 10.00 a.m.

Submission of Tenders and Tender Opening

3. According to the Minutes of the subject tender's opening held on 1st July 2025 signed by members of the Tender Opening Committee (hereinafter referred to as the 'Tender Opening Minutes') and which Tender Opening Minutes were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the 1st Respondent pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter referred to as the 'Act'), ten (10) bid securities retrieved from the bid security box were opened and read out.

4. The Tender Opening Committee initially noted that a total of nine (9) tenders were successfully submitted in the subject tender. It was noted that M/s Chint Meters and Electric Kenya Co. Ltd was attached but not submitted in KPLC E-Procurement System as per the attached screen print. This was attributed to system inconsistencies during the tender opening where documents for M/s Chint Meters and Electric Kenya Co. Ltd were found in the collaboration folders, despite the system indicating that the bidder had not submitted a bid. The Tender Opening Committee resorted to read the prices for the said bidder and as such ten (10) tenders were opened in the presence of tenderers' representatives present at the tender opening session, and were recorded as follows:

No	Bidders Name	Response Number	Amount as indicated in the tender form.
1	M/s Hexing Technologies Co Ltd	4000081805	4,274,600,000.00
2	M/s Smart Meter Technology Ltd	4000081831	Category 1-Lot 1 2,052,463,400.00 Category 2-Lot 1 -1,236,560,000.00 Lot 2 - 1,051,076,000.00 Lot 3 -618,280,000.00 Lot 4 - 422,240,000.00 Category 3 -Lot 1 - 1,236,560,000. Lot 2- 803,764,000.00 Lot 3- 422,240,000.00
3	M/s Yocean Group Limited	4000081806	7,832,552,000.00
4	M/s Inhemeter Africa	4000081830	7,873,291,200.00
5	M/s East Africa Meter Company	4000081638	5,475,395,200.00
6	M/s Magnate ventures Ltd	4000081838	4,704,728,000.00
7	M/s Chartford Limited	4000081839	Category 2 - 2,863,980,000.00 Category 3- 2,200,000,000.00
8	M/S Abcos Industrial Ltd	4000081474	3,486,646,800.00
9	M/s House of Procurement	4000081836	Category 3-Lot 1 - 1,156,636,000.00 Lot 2 - 751,813,400.00 Lot 3 - 404,822,600.00
10	M/s Chint Meters and Electric Kenya Co. Ltd	4000081602	2,063,750,000.00

Evaluation of Tenders

5. A Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") appointed by the 1st Respondent undertook evaluation of the tenders submitted in the subject tender as captured in an Evaluation Report for the subject tender dated 15th July 2025 and signed by members of the Evaluation Committee (hereinafter referred to as the "Evaluation Report") in the following stages:
- a. Preliminary Evaluation;
 - b. Technical Evaluation –
 - i. Preliminary Technical Evaluation
 - ii. Detailed Technical Evaluation
 - c. Financial Evaluation.

Preliminary Evaluation

6. The Evaluation Committee was required to carry out a Preliminary Evaluation and examine tenders for responsiveness using the criteria provided under Part 1 – Preliminary Evaluation Criteria Under clause 28.2 of the ITT of Section III- Evaluation and Qualification Criteria at page 32 to 33 of the Tender Document. Tenderers were required to meet all the mandatory requirements at this stage to proceed for Technical Evaluation.
7. At the end of evaluation at this stage, all the ten (10) tenders were determined to be responsive and proceeded to Technical Evaluation.

Technical Evaluation

8.The Evaluation Committee was required to carry out a Technical Evaluation using the criteria provided under Part II - Technical Evaluation Criteria Under clause 28.3 of the ITT of Section III- Evaluation and Qualification Criteria at page 34 to 38 of the Tender Document. The Technical Evaluation was in two phases categorized in the Evaluation Report as stage I of the Technical Evaluation and stage II of the Technical Evaluation follows:

a. Preliminary Technical Evaluation

9. The Evaluation Committee was required to carry out a Preliminary Technical Evaluation using the criteria provided under Stage I of II – Technical Evaluation Criteria Under clause 28.3 of the ITT. At the end of evaluation at this stage, all the ten (10) tenders were determined to be responsive and progressed to the Detailed Technical Evaluation.

b. Detailed Technical Evaluation

10.The Evaluation Committee was required to carry out a Detailed Technical Evaluation using the criteria provided under Stage II of Part II – Detailed Technical Evaluation under clause 28.3 of the ITT. At the end of evaluation at this stage, all the ten (10) tenders were determined to be responsive and progressed to the Financial Evaluation.

Submitted Samples Testing and Results

11.The samples submitted by bidders were presented to the Procuring Entity’s Central Meter Lab – Ruaraka for testing. The meters were to

be subjected to routine and functional tests as outlined in the specifications and in accordance with IEC 62053-21:2003. All samples tested were found compliant.

Financial Evaluation

12. At this stage of evaluation, the Evaluation Committee was required to examine tenders using the criteria provided under Part III- Financial Evaluation Criteria Under clause 33.1 of the ITT of Section III – Evaluation and Qualification Criteria at page 38 to 39 of the Tender Document. Upon evaluation, all bidders were found responsive and the Evaluation Committee noted that the bidders had submitted their bids in different categories as follows:

No.	Bidders Company Name
Category 1 – Local Manufacturers/Assemblers with ready stocks	<ul style="list-style-type: none"> ✓ M/s Smart Meter Technology Ltd ✓ M/s Inhemeter Africa ✓ M/s Yocean Group Limited ✓ M/s East Africa Meter Company ✓ M/S Abcos Industrial Ltd
Category 2 – Local Manufacturers/Assemblers who have successfully supplied meters to completion to KPLC or any public entity in Kenya before.	<ul style="list-style-type: none"> ✓ M/s Smart Meter Technology Ltd ✓ M/s Inhemeter Africa ✓ M/s Yocean Group Limited ✓ M/s East Africa Meter Company ✓ M/s Chartford Limited ✓ M/s Hexing Technologies Co Ltd ✓ M/s Magnate ventures Ltd
Category 3 – All local meter Manufacturers/Assemblers	<ul style="list-style-type: none"> ✓ M/s House of Procurement ✓ M/s Chint Meters and Electric Kenya Co. Ltd ✓ M/s Chartford Limited ✓ M/s Hexing Technologies Co Ltd ✓ M/s Magnate ventures Ltd ✓ M/s Inhemeter Africa ✓ M/s Smart Meter Technology Ltd ✓ M/s Yocean Group Limited ✓ M/s East Africa Meter Company ✓ M/s Abcos Industrial Ltd

13. The Evaluation Committee conducted a financial comparison of the ten (10) responsive bidders as per the eligibility and laid down the award criteria as follows:

M/s Inhemeter Africa Company Ltd	M/s Smart Meter Technology Ltd	M/s Magnate ventures Ltd	M/s Hexing Technology Company Ltd	M/s Yocean Group Ltd	M/S East Africa Meter Company Ltd	M/s Chartford Limited	CHINT	M/s ABCOS	HOP
1	2	3	4	5	6	7	8	9	10
Category 1 – Local Manufacturers/Assemblers with ready stocks									
10,660.00	10,595.00	N/Q	N/Q	10,600.00	7,410.00	N/Q	N/Q	8,190.00	N/Q
Category 2 – Local Manufacturers/Assemblers who have successfully supplied meters to completion to KPLC or any public entity in Kenya before.									
10,530.00	10,660.00	8,462.00	8,200.00	10,600.00	7,410.00	10,491.00	N/Q	N/Q	N/Q
10,530.00	10,660.00	8,631.00	7,800.00	10,600.00	7,410.00	10,686.20	N/Q	N/Q	N/Q
10,530.00	10,660.00	8,803.00	7,400.00	10,600.00	7,410.00	10,650.32	N/Q	N/Q	N/Q
10,530.00	10,400.00	8,980.00	7,400.00	10,600.00	7,410.00	10,686.20	N/Q	N/Q	N/Q
Category 3 – All local meter Manufacturers/Assemblers									
10,820.00	10,660.00	8,462.00	8,200.00	10,600.00	7,410.00	11,000.00	10,096.50	8,190.00	9,971.00
10,820.00	10,660.00	8,631.00	7,600.00	10,600.00	7,410.00	11,000.00	10,541.00	8,190.00	9,971.00
10,820.00	10,400.00	8,980.00	7,400.00	10,600.00	7,410.00	11,000.00	10,541.00	8,190.00	9,971.00

Key

N/Q -No Quote

Market Survey

14. According to the Evaluation Report, the Evaluation Committee observed that despite changes in market variables, the offered prices compared favourably well with the previous prices used to procure the items in January 2024. It recorded the below summary of the previous prices as compared to the prices recommended for the award.

Order number and date	Previous awarded Unit price KSHS VAT Excl	Current recommended Prices per category and lots		
		Category	Lot No	Current recommended Unit price KSHS VAT Excl
3000741278 of 31/01/2024	10,725.00	1	1	10,595.00
3000741280 of 31/01/2024	10,758.00	2	1	7,410.00

Order number and date	Previous awarded Unit price KSHS VAT Excl	Current recommended Prices per category and lots		
		Category	Lot No	Current recommended Unit price KSHS VAT Excl
3000741273 of 31/01/2024	11,084.00		2	7,800.00
3000741351 of 31/01/2024	10,200.00		3	10,530.00
3000741480 of 31/01/2024	10,900.20		4	10,400.00
			1	8,190.00
		3	2	8,631.00
			3	9,971.00
Average prices (VAT excl)	10,733.44			

Due Diligence

15. At this stage, the Evaluation Committee was required to carry out due diligence as provided under Clause 3 Post-Qualification of Tenderers (Due Diligence) of Section III – Evaluation and Qualification Criteria at page 39 of the Tender Document.

16. According to the Evaluation Report, the Evaluation Committee noted that there was need to conduct due diligence in the following manner:

a) Verification of Ready stocks

The Evaluation Committee noted that Category 1 was to be awarded based on the readily available stocks which were to be supplied within 21 days after the order was issued. The Evaluation Committee, therefore, conducted a factory visit on the bidders who had declared the availability of these ready stocks. Below is a summary of the findings.

No	Bidders Name	Quantity of ready stocks declared in the bid documents	Quantity of ready stocks as verified by the Evaluation committee
1	M/s Inhemeter Africa	94,000 Pcs	20,000PCS
2	M/s East Africa Meter Company	100,000.00	Nil
3	M/s Smart Meter Technology Ltd	167000 Pcs	167,000 Pcs
4	M/S Abcos Industrial Ltd	200,000 Pcs	NIL

Confirmation of ready stock forms attached as Appendix IX.

b) Due diligence on new manufacturers/Assemblers and respective OEM.

The Evaluation Committee noted that two bidders, namely M/S Abcos Industrial Ltd and M/s House of Procurement, were new local manufacturers and had not supplied meters to KPLC. The committee also noted that their subsequent original equipment manufacturers (OEM) have also not supplied meters to KPLC. The Evaluation Committee visited the two local manufacturers on 11th July 2025 and noted that the manufacturers were fully established. The committee also noted the approval to manufacture letters dated 12th November 2024 highlighted as follows;

(i) As a Legal requirement, KPLC was to conduct further due diligence during the tendering period on the Original Equipment Manufacturers (OEM) to ascertain the following;

- Product quality on mechanical and electronic components
- Production process of semi knock down kits.
- Production capacity.
- Production and testing equipment's
- Environmental aspects

(ii) The need to conduct a systematic introduction of their meters in the Kenyan market to ensure proper compatibility and integration with the existing software.

Further to the above recommendations highlighted during the factory inspection stage and Pursuant to section 83 of the Public Procurement and Asset Disposal Act 2015, the Evaluation Committee noted that it is necessary to conduct further due diligence on the Original Equipment Manufacturers (OEM) as follows;

	Bidder	Item Description	(Oem) Manufacturer	Location
1	Abcos Industrial Ltd	Single-Phase Smart Meter	Wasion Group Ltd	No. 468 West Tongzipo Road, Changsha, Hunan province, China
2	House of Procurement Ltd	Single-Phase Smart Meter	Qingdao Eastsoff Communication Technology Co., Ltd	16A Shangqing Road, Shibe District, Qingdao, Shandong Province, China

Evaluation Committee's Recommendation

17. The Evaluation Committee recommended award of the subject tender as follows:

- (i) Award of Tender No. KP1/9A.3/RT/14/24-25 for Supply of Single Phase Smart Meters (Local Manufacturers and Assemblers) at a total cost of **KShs 6,719,723,400.00 (Six Billion Seven Hundred and Nineteen Million Seven Hundred and Twenty-Three Thousand Four Hundred**

Kenya Shillings Only. (VAT inclusive PPCBL Inclusive) as tabulated below, subject to successful due diligence on their Original Equipment Manufacturers (OEM) for the two new manufacturers, namely M/S Abcos Industrial Ltd and M/s House of Procurement Limited.

1) M/s Smart Meter Technology Ltd								
category	lot no	Code	Description	Delivery Point	Unit	Quantities	Unit Price Kshs (VAT Exclusive PPCBL Incl)	Total Amount VAT Exclusive PPCBL Incl)
1	1	535402	Single-phase SMART meter	Meter store	Pc	167,000	10,595.00	1,769,365,000.00
2	4	535402	Single-phase SMART meter	Meter store	Pc	35,000	10,400.00	364,000,000.00
Total Value Kshs (VAT Exclusive PPCBL Incl)								2,133,365,000.00
Add 16% VAT								341,338,400.00
Grand Total Value Kshs (VAT Exclusive PPCBL Incl)								2,474,703,400.00

2) M/s Inhemeter Africa Company Ltd								
Category	Lot No	Code	Description	Delivery Point	Unit	Quantities	Unit Price Kshs (VAT Exclusive PPCBL Incl)	Total Amount VAT Exclusive PPCBL Incl)
2	3	535402	Single-phase SMART meter	Meter store	Pc	50,000	10,530.00	526,500,000.00
Total Value Kshs (VAT Exclusive PPCBL Incl)								526,500,000.00
Add 16% VAT								84,240,000.00
Grand Total Value Kshs (VAT Exclusive PPCBL Incl)								610,740,000.00

3) M/s Magnate Ventures Ltd								
category	lot no	Code	Description	delivery Point	Unit	Quantities	Unit Price Kshs (VAT Exclusive PPCBL Incl)	Total Amount VAT Exclusive PPCBL Incl)
3	2	535402	Single-phase SMART meter	Meter store	Pc	65,000	8,631.00	561,015,000.00
Total Value Kshs (VAT Exclusive PPCBL Incl)								561,015,000.00
Add 16% VAT								89,762,400.00
Grand Total Value Kshs (VAT Exclusive PPCBL Incl)								650,777,400.00

4) M/S East Africa Meter Company Ltd								
category	lot no	Code	Description	Delivery Point	Unit	Qty	Unit Price Kshs (VAT	Total Amount VAT Exclusive PPCBL Incl)

								Exclusiv e PPCBL Incl)	
2	1	53540 2	Single-phase SMART meter	Meter store	Pc	100,00 0	7,410.00		741,000,000.0 0
Total Value Kshs (VAT Exclusive PPCBL Incl)									741,000,000.0 0
Add 16% VAT									118,560,000.0 0
Grand Total Value Kshs (VAT Exclusive PPCBL Incl)									859,560,000.0 0

5) M/s Hexing Technology Company Ltd									
Category	Lot	Code	Description	Delivery Point	Unit	Qty	Unit Price Kshs (VAT Exclusive PPCBL Incl)	Total Amount VAT Exclusive PPCBL Incl)	
2	2	53540 2	Single-phase SMART meter	Meter store	Pc	8500 0	7,800.00		663,000,000.0 0
Total Value Kshs (VAT Exclusive PPCBL Incl)									663,000,000.0 0
Add 16% VAT									106,080,000.0 0
Grand Total Value Kshs (VAT Exclusive PPCBL Incl)									769,080,000.0 0

6) M/s House of Procurement Limited									
category	lot	Code	Description	Delivery Point	Unit	Qty	Unit Price Kshs (VAT Exclusive PPCBL Incl)	Total Amount VAT Exclusive PPCBL Incl)	
3	3	53540 2	Single-phase SMART meter	Meter store	Pc	3500 0	9,971.00		348,985,000.0 0
Total Value Kshs (VAT Exclusive PPCBL Incl)									348,985,000.0 0
Add 16% VAT									55,837,600.00
Grand Total Value Kshs (VAT Exclusive PPCBL Incl)									404,822,600.0 0

7) M/S Abcos Industrial Ltd									
category	lot no	Code	Description	Delivery Point	Unit	Qty	Unit Price Kshs (VAT Exclusive PPCBL Incl)	Total Amount VAT Exclusive PPCBL Incl)	

3	1	535402	Single-phase SMART meter	Meter store	Pc	100,000	8,190.00	819,000,000.00
Total Value Kshs (VAT Exclusive PPCBL Incl)								819,000,000.00
Add 16% VAT								131,040,000.00
Grand Total Value Kshs (VAT Exclusive PPCBL Incl)								950,040,000.00

ii) Pursuant to Section 83 of the Public Procurement and Asset Disposal Act 2015; grant approval to the Evaluation Committee to conduct further due diligence exercise on the Original Equipment Manufacturers for the two new local manufacturers namely M/s Abcos Industrial Ltd and M/s House of Procurement Limited based in China as tabulated below; This is because the local assemblers and their Original Equipment Manufacturers have not previously supplied any meters to KPLC.

	Bidder	Item Description	(Oem) Manufacturer	Location
1	Abcos Industrial Ltd	Single-Phase Smart Meter	Wasion Group Ltd	No. 468 West Tongzipo Road, Changsha, Hunan province, China
2	House of Procurement Ltd	Single-Phase Smart Meter	Qingdao Eastsoft Communication Technology Co., Ltd	16A Shangqing Road, Shibe District, Qingdao, Shandong Province, China

Professional Opinion

18. In a Professional Opinion dated 16th July 2025 (hereinafter referred to as the "Professional Opinion"), the General Manager, Supply Chain & Logistics, Dr. John Ngeno, OGW reviewed the manner in which the subject procurement process was undertaken including evaluation of tenders and concurred with the recommendations of the Evaluation Committee with respect to award of the subject tender.

19. Thereafter, the Professional Opinion was approved as recommended on 17th July 2025.

Notification to Tenderers

20. Tenderers were notified of the outcome of evaluation of the subject tender on 17th July 2025.

REQUEST FOR REVIEW NO. 86 OF 2025

21. On 30th July 2025, Chartford Limited, the Applicant herein filed a Request for Review dated 30th July 2025 together with a Supporting Affidavit sworn by David Maina Kamiru, its director on 30th July 2025 (hereinafter referred to as the 'instant Request for Review') through Limo and Njoroge Advocates seeking the following orders from the Board in verbatim:

a) The letter of Notification of Intention to Award dated 17th July 2025 issued by the 1st respondent with respect to Tender No. KP1/9A.3/RT/14/24-25 for SUPPLY OF SINGLE-PHASE SMART METERS. (LOCAL MANUFACTURERS AND ASSEMBLERS) be cancelled and set aside.

b) The entire procurement proceedings in respect of Tender No. KP1/9A.3/RT/14/24-25 for SUPPLY OF SINGLE-PHASE SMART METERS. (LOCAL MANUFACTURERS AND ASSEMBLERS) be annulled and set aside.

c) The 1st respondent be and is hereby directed to re-advertise and initiate fresh procurement proceedings in

respect of Tender No. KP1/9A.3/RT/14/24-25 for SUPPLY OF SINGLE-PHASE SMART METERS. (LOCAL MANUFACTURERS AND ASSEMBLERS).

In the alternative:

d) The Board be pleased to direct the 1st respondent to award Tender No. KP1/9A.3/RT/14/24-25 for SUPPLY OF SINGLE-PHASE SMART METERS. (LOCAL MANUFACTURERS AND ASSEMBLERS) to the applicant.

22. In a Notification of Appeal and a letter dated 30th July 2025, the Board Secretary notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 30th July 2025.

23. On 4th August 2025, the Respondents filed through Joseph Muchai Advocate a Notice of Appointment of Advocate dated 3rd August 2025 and a 1st and 2nd Respondents' Memorandum of Response to the Request for Review dated 3rd August 2025 together with confidential

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

24. On 5th August 2025, the 7th Interested Party filed through CM Advocates LLP a Notice of Appointment dated 4th August 2025 and the 7th Interested Party's Memorandum of Response to the Applicant's Request for Review dated 30th July 2025.

25. On 5th August 2025, the Respondents filed a Notice of Preliminary Objection dated 4th August 2025.

26. On 6th August 2025, the 1st Interested Party filed through NOW Advocates LLP a Notice of Appointment of Advocates dated 5th August 2025 and a Notice of Preliminary Objection dated 5th August 2025.

27. *Vide* letter dated 6th August 2025, the Board Secretary notified all tenderers in the subject tender via email, of the existence of the subject Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the subject tender within three (3) days.

28. On 7th August 2025, the Applicant filed an Applicant's Supplementary Affidavit sworn by David Maina Kamiru, its director on 6th August 2025.

29. On 7th August 2025, the 2nd Interested Party filed through Kipkorir Cheruiyot Chivai & Kigen Advocates LLP a Notice of Appointment of Advocates dated 6th August 2025 and a Replying Affidavit, as a response to the Request for Review dated 30th July 2025, sworn by Niu Yuan on 6th August 2025.

30. On 7th August 2025, the 4th Interested Party filed through Maureen Wakahia Advocate and 4th Interested Party Memorandum of Response dated 7th August 2025.

31. *Vide* a Hearing Notice dated 8th August 2025, the Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the instant Request for Review slated for 13th August 2025 at 2.00 p.m., through the link availed in the said Hearing Notice.

32. On 8th August 2025, the 7th Interested Party filed through CM Advocates LLP Advocates a Notice a Notice of Appointment dated 4th August 2025.

33. On 8th August 2025, the 1st Interested Party filed a 1st Interested Party's Replying Affidavit sworn by Emmanuel Tongi Oroo on 8th August 2025 together with an Affidavit sworn by Dennis Muthenya, its Procurement Officer on 8th August 2025.

34. On 8th August 2025, the 3rd Interested Party filed a Notice of Appointment dated 7th August 2025 together with a Replying Affidavit

by the 3rd Interested Party sworn by Zhou Xiping, its General Manager, on 7th August 2025.

35. On 8th August 2025, the 6th Interested Party filed through Seko Minayo & Company Advocates LLP a Notice of Appointment dated 7th August 2025.

36. On 11th August 2025, the Applicant filed Written Submissions dated 11th August 2025 and Applicant's Case Digest dated 11th August 2025.

37. On 12th August 2025, the 1st and 2nd Respondents filed Written Submissions dated 12th August 2025 together with 1st and 2nd Respondents' List of Authorities dated 12th August 2025.

38. On 13th August 2025, the 1st Interested Party filed 1st Interested Party's Written Submissions dated 13th August 2025 and 1st Interested Party's List and Bundle of Authorities dated 13th August 2025.

39. When the matter first came up for hearing on 13th August 2025 at 2.45 p.m., the Board informed parties that due to an unforeseen medical emergency affecting the Panel Chairperson, the hearing would not proceed and was rescheduled to 14th August 2025 at 12.00 noon.

40. At the hearing of the instant Request for Review on 14th August 2025 at 12.00 noon, the Board read out the pleadings filed by parties in the matter and allocated time for parties to highlight their respective

cases. Thus, the instant Request for Review proceeded for virtual hearing as scheduled.

PARTIES' SUBMISSIONS

Applicant's Submissions

41. In his submissions, Mr. Ouma relied on the Applicant's documents filed before the Board.

42. As to whether the Applicant has the requisite jurisdiction to lodge the instant Request for Review under Section 167(1) of the Act, counsel submitted that the Applicant duly pleaded that it risks suffering loss or damage as a result of the alleged breach of duty imposed on the Procuring Entity. He pointed the Board to the Applicant's Supplementary Affidavit sworn on 6th August 2025 where the effects of the Respondents' breach of law are disclosed and which deposed that the lack of transparency in the procurement proceedings threatens to cause loss and damage to the Applicant. Counsel submitted that the Applicant discharged the requirement of stating that it will suffer loss and as such, has the requisite locus standi to seek administrative review under the Act.

43. He urged the Board to have a holistic scrutiny of all the documents lodged by the Applicant to ascertain if loss or risk of suffering loss was stated. In support of his argument, he relied on the holding in *PPARB Application No. 19 of 2025 Wanjohi Mutonyi Consult Ltd and the Director General Kenya Civil Aviation* and indicated that in this case,

the failure to plead loss and damage was drawn from both the Request for Review and Applicant's response.

44. Counsel submitted that the Board must give regard to both the Request for Review and the Supplementary Affidavit in ascertaining whether the Applicant stated that it suffered or risks suffering loss or damage. Without prejudice to the foregoing, Mr. Ouma further submitted that it is not material to specifically plead loss in order to bring a request for review under Section 167(1) of the Act. He argued that should the Board find that no loss or damage or risk of suffering the same was claimed, it ought to proceed to substantively determine the review application since the purpose of the administrative review contemplated under Section 167 of the Act is to safeguard the integrity of the procurement proceedings.

45. Counsel further argued that it is sufficient for the Board to determine the review application so as to ascertain whether there were any breaches attendant to the procurement proceedings and that it will defeat the spirit behind the enactment of the Act in striking out the instant Request for Review which alleges and discloses breach of the law just because the candidate did not claim that they would suffer loss and damage. The Applicant submitted that this would run contrary to the spirit of the law and allow procurement entities to flaunt the law.

46. Mr. Ouma referred the Board to the holding by Justice Chigiti in *Republic v Public Procurement Administrative Review Board; Lake Victoria North Water Works Development Agency & another (Interested Parties); Toddy Civil Engineering Company Limited (Ex parte Applicant) (Judicial Review E031 of 2023) [2023] KEHC 3699 (KLR) (Judicial Review) (27 April 2023) (Judgment)* and submitted that the Learned Judge found that failure to plead loss was curable and that striking out the review was a drastic action inconsistent with various constitutional principles and provisions.

47. As to whether the Procuring Entity violated the principles of public procurement as set out in Article 227 of the Constitution, and its duties under the Act, Regulations 2020 and the Tender Document, counsel submitted that the notification of intention to award details various read-out tender amounts for successful bidders and that the Respondents have not recanted the fact that the tender prices for the 1st, 2nd and 5th Interested Parties as disclosed in the notification letter are higher than the Applicant's price. He further submitted that the award of tender to the Interested Parties whose tender prices are higher than the Applicant's is a violation of the principles of fairness and competitiveness.

48. The Applicant submitted that the subject tender was divided in different categories and lots and essentially, the different lots constitute separate contracts. That in issuing the notification letter, the Respondents failed to disclose which categories or lots were

awarded to the various Interested Parties. It argued that this failure to attribute specific categories and lots to the Interested Parties renders the outcome of the procurement proceedings obscure, and not up to the tenant of fairness and transparency as envisioned under Article 227(1) of the Constitution.

49. Counsel submitted that the Respondents violated provisions under Section 87 of the Act as read with Regulation 82 of Regulations 2020 which places an obligation on the accounting officer in notifying bidders of the outcome of evaluation of their tenders to disclose the successful bidders as appropriate and reasons thereof.

50. While making reference to the holding in *Republic v Public Procurement Administrative Review Board Ex parte Kenya Power & Lighting Company Limited; Energy Sectors Contractors Association & Zoec-Zhapedc-Nginu (Interested Parties) [2020] KEHC 10455 (KLR)*, Mr. Ouma submitted that in advancing its case, an applicant must establish irregularities whose materiality is assessed against the Constitution and statutory law.

51. Counsel submitted that there is an effect of unbundling procurements and how unbundled procurements must be handled. He pointed out that while Section 54 (1) of the Act prohibits procuring entities from structuring a procurement as two or more procurements, Regulation 154 of the Act makes provision for unbundling of public procurement for the purpose of ensuring maximum participation of citizen

contractors, disadvantaged groups, small, micro and medium enterprises. He indicated that the Respondents conceded that the subject tender was unbundled into various categories and lots and as such, the different categories and lots amounted to different procurements thus requiring specific awards.

52. Counsel referred the Board to Section 80(2) of the Act as read with ITT 33.2 and 34 of the Tender Document and submitted that the Respondents were under an obligation to evaluate the price for each lot. He indicated that to the contrary, the Respondents issued a notification letter citing the cumulative tender price of the different lots instead of the prices for each lot which was in violation of the provisions of the Tender Document.

53. He further submitted that ITT 40 as amended by Addendum No. 1 sets out the mode of award of the subject tender for the different categories and lots and that this provision required the procuring entity to award a bidder one lot per category for categories 2 and 3 and thereafter, the lots were to be awarded sequentially to the qualified bidders. Counsel argued that the Respondents failed to adhere to the provisions of ITT 40 and that the awarded tender prices do not show how different lots were allocated to the Interested Parties.

54. Mr. Ouma urged the Board to allow the instant Request for Review as prayed.

Respondents' submissions

55. In his submissions, Mr. Muchai relied on the Respondents' documents concerning the subject tender filed before the Board.

56. While making reference to Article 227(1) of the Constitution and Section 3 of the Act, Mr. Muchai submitted that the decision to advertise and ultimately award a tender constitutes an administrative action and as such, the procuring entity is guided by various legal principles meant to ensure fairness, transparency, equitability, cost-effectiveness and fair competition.

57. Counsel submitted that in the instant Request for Review, the Applicant lacks *locus standi* under Section 167(1) of the Act, having failed to plead and/or state that it has suffered or that it risks to suffer any loss or damage as a result of the alleged breach of the duty imposed on the Procuring Entity by the Act. He further submitted that the request for review is incurably defective and ripe for dismissal.

58. He argued that Section 167(1) of the Act restricts the right to seek review to a candidate or tenderer who pleads that they have suffered or risk suffering loss or damage due to a breach by the procuring entity. He further argued that the Board's jurisdiction is conferred strictly by statute, and where an applicant does not meet this threshold, the Board must decline jurisdiction. In support of his argument, he placed reliance on the holdings in *James Ayodi t/a Betooyo Contractors & Another v Elroba Enterprises Ltd & Another*

[2019] eKLR , Republic v PPARB & 2 others; MFI Document Solutions Ltd [2024] KEHC 9582 (KLR),Space Contractors & Suppliers Investment Limited v Public Procurement Administrative Review Board & 23 others (Civil Appeal E169 of 2023) [2023] KECA 1457 (KLR) (27 November 2023) (Judgment), and PPARB App NO. 63 of 2025: Peesam Limited v KPLC and 6 Others which held that pleading loss is a jurisdictional prerequisite.

59. Counsel submitted that the Applicant, upon perusing the Respondents' response and Notice of Preliminary Objection, tried to cure the defect in its pleadings by filing a supplementary affidavit in which it made a futile attempt of trying to plead the damage/loss that it allegedly suffered as a result of breach of duty on the part of the Procuring Entity.

60. Mr. Muchai submitted that an affidavit is not a pleading and pointed the Board to the holding by the Court of Appeal in *Superior Homes (Kenya) PLC v Water Resources Authority & 9 others (Civil Appeal E330 of 2020) [2024] KECA 1102 (KLR) (19 August 2024) (Judgment)* and *Michael Ngania vs Elphas Munyolimo [2004] eKLR*. He indicated that a party cannot purport to use an affidavit to plead any allegations or damage/loss suffered since it is evidence and its purpose is to adduce evidence to support what has been pleaded in the pleadings. Counsel pointed out that the request for review is the pleading and that the Applicant ought to have pleaded all the issues that it needed to plead in the request for review.

61. He further pointed out that the request for review is accompanied by a supporting affidavit to enable an applicant adduce evidence in support of what has been pleaded in the request for review and if need be, an applicant can use a supplementary affidavit to respond to issues raised in a respondent's response or replying affidavit but cannot use the same to plead new issues. In support of his argument, he referred to the holding in *Astute Africa Investments & Holding v Spire Bank Kenya Limited & another* [2018] eKLR and *Matindi & 3 others v The National Assembly of Kenya & 4 others; Controller of Budget & 50 others (Interested Parties) (Petition E080, E084 & E150 of 2023 (Consolidated))* [2023] KEHC 19534 (KLR) (Constitutional and Human Rights) (3 July 2023) (Judgment).

62. As to whether the Procuring Entity evaluated and awarded the subject tender in accordance with the evaluation criteria contained in the Tender Document and in compliance with applicable laws, counsel made reference to Section 79(1) and 80(2) of the Act and the Court of Appeal holding in *Sinopec International Petroleum Service Corporation v Public Procurement Administrative Review Board & 3 others (Civil Appeal E012 of 2024)* [2024] KECA 184 (KLR) (23 February 2024) (Judgment) and submitted that as a general rule, a procuring entity ought to only consider conforming, compliant or responsive tenders.

63. He indicated that ITT 40 of the Tender Document provided the award criteria and that the Evaluation Committee subjected bids to the said criteria in conducting a financial comparison as per their eligibility and recommending award of the subject tender. He further indicated that the Evaluation Committee conducted a market survey and noted that the prices offered were within the prevailing market price in addition to a due diligence with respect to verification of ready stocks and the new manufacturers/assemblers and their equipment manufacturers.

64. Counsel submitted that with regards to the verification of ready stocks, it was established that only the 1st Interested Party had the same number of ready stocks as indicated in its tender and with regard to the new manufactures/assemblers and their equipment manufacturers, it was confirmed that the equipment manufacturers of the two new assemblers who had never supplied meters to KPLC (the 6th and 7th Interested Parties) were fully established and in existence.

65. Counsel reiterated that the Evaluation Committee awarded the tenderers in line with ITT 3.6 as read with ITT 40 of the Tender Document as amended by Addendum No. 3.

66. He submitted that the Applicant was not awarded in (a) category 1 lot 1 having not tendered for the same, (b) category 2 as its prices did not emerge as the lowest evaluated price in any of the lots therein, and (c) category 3 as its prices did not emerge as the lowest evaluated price in any of the lots therein.

67. He further submitted that the 1st Interested Party was awarded under category 1 lot 1 by virtue of the fact that it was the only bidder with ready stock in the required quantity and in category 2 lot 4 despite not having the lowest evaluated price since other bidders who had lower prices than its price were awarded in other lots (i.e. Magnate Ventures Ltd – Category 3, Lot 2; Hexing Technology Company Ltd Category 2, Lot 2; and East Africa Meter Company Ltd- Category 2, Lot 1.)

68. He pointed out that the 2nd Interested Party was awarded under category 2 lot 1 by virtue of the fact that it had the lowest evaluated bid price under that lot. Further, that the 5th Interested Party was awarded under category 2 lot 3 despite it not having the lowest evaluated price since other bidders who had lower prices than it were awarded other lots i.e. (Hexing Technology Company Ltd- Category 2, Lot 2; East Africa Meter Company Ltd- Category 2, Lot 1; and Magnate Ventures Ltd – Category 3, Lot 2).

69. As to whether the notifications issued to the unsuccessful bidders were done in accordance with Section 87 (3) of the Act and Regulation 82(2) of Regulations 2020, counsel submitted that the only information that is legally required to be stated in the notification to the unsuccessful bidder is the name of the successful bidder and reason(s) as to why its bid was unsuccessful. He argued that the Procuring Entity is not legally required to disclose the specific categories and lots awarded to

the successful tenderers to the Applicant and that the notification letter as issued in the subject tender was proper.

70.As to whether the tender sums awarded to the successful bidders tally with their bid amounts in each specific lot awarded, counsel submitted that the tender sum awarded to each and every successful bidder is equivalent to the bid price submitted by each bidder multiplied by the quantity of each specific lot. In emphasizing his argument, counsel referred the Board to the tender sum awarded to the 7th Interested Party under category 3 lot 1 and indicated that the 7th Interested Party's bid price under this lot was Kshs. 8,190.00 and the quantity for the lot was 100,000 pieces and a multiplication of the two figures amounts to Kshs. 819,000,000.00 which is equivalent to the tender sum awarded to the 7th Interested Party.

71.Mr. Muchai urged the Board to dismiss the instant Request for Review with costs.

1st Interested Party's case

72.In her submissions, Ms. Nungo for the 1st Interested Party relied on the 1st Interested Party's documents filed before the Board and associated herself with the submissions of the Respondents with regard to the preliminary objection raised on the jurisdictional issue under Section 167 of the Act.

73. Counsel submitted that the Applicant conspicuously failed to claim and/or plead with specificity and/or disclose that it has suffered or risks suffering loss or damage due to breach of a duty imposed on the Procuring entity under the Act or Regulations 2020. In support of her argument, she relied on the holding in *James Oyondi t/a Betoyo Contractors & another v Elroba Enterprises Limited & 8 others* [2019] eKLR, and argued that the Applicant lacks the *locus standi* to institute the instant Request for Review in light of its failure to claim and/or plead that it has suffered or risks suffering, loss or damage due to alleged breach of a duty imposed on the 1st Respondent by the Act or Regulations 2020 thus offending the provisions of Section 167(1) of the Act.

74. She further submitted that the Applicant attempted to cure this breach of law by filing a Supplementary Affidavit yet an affidavit is not a pleading. In support of her argument, she made reference to the holding in *Astute Africa Investments & Holding v Spire Bank Kenya Limited & another* [2018] eKLR; *Matindi & 3 Others v The National Assembly of Kenya & 4 others; Controller of Budget & 50 others (Interested Parties) (Petition E080, E084 & E150 of 2023 (Consolidated))* [2023] KEHC 19534 (KLR) (Constitutional and Human Rights) (3 July 2023) (Judgment); and *Superior Homes (Kenya) PLC v Water Resources Authority & 9 others (Civil Appeal E330 of 2020)* [2024] KECA 1102 (KLR) (19 August 2024) (Judgment).

75. Without prejudice to the foregoing, counsel submitted that even if the Supplementary Affidavit was regarded as a pleading, the Applicant still failed to claim or plead in the affirmative that it suffered or stands to suffer loss or damage due to breach of a duty imposed on the Procuring Entity by the Act or Regulations 2020.

76. Ms. Nungo submitted that the Applicant is, in any event, not a tenderer within the meaning of Section 2 of the Act with respect to Category 1 of the subject tender as it only submitted and bid for Category 2 and 3 of the Tender Document. She argued that in this regard, the Applicant has not and is not capable of suffering any loss or damage as a result of the alleged breach of duty imposed on the Procuring Entity under the Act or Regulations 2020.

77. As to whether the Procuring Entity evaluated and awarded the subject tender in accordance with the mode of evaluation contained in the Tender Document and the Act, counsel submitted that award of the subject tender was made strictly in line with the laid-out criteria provided at Clause 2.2.8 of Section III- Evaluation and Qualification Criteria at page 39 of the Tender Document as read with ITT 40 of Section II – Tender Data Sheet as amended by the various addendums.

78. She argued that the Procuring Entity having found the Applicant's bid price not to be competitive and not being the lowest evaluated bid price, acted within the bounds of the law and principles of fairness in

awarding lot 4 of category 2 to the 1st Interested Party and as such, the award was both lawful and procedurally fair and in line with Section 86(1) of the Act as read with Regulation 77 of Regulations 2020.

79. As to whether the Respondents acted in contravention of Section 87(3) of the Act as read with Regulation 82(1) of Regulations 2020 in informing bidders of their results under the subject tender, counsel submitted that there is no provision of law that requires disclosure of (a) the details of the successful bidder for each lot in the subject tender, (b) the unit prices for the successful bidders for each lot in the subject tender, and (c) the awarding quantities for each successful bidder. While relying on the holding in *PPARB Application No. 96 of 2024; Chakra Company Limited V The Accounting Officer, Muhoroni Sugar Company Limited and Canon Security Limited (Interested Party)*, counsel submitted that the 2nd Respondent was/ is not required by law to disclose the specific categories and lots awarded to the successful tenderers. She indicated that to that end, the Notification of Award dated 17th July 2025 clearly informed bidders who were the successful tenderers and those who were the unsuccessful tenderers of the outcome of the tendering process in the subject tender.

80. She urged the Board to strike out the instant Request for Review for want of jurisdiction and in the event the Board considers the merits of the application, to dismiss the instant Request for Review with costs.

2nd Interested Party's Case

81. In his submissions, Mr. Chivai for the 2nd Interested Party relied on the 2nd Interested Party's documents filed before the Board.

82. Counsel associated himself with submissions made by Mr. Muchai for the Respondents and Ms. Desma for the 1st Interested Party. He submitted that the 2nd Interested Party bid in all the 3 categories and emerged successful in category 2 lot 1 despite being the lowest bidder in most of the other categories. He indicated that the reason the 2nd Interested Party was not complaining is that the rules set out by the Respondents in the subject tender were fair, equitable, transparent, and competitive.

83. Counsel submitted that the Applicant's allegations in the instant Request for Review are bereft of any basis and that it failed to demonstrate how it arrived at the conclusion that the awards were not made to the lowest bidders nor any impropriety on the part of the Procuring Entity.

84. He urged the Board to dismiss the instant Request for Review with costs.

3rd Interested Party's Case

85. In her submissions, Ms. Tuwei for the 3rd Interested Party relied on the 3rd Interested Party's documents filed before the Board.

86. The 3rd Interested Party contends that the instant Request for Review as filed is fatally defective and incurably bad in law since the Applicant has not demonstrated any prejudice or specific loss or damage suffered. It further contends that the Applicant lacks locus standi to institute the present proceedings.

87. The 3rd Interested Party averred that the procurement process was lawful and proper and that the award made thereof was fair to the participating tenderers. It further averred that the award made to it in category 2 was procedural and appropriate and that the Applicant's allegations are merely speculative as it does not show how it was unfairly disqualified in the various categories of the subject tender or how the criteria of evaluation used by the Procuring Entity was not followed.

88. She urged the Board to dismiss the instant Request for Review with costs.

4th Interested Party's Case

89. In her submissions, Ms. Wakahia for the 4th Interested Party relied on the 4th Interested Party's documents filed before the Board and associated herself with the Respondents' submissions and the 1st, 2nd, 3rd, 5th, 6th and 7th Interested Party's submissions.

90. Counsel submitted that the 4th Interested Party was notified of award of the subject tender vide notification letter dated 17th July 2025 that

was issued in accordance with Section 87 of the Act. She emphasized that the said award was lawful and properly communicated, and that the 4th Interested Party was awarded Category 3 Lot 2 having emerged the lowest bidder in accordance with ITT 40 of the Tender Document as amended by the various addendums which stipulated that a bidder could only be awarded one lot per category, and on this basis the 4th Interested Party was awarded Category 3, Lot 2 at a price of Kshs. 561,015,000/= exclusive of VAT, being the lowest bid.

91. Ms. Wakahia submitted that the Applicant's bid price for the same lot was Kshs. 685,165,000/=, which was higher than that of the 4th Interested Party, rendering its claim of discrimination baseless

92. She indicated that the procurement process complied with the Act and Tender requirements, and that the award was made to the lowest evaluated responsive bidder. Further, that the award process was fair, transparent, cost-effective, and lawful, and as such, the instant Request for Review lacks merit and ought to be dismissed.

5th Interested Party's Case

93. In his submissions, Mr. Munene for the 5th Interested Party relied on the 5th Interested Party's documents filed before the Board and associated himself with the Respondents' submissions and the 1st, 2nd, 3rd, 4th, 6th and 7th Interested Party's submissions.

94. It is the 5th Interested Party's case that the Applicant has not complied with the requirements set out in Section 167(1) and 2 of the Act and that the instant Request for Review as filed is frivolous, misconceived and unfounded for want of jurisdiction and ought to be struck out with costs. Counsel submitted that the Applicant had failed to prove any actual or potential loss suffered as a result of the procurement process and that it is required to establish the alleged irregularity complained of caused or will cause it prejudice.
95. Mr. Munene submitted that the instant Request for Review is pegged on speculative grounds and that the Applicant has not demonstrated any breach of law as far as evaluation of the subject tender is concerned. He reiterated that Section 173 of the Act empowers the Board to grant remedies only where a breach of the law or procedure is established and that the Applicant has neither discharged the burden of proof under Section 107 of the Evidence Act nor met the threshold under Section 167 of the Act.
96. He indicated that the evaluation criteria was clearly set out in the Tender Document and that the same was applied uniformly to all bidders including the Applicant herein without bias or deviation from the prescribed requirements.
97. Counsel urged the Board to dismiss the instant Request for Review with costs.

6th Interested Party's Case

98. In his submissions, Mr. Seko for the 6th Interested Party relied on the 6th Interested Party's documents filed before the Board.

99. Counsel submitted that the 6th Interested Party was in support of the preliminary objection raised by the Respondents to the effect that the review application does not comply with Section 167 (1) of the Act and the Applicant lacks *locus standi* to institute the present proceedings.

100. He submitted that the 2nd Interested Party lawfully participated in the subject tender by bidding for Category 3 Lot 3, and its bid was responsive as it satisfied all mandatory, technical, and financial requirements set out in the Tender Document.

101. Counsel indicated that upon evaluation, the Procuring Entity determined the 6th Interested Party to be the successful bidder for Category 3 Lot 3, having submitted the lowest evaluated bid and that this award was made strictly in line with the evaluation criteria, which allowed one lot per bidder per category, with subsequent lots awarded sequentially provided the pricing fell within prevailing market rates.

102. He emphasized that due diligence was conducted and the Procuring Entity confirmed that the 6th Interested Party had the requisite capacity and facilities to supply the goods. He pointed out that the 6th Interested Party furnished a factory inspection letter, an approval to

manufacture, and documentary evidence establishing its status as a Local Manufacturer and Assembler.

103.Mr. Seko submitted that the award process fully complied with Articles 10 and 227 of the Constitution, Section 80 of the Act, and Regulation 77 of the Regulations 2020. He further submitted that the Applicant had failed to particularize any violation of the Act by the Procuring Entity, rendering its grounds for review baseless.

104.He urged the Board to dismiss the instant Request for Review with costs.

7th Interested Party's Case

105. In his submissions, Mr. Timbe for the 7th Interested Party relied on the 7th Interested Party's documents filed before the Board and associated himself with the Respondents' submissions.

106.He affirmed that the Procuring Entity evaluated the subject tender in full compliance with the relevant provisions of the law specifically Article 10, 27, 227 and 232 of the Constitution as well as Section 80 of the Act. Counsel argued that the Applicant has not specified what has been contravened by the Procuring Entity and has failed to demonstrate and substantiate the allegations raised in the instant Request for Review.

107. Mr. Timbe submitted that the 7th Interested Party sufficiently demonstrated that it was qualified to supply the goods in the subject tender and was rightfully awarded having emerged as the lowest bidder in category 3 lot 1.

108. He urged the Board to dismiss the instant Request for Review with costs.

Applicant's Rejoinder

109. In a rejoinder, Mr. Ouma submitted that Section 167 of the Act only requires a candidate or tenderer to claim to have suffered loss or risk suffering loss and that even the provisions in Regulations 2020 do not state that the claim must be specifically set out. He argued that it would be an injustice to restrict or rather strike out the instant Request for Review just because this allegation came out in the supplementary affidavit and not in the request for review. In support of his argument, he referred the Board to the holding in *PPARB Application No. 19 of 2025* and pointed out that the Board scrutinized the request for review and accompanying responses so as to establish if the issue of loss or risk of suffering loss and damage had been pleaded.

110. Counsel invited the Board to peruse the Request for Review and pointed out that the same clearly sets out which specific sections of the law have been breached having laid out violation of various article of the Constitution and sections of the Act and Regulations 2020.

111. While making reference to Regulation 80 of Regulations 2020, counsel submitted that an unsuccessful tenderer in the notification letter is informed of the name of the successful tenderer, the tender price, and the reason thereof in accordance with Section 86(1) of the Act. He reiterated that this was not complied with by the Procuring Entity in the subject tender and that the notification issued by the Procuring Entity was contrary to the law as it did not indicate what lots or categories the various interested parties were awarded in the subject tender.

CLARIFICATIONS

112. The Board sought to know how the market survey was conducted based on the prices captured in the Evaluation Report was the exact price awarded to the various successful bidders in the subject tender.

113. In response, Mr. Muchai submitted that meters being procured in the subject tender are unique products and that the only way that the Respondents could conduct market survey was by basing them on the previous prices of previous tenders. He pointed out that the previous process were captured in the Evaluation Report for comparison with the current prices quoted by tenderers.

114. At the conclusion of the hearing, the Board informed parties that the instant Request for Review having been filed on 30th July 2025 was due to expire on 20th August 2025 and the Board would communicate

its decision on or before 20th August 2025 to all parties to the Request for Review via email.

BOARD'S DECISION

115. The Board has considered each of the parties' cases, documents, pleadings, oral and written submissions, list and bundle of authorities together with confidential documents submitted to the Board by the Respondents pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination.

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

In determining the first issue, the Board will make a determination on:

- i. Whether the Applicant has the requisite *locus standi* to approach the Board by dint of Section 167(1) of the Act on the question of pleading loss and damage; and
- ii. Whether the Applicant has the requisite *locus standi* to approach the Board by dint of Section 167(1) as read with Section 2 of the Act on the question of whether the Applicant is a tenderer with respect to Category 1 of the subject tender;

Depending on the outcome of Issue A;

- B. Whether the Procuring Entity's Evaluation Committee evaluated and awarded the subject tender in accordance with the provisions of the Tender Document as read with provisions of the Constitution, the Act and Regulations 2020;**
- C. Whether the notification of the outcome of evaluation of the subject tender as issued was in line with Section 87(3) of the Act as read with Regulation 82 of Regulations 2020.**
- D. What orders should the Board grant in the circumstances?**

As to whether the Board has jurisdiction to hear and determine the instant Request for Review

116. This Board is mindful of the established legal principle that courts and decision-making bodies can only preside over cases where they have jurisdiction and when a question on jurisdiction arises, a Court or tribunal seized of a matter must as a matter of prudence enquire into it before doing anything concerning such a matter in respect of which it is raised.

117. Black's Law Dictionary, *8th Edition*, defines jurisdiction as:

"... the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties ... the power of courts to inquire into facts, apply the law, make decisions and declare judgment; The legal rights by which judges exercise their authority."

118. The *locus classicus* case on the question of jurisdiction is the celebrated Court of Appeal decision in **The Owners of Motor Vessel "Lilian S" v Caltex Oil Kenya Limited [1989]eKLR; Mombasa Court of Appeal Civil Appeal No. 50 of 1989** which underscores the centrality of the principle of jurisdiction. In particular, Nyarangi JA, made the oft-cited dictum:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction."

119. The Supreme Court added its voice on the source of jurisdiction of a court or other decision-making body in the case **Samuel Kamau Macharia and another v Kenya Commercial Bank Ltd and 2**

others [2012] eKLR; Supreme Court Application No. 2 of 2011 when it decreed that;

"A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with Counsel for the first and second Respondent in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction the Court cannot entertain any proceedings."

120. In the persuasive authority from the Supreme Court of Nigeria in the case of **State v Onagoruwa [1992] 2 NWLR 221 – 33 at 57 – 59** the Supreme Court held:

"Jurisdiction is the determinant of the vires of a court to come into a matter before it. Conversely, where a court has no jurisdiction over a matter, it cannot validly exercise any judicial power thereon. It is now common place, indeed a well beaten legal track, that jurisdiction is the legal right by which courts exercise their authority. It is the power and authority to hear and determine judicial proceedings. A court with

jurisdiction builds on a solid foundation because jurisdiction is the bedrock on which court proceedings are based."

121. The jurisdiction of a court, tribunal, quasi-judicial body or an adjudicating body can only flow from either the Constitution or a Statute (Act of Parliament) or both. This Board is a creature of statute owing to its establishment as provided under Section 27 (1) of the Act which reads:

"(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."

122. Further, the functions of the Board are provided under Section 28 of the Act as follows:

***"(1) The functions of the Review Board shall be—
(a) reviewing, hearing and determining tendering and asset disposal disputes; and
(b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law."***

123. The above provisions demonstrate that the Board is a specialized, central independent procurement appeals review board with its main function being reviewing, hearing and determining tendering and asset disposal disputes.

124. The jurisdiction of this Board is provided for under Part XV – Administrative Review of Procurement and Disposal Proceedings and specifically in Section 167 of the Act which provides for what can and cannot be subject to proceedings before the Board and Section 172 and 173 of the Act which provides for Powers of the Board.

125. Turning to the instant Request for Review, the Respondents and Interested Parties challenged the jurisdiction of the Board to hear and determine the instant Request for Review as follows:

i As to whether the Applicant has the requisite locus standi to approach the Board by dint of Section 167(1) of the Act on the question of pleading loss and damage.

126. The Respondents raised a preliminary objection to the hearing of the instant Request for Review on the ground that the Applicant lacks *locus standi* to institute the request for review pursuant to Section 167(1) of the Act since it has neither claimed or pleaded that it has suffered and/or risk suffering any loss or damage as a result of the alleged breach of duty imposed on the Procuring Entity by the Act.

127. Similarly, the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Interested Parties associated themselves with the Respondents submissions and objected to the hearing of the instant Request for Review on the ground that the Applicant lacks *locus standi* before the Board having not pleaded that it

suffered or risks suffering loss or damage due to the alleged breach of duty imposed on the Procuring Entity by the Act or Regulations 2020.

128. In response, the Applicant submitted that it had duly pleaded that it risks suffering loss or damage as a result of the alleged breach of duty imposed on the Procuring Entity. It pointed the Board to its Supplementary Affidavit sworn on 6th August 2025 and indicated that the effects of the Respondents breach of law are disclosed. It reiterated that it had discharged the requirement of stating that it will suffer loss and as such, has the requisite locus standi to seek administrative review under the Act.

129. The Applicant urged the Board to have a holistic scrutiny of all its filed documents so as to ascertain whether loss or risk of suffering loss was stated.

130. On a without prejudice basis, the Applicant further submitted that it is not material to specifically plead loss in order to bring a request for review under Section 167(1) of the Act and should the Board find that no loss or damage or risk of suffering the same was claimed, it should proceed to substantively determine the instant Request for Review.

131. In rejoinder, the Respondents and Interested Parties submitted that the Applicant in an attempt to cure the defect in its pleadings filed its Supplementary Affidavit whereby it made an attempt at pleading the damage/loss that it allegedly suffered as result of breach of duty on the

part of the Procuring Entity. They further submitted that an affidavit is not a pleading and cannot be used to plead any allegations or damage/loss suffered since its purpose is to adduce evidence to support what has been pleaded in the pleadings.

132. We note that Section 167 of the Act provides as follows:

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.

(2)

(3)

(4)

133. In essence, for one to invoke the jurisdiction of the Board, they need to approach the Board as provided under Section 167(1) of the Act and must (a) either a candidate or a tenderer (within the meaning of Section 2 of the Act), (b) claim to have suffered or to risk suffering, loss or damage due to breach of a duty imposed on a procuring entity by the Act or Regulations 2020, and (c) seek administrative review by the Board within fourteen (14) days of notification of award or date of occurrence of

alleged breach of duty imposed on a procuring entity by the Act and Regulations 2020 at any stage of the procurement process in a manner prescribed under Regulation 203 of Regulations 2020.

134. Having considered parties rival submissions, we note that superior courts have pronounced themselves on the aforementioned requirement for a candidate or tenderer to plead suffering or risk suffering loss or damage due to the breach of a duty imposed on a procuring entity by the Act or Regulations 2020 as provided under Section 167 of the Act.

135. In **Mombasa Civil Appeal No. 131 of 2018 James Ayodi t/a Betoyo Contractors & Another vs Elroba Enterprises Ltd & Another (2019) eKLR** (hereinafter referred to as “the James Oyondi case”), the Court of Appeal was called upon to render itself in an appeal challenging the decision of the High Court which held that the Board ought to have ruled that the Appellants had no *locus standi* before it as they had not demonstrated that they had suffered loss or were likely to suffer loss. The Court of Appeal held as follows:

" 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]

136. In essence, the court of appeal held that in seeking an administrative review before the Board, a candidate or tenderer must at the very least claim in its pleadings to have suffered or to be at the risk of suffering loss or damage due to the breach of a duty imposed on a procuring entity by the Act or Regulations 2020.

137. This Board in **PPARB Application No. 8 of 2023 Toddy Civil Engineering Company Limited v Chief Executive Officer, Lake Victoria North Water Works Development Agency & Another** (hereinafter referred to as "the Toddy case") was faced with a similar issue as the one herein and being guided by the holding in the James Oyondi case, held at pages 60 to 65 of its Decision as follows:

"In the James Oyondi case, the applicant 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 Kenya Ports Authority which the Court of Appeal held is a threshold requirement for any who would file a review before the Board in terms of Section 167(1) of the Act. The Court of Appeal held that it seemed plain 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 risk of suffering loss or damage for it is not every candidate or tenderer who has a right to file for administrative review. The Court of Appeal further held that the Board ought to have ruled that the Applicant in the request for review had no locus, and that the learned Judge at the High was right to reverse the Board's decision for failing to do so. The Court of Appeal concluded on by holding that they had no difficulty upholding the learned high court judge.

We understand this to mean that for a tenderer to file a request for review application before the Board, it must at the very least claim in its pleadings that it has suffered or is at the risk of suffering loss or damage due to breach of duty imposed on a procuring entity by the Act or Regulations 2020 pursuant to section 167 (1) of the Act.

In essence, administrative review by the Board is sought by a candidate or a tenderer who claims to have suffered or is at risk of suffering loss or damage and such loss or damage

emanates from the breach of a duty imposed on a procuring entity by the Act or Regulations 2020.

.....

Guided by the holding in the above cases, and in view of the Court of Appeal's holding in the James Oyondi case, the Applicant would have at the very least sought leave to amend its Request for Review (in good time) to incorporate its pleadings and claim/plead having suffered or likely to have suffered loss or damage due to breach of duty imposed on the 2nd Respondent by the Act and Regulations 2020 in line with the provisions of section 167(1) of the Act.

In view of the foregoing, our hands are tied as we are bound by the Court of Appeal's holding in the James Oyondi case and we have no option but to hold that the Applicant lacks the standing to seek an administrative review by the Board for failure to claim/plead that it has suffered or risks suffering loss or damage due to breach of duty imposed on the 2nd Respondent by the Act and Regulations 2020. Accordingly, the Applicant lacks the locus standi to seek administrative review before the Board for failure to claim that it has suffered or risks suffering, loss or damage due to breach of a duty imposed on the 2nd Respondent by the Act or the Regulations.

Consequently, this ground of objection by the Respondents succeeds."

138. From the Toddy case (which was upheld by the Court of Appeal in its judgment delivered on 19th June 2023 in *Civil Appeal No. E295 of 2023 consolidated with Civil Appeal No. E296 of 2023 Lake Victoria North Water Works Development Agency v Toddy Civil Engineering Company Limited & others*), the Board found that it was bound by the Court of Appeal holding in the James Oyondi case and held that the Applicant lacked *locus standi* to seek administrative review before it for failure to claim or plead in its Request for Review that it has suffered or risks suffering loss or damage due to breach of a duty imposed on the procuring entity by the Act or Regulations 2020.

139. Similarly, in **PPARB Application No. 52 of 2023 Space Contractors & Suppliers Investment Limited v Accounting Officer, Kenya Ports Authority & Others**, (hereinafter referred to as "the Space Contractors case") the Board found at paragraph 170 of its Decision dated 21st August 2023 as follows:

"170. In the circumstances, we find no reason to depart from this Board's holding in the Toddy case and the holding by the Court of Appeal in the James Oyondi case and hereby find and hold that the Applicant lacks the standing to seek an administrative review by the Board for failure to claim or

plead that it has suffered or risks suffering loss or damage due to breach of duty imposed on the 2nd Respondent by the Act and Regulations 2020. Consequently, the Applicant lacks the locus standi to seek administrative review before the Board for its failure to plead that it has suffered or risks suffering, loss or damage due to breach of a duty imposed on the 2nd Respondent by the Act or the Regulations.

140. On appeal, the Board's decision in the Space Contractor's case was upheld by the Court of Appeal in its judgement delivered at Mombasa on 27th November 2023 in **Civil Appeal No. E169 of 2023 Space Contractors & Suppliers Investment Limited v Public Procurement Administrative Review Board & Others** which held at paragraph 61 as follows:

".....In our view, the answer to Mr Gikandi's submission is to be found in section 167(1), which requires that the person seeking administrative review by way of a Request for Review be a candidate or a tenderer who ought to claim that it has suffered, or was at the risk of suffering, loss or damage due to the breach of a duty imposed on a procuring entity by the Act or the Regulations. Therefore, it does not suffice to alleged breach. One must go ahead and plead that it has suffered or risk suffering loss or damage as a result of the breach. In our considered view, it is not enough to simply contend that some of those awarded the tender were not qualified as the

appellant contended here. The appellant ought to have pleaded what loss, if any, it suffered or risked suffering as a result thereof. It failed to do so.

141. The Court of Appeal held that it does not suffice for one to allege breach. What is required is for one to go ahead and plead that it has suffered or risks suffering loss or damage as a result of the alleged breach.

142. Having carefully studied the instant Request for Review, we note that the same is premised on the alleged breach by the Respondents of Article 227 of the Constitution, Section 80, 86, and 87 of the Act and ITT 40 of the Tender Document. However, the Applicant fails to expressly plead or claim in the Request for Review that it is likely to suffer or has suffered loss or damage due to the alleged breach of duty imposed on the 2nd Respondent by the Act or Regulations 2020.

143. In determining whether the Applicant lacks *locus standi* in the instant Request for Review for its failure to plead that as a result of the Respondents' breach of duty, it suffered or risked suffering loss and damage, we note that the High Court in **Alfred Njau and Others v City Council of Nairobi (1982) KAR 229** described *locus standi* as:

"the term Locus Standi means 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".

144. Further, in **Law Society of Kenya v Commissioner of Lands & Others Nakuru High Court Civil Case No. 464 of 2000**, the High Court held that:

"Locus Standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in a court of law".

145. The import of the above holdings is that *locus standi* is the right to appear and be heard in Court or other proceedings and literally means 'a place of standing.' As such, if a party is found to have no *locus standi*, it then means that it cannot be heard whether or not it has a case worth listening to and this point alone may dispose of the Request for Review preliminarily without looking into its merit.

146. The Applicant pointed the Board to its Supplementary Affidavit filed on 7th August 2025 where we note that its director, David Maina Kamiru, deponed at paragraphs 3, 4, 5, and 6 as follows:

3. Foremost, the applicant has locus standi to bring the Request for Review, as it was a candidate in the subject procurement proceedings. From the applicant's response to the tender, the applicant is an established company licensed to trade, handling a maximum business valued at KES 3,500,000,000 at any given time.

4. Therefore, I refute the assertion that the applicant does not stand to suffer any loss or damage. I wish to clarify that by bidding in the subject procurement proceedings, the

Applicant had great prospects of receiving awards based on various prices presented for different lots and improve its participation as a player in the market as a manufacturer/assembler of the subject goods. The lapses by the procuring entity in the procurement proceedings prejudice the applicant because it did not award each lot separately.

5. This lack of transparency is not only inconsistent with the Constitution, statute and the tender document but also threatens to cause loss and damage to the applicant as it will not be able to assess the competitiveness of its prices in the market for the specific goods tendered in different lots.

6. Without prejudice to the above averments, I have been advised by the applicant's advocate, whose advice I verily hold to be true, that it is not mandatory for a candidate to specifically plead loss or damage in a Request for Review. Further, the law and any Request for Review are aimed at safeguarding the integrity of the public procurement process. Therefore, I believe that and request the Board to find that the Request for Review is competent and properly before it as it challenges the outcome of a constitutionally and statutorily protected process and proceedings.

147. From the above, the Applicant refuted the allegation by the Respondents and Interested Parties that it does not have *locus standi* before the Board and argued that the lapses by the Procuring Entity in the subject tender complained of prejudiced it and threatened to cause it loss and damage.

148. It is not in contest that the above claims in the Applicant's Supplementary Affidavit were raised after the filing of the Respondent's Notice of Preliminary Objections on 5th August 2025 and the 1st Interested Party's Notice of Preliminary Objection on 6th August 2025.

149. The Respondents and 1st Interested Party submitted at length that despite the attempt by the Applicant to cure the defect in its pleadings by filing its Supplementary Affidavit, it is trite law that an affidavit is not a pleading and that a party cannot purport to use an affidavit to plead any allegation or loss/damage suffered.

150. To this end, they relied on the holding by the Court of Appeal in **Superior Homes (Kenya) PLC v Water Resources Authority & 9 others (Civil Appeal E330 of 2020) [2024] KECA 1102 (KLR) (19 August 2024) (Judgment)** where it was held as follows:

"76. Section 2 of the Civil Procedure Act defines "pleading" as follows: "pleading" includes a petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant. From the above, an affidavit is not a pleading, and alleged special damages set out in an affidavit cannot be considered as pleaded special damages. Indeed, in Stephen Boro Githua v. Family Finance Building Society & 3 Others [2015] eKLR this Court held that:

"As is trite law the contents of an affidavit constitute evidence on oath. An affidavit does not constitute a pleading. A pleading includes a summons, petition, a statement of claim or demand or a defence, a reply to a defence or counterclaim, all of which are subject to amendment, unlike an affidavit, which is evidence."

151. The import of the above holding by the Court of Appeal is that an affidavit does not constitute a pleading and any special damages set out in an affidavit cannot be considered as pleaded special damages.

152. In the same vein, we note that in the Court of Appeal in **Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR** in holding that parties are bound by their pleadings which in turn limits the issues upon which a trial court may pronounce itself on, agreed with the decision of the Nigerian Supreme Court in **Adetoun Oladeji (Nig) Ltd v Nigeria Breweries Plc SC 91/2002**, where Judge Pius Aderemi JSC expressed himself as follows;

"...it is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded."

153. The Court of Appeal further observed that other judges on the case expressed themselves in similar terms, with Judge Christopher Mitchell JSC rendering himself thus;

"In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation."

154. Noting that it is trite law that parties are bound by their pleadings and issues for the court's determination flow from the pleadings, we disagree with the Applicant's submission that it is not material to specifically plead loss in bring a request for review under Section 167(1) of the Act. To the contrary, Section 167(1) requires that the person seeking administrative review by way of a request for review be a candidate or a tenderer who ought to plead that it has suffered, or was at the risk of suffering, loss or damage due to the breach of a duty imposed on a procuring entity by the Act or Regulations 2020.

155. In view of the foregoing, we are constrained to make a finding that the Applicant lacks the standing to seek administrative review before the Board for its failure to plead in the Request for Review that it has suffered or risks suffering, loss or damage due to breach of a duty imposed on the 2nd Respondent by the Act or Regulations 2020 in line with Section 167(1) of the Act.

156. Accordingly, the Applicant lacks the *locus standi* to seek administrative review before the Board for failure to plead that it has suffered or risks suffering, loss or damage due to breach of a duty imposed on the 2nd Respondent by the Act or the Regulations. The Board therefore has no jurisdiction to hear and determine the instant Request for Review.

157. Consequently, this ground of objection succeeds.

As to whether the Applicant has the requisite locus standi to approach the Board by dint of Section 167(1) as read with Section 2 of the Act on the question of whether the Applicant is a tenderer with respect to Category 1 of the subject tender.

158. The 1st Interested Party raised a preliminary objection to the hearing of the instant Request for Review on the ground that the Applicant is not a tenderer within the meaning of Section 2 of the Act with respect to Category 1 of the subject tender since it did not submit its bid in response to any lot in Category 1 of the subject tender and as such, has not and is not capable of suffering any loss or damage as a result of the alleged breach of a duty imposed on the 2nd Respondent by the Act or Regulations 2020 with respect to award of the lot in Category 1 of the subject tender. The Applicant did not specifically respond to this ground of objection.

159. The Board notes that the question on whether or not the Applicant was a tenderer within the meaning of Section 2 of the Act with respect to Category 1 of the subject tender is a jurisdictional issue since it is not just

any and every person that may move the Board or invoke the jurisdiction of the Board by way of a Request for Review under Section 167 (1) of the Act.

160. We have hereinbefore noted the provisions of Section 167(1) of the Act which states:

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.

161. In essence, the right to seek an administrative review before the Board is expressly reserved for candidates and tenderers who may have a claim at any stage of the procurement process to having suffered loss or damage due to the breach of a duty imposed on a procuring entity by the Act or Regulations 2020. We take this to mean that only a candidate or tenderer are clothed with the legal capacity of invoking the Board's jurisdiction by seeking administrative review of procurement proceedings.

162. Section 2 of the Act defines the term candidate and tenderer as follows:

"candidate" means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity;"

.....

"Tenderer" means a person who submitted a tender pursuant to an invitation by a public entity"

163. It therefore means that a tenderer is any person who has submitted a tender pursuant to an invitation by a public entity.

164. Turning to the circumstances in the instant Request for Review, we note from the Tender Document as amended by Addendum No. 1 that the subject tender was structured in 3 categories as provided under ITT 3.6 as amended in Addendum No. 1 as follows:

This invitation to Tender is open to Local Meter Manufacturers and Assemblers in the categories.

Category 1 – Local Manufacturers/Assemblers with ready stock

Category 2 – Local Manufacturers/Assemblers who have successfully supplied meters to completion to KPLC or any public entity in Kenya before.

Category 3 – All local meter Manufacturers/ Assemblers.

165. According to the Tender Opening Minutes which form part of the confidential documents submitted to the Board by the 1st Respondent

pursuant to Section 67(3)(e) of the Act, we note that the Applicant submitted its tender in response to only Category 2 and 3 of the subject tender.

166. Having not submitted a tender in response to Category 1 of the subject tender, the Board finds that the Applicant was not a tenderer in respect of any lot in Category 1 of the subject tender.

167. As such, the Applicant is not capable of suffering any loss or damage as a result of an alleged breach of duty imposed on the 2nd Respondent by the Act or Regulations 2020 with respect to Category 1 of the subject tender since it was not a tenderer in the said category. The Applicant therefore has no *locus standi* as a tenderer to approach the Board with respect to the procurement proceedings in Category 1 of the subject tender by dint of Section 167(1) as read with Section 2 of the Act.

168. Accordingly, this ground of objection succeeds.

What orders should the Board grant in the circumstances?

169. We have found that the Applicant has no *locus standi* as a tenderer to approach the Board with respect to the procurement proceedings in Category 1 of the subject tender by dint of Section 167(1) as read with Section 2 of the Act.

170. We have also found that the Applicant lacks the *locus standi* to invoke the jurisdiction of this Board as it failed to plead that it has suffered loss or is likely to suffer loss or damage due to the alleged breach of duty imposed on the 2nd Respondent by the Act and Regulations 2020.

171. The upshot of our finding is that the instant Request for Review is for striking out for want of jurisdiction.

FINAL ORDERS

172. 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:

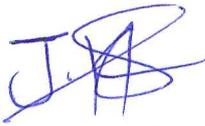
A. The Respondents' Notice of Preliminary Objection dated 4th August 2025 and filed on 5th August 2025 be and is hereby upheld.

B. The 1st Interested Party's Notice of Preliminary Objection dated 5th August 2025 and filed on 6th August 2025 be and is hereby upheld.

C. The Request for Review dated 30th July 2025 and filed on even date be and is hereby struck out for want of jurisdiction.

D. Each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 20th Day of August 2025.



.....
PANEL CHAIRPERSON
PPARB



.....
SECRETARY
PPARB

