

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 8/2026 FILED ON 22ND JANUARY 2026

BETWEEN

STRATEGIC CORPORATE CONSULTANTS LIMITED..... APPLICANT

VERSUS

THE MANAGING DIRECTOR,

KENYA PIPELINE COMPANY LIMITED.....1ST RESPONDENT

KENYA PIPELINE COMPANY LIMITED.....2ND RESPONDENT

Review against the decision of the Accounting Officer, Kenya Pipeline Company Limited in relation to Tender No. KPC/PU/OT-093/CORR/NBI/25-26 - Tender for the Provision of In-Line Inspection (ILI) Services for Line 5.

BOARD MEMBERS PRESENT

Mr. Jackson Awele	-	Panel Chairperson
Mr. Stanslaus Kimani	-	Member
Mr. Daniel Langat	-	Member

IN ATTENDANCE

Ms. Sarah Ayoo	-	Holding Brief for Board Secretary
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APPLICANT**STRATEGIC CORPORATE CONSULTANTS
LIMITED**

Mr. Anthony Simiyu

Advocate, ASW Law Advocates LLP

Mr. Roy Chidi

Advocate, ASW Law Advocates LLP

RESPONDENTS**THE MANAGING DIRECTOR,
KENYA PIPELINE COMPANY LIMITED****KENYA PIPELINE COMPANY LIMITED**

Mr. Nelson Nyaduwa

Advocate, Kenya Pipeline Company Limited

Ms. Muridi

Advocate, Kenya Pipeline Company Limited

BACKGROUND OF THE DECISION**The Tendering Process**

1. The Kenya Pipeline Company Limited (hereinafter referred to as “the Procuring Entity”) invited eligible tenderers to submit bids for Tender No. KPC/PU/OT-093/CORR/NBI/25-26 - Tender for the Provision of In-Line Inspection (ILI) Services for Line 5 (hereinafter referred to as “the subject tender”). The tender was initially scheduled to close and be opened on 30th October 2025.

Addenda/Clarifications

2. According to the confidential documents submitted to the Board pursuant to section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as *the Act*), the Respondents issued three Clarifications dated 21st October 2025, 22nd October 2025, and 24th October 2025, which provided further guidance on the Tender document. Subsequently, on 27th October 2025, the Respondents extended the tender submission deadline to 6th November 2025.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 6th November 2025, submitted as part of the confidential documents, a total of eleven (11) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Sintmond Group Limited
2.	Steminak Premier Technologies Limited
3.	Comacon in JV Dexon Technology Public Limited Company
4.	Himilo Construction
5.	Technique Inspection & Controle EA Limited

6.	Baran Telecom Networks Limited
7.	Blakline Consulting Limited
8.	JS&B Group Limited
9.	Strategic Corporate Consultants Limited
10.	Wegauge Pipeline Inspection & Services
11.	Dexon Technology Public Limited Company

Evaluation of Tenders

4. According to the Tender Evaluation Report dated 13th November 2025 (hereinafter referred to as "the Evaluation Report"), the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:

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

Preliminary Evaluation

5. At the Preliminary Evaluation stage, the Evaluation Committee was required to examine each tender against the mandatory requirements set out under the Preliminary/Mandatory Evaluation criteria of the Tender

Document. Any tender that failed to satisfy these requirements was to be declared non-responsive.

6. Upon conclusion of the Preliminary Evaluation, all tenders, save for the Applicant's tender, were found to be non-responsive and, consequently, did not proceed to the Technical Evaluation stage. The Applicant's tender was accordingly advanced to the technical evaluation stage.

Technical Evaluation

7. At the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out in the Technical Evaluation criteria of the Tender Document. To qualify for progression to the financial evaluation stage, a tender was required to comply with all the technical requirements.
8. Upon conclusion of the Technical Evaluation stage, the Applicant was found to have met all the technical requirements and was accordingly advanced to the Financial Evaluation stage.

Financial Evaluation

9. At the Financial Evaluation stage, the Evaluation Committee was required to evaluate the tenders in accordance with the Financial Evaluation criteria

set out in the Tender Document, including the determination of the lowest evaluated bidder.

10. Upon conclusion of the Financial Evaluation, the Applicant was found to be the lowest responsive evaluated bidder.

Due diligence

11. According to the Evaluation Report, the Evaluation Committee conducted due diligence on the Applicant, and the findings were positive.

Evaluation Committee's Recommendation

12. The Evaluation Committee recommended award of the subject tender to the Applicant, who was determined to be the lowest responsive evaluated bidder at USD 2,270,940.00, inclusive of all taxes.

1st Professional Opinion

13. In a Professional Opinion dated 18th November 2025 (hereinafter referred to as "*the 1st Professional Opinion*"), the Procuring Entity's General Manager, Supply Chain, reviewed the procurement process, including the evaluation of the tenders, and concurred with the Evaluation Committee's recommendation to award the tender to the most responsive bidder.

However, the 1st Professional Opinion was rejected by the 1st Respondent on 8th December 2025, with a directive that the Evaluation Committee review all provisions relating to subcontractor clauses in the Tender document.

14. According to a document titled *Addendum to the Evaluation Report* dated 10th December 2025, the Evaluation Committee reconvened to review the Tender document in line with the 1st Respondent's recommendation. The Evaluation Committee observed that there may have been confusion among bidders arising from inconsistencies between Instructions to Tenderers (Clause 4.4) and the mandatory evaluation criteria. This lack of alignment may have led some bidders to enter into subcontract agreements under ITT 4.4, unaware of the restrictions on subcontracting set out in the mandatory evaluation criteria.
15. The Evaluation Committee recommended that the 1st Respondent consider approving a repeat of the tendering process, with the Tender document revised and the mandatory criteria harmonized with the provisions of the Instructions to Tenderers.

2nd Professional Opinion

16. In a Professional Opinion dated 9th January 2026 (hereinafter referred to as "*the 2nd Professional Opinion*"), the Procuring Entity's General Manager, Supply Chain, reviewed the procurement process and concurred with the

Evaluation Committee's recommendation to terminate the tender under section 63(1)(e) of the Act due to material governance issues. The 2nd Professional Opinion, however, does not indicate whether it was approved or rejected by the 1st Respondent, as it was not executed by the said 1st Respondent.

Notification of the Termination

17. The tenderers were notified of the outcome of the evaluation for the subject tender through Termination letters dated 13th January 2026.

REQUEST FOR REVIEW NO. 8 OF 2026

18. On 22nd January 2026, the Applicant, through the firm ASW Law Advocates LLP, filed a Request for Review dated 21st January 2026, accompanied by a Statutory Statement sworn on the same date by David Magadi, the Principal Officer of the Applicant (hereinafter collectively referred to as "*the Request for Review*"), seeking the following reliefs:

a. A declaration does hereby issue that the Respondents' termination of Tender No. KPC/PU/OT-093/CORR/NBI/25-26 Tender for the Provision of In-Line Inspection (ILI) Services for Line 5, to the detriment of the Applicant as the lowest responsive bidder constituted a breach of Sections

63 and 86(1) of the Public Procurement and Asset Disposal Act (Cap 412C);

- b. The 1st Respondent's letter dated 13th January 2026, addressed to Applicant and terminating the procurement process in respect of Tender No. KPC/PU/OT-093/CORR/NBI/25-26 Tender for the Provision of In-Line Inspection (ILI) Services for Line 5, be and is hereby cancelled and set aside;***

- c. The letters of termination issued by the Respondents to the rest of the bidders in respect of Tender No. KPC/PU/OT-093/CORR/NBI/25-26 Tender for the Provision of In-Line Inspection (ILI) Services for Line 5, be and are hereby cancelled and set aside;***

- d. The Respondents be and are hereby directed to issue a letter of award in respect of Tender No. KPC/PU/OT-093/CORR/NBI/25-26 Tender for the Provision of In-Line Inspection (ILI) Services for Line 5, to the Applicant as the lowest evaluated bidder;***

- e. The Respondents be and are hereby directed to execute a contract with the Applicant in respect of Tender No. KPC/PU/OT-093/CORR/NBI/25-26 Tender for the***

Provision of In-Line Inspection (ILI) Services for Line 5, within 21 days from the date of the Board's Decision;

f. The Applicant be and is hereby awarded costs in respect of this Request for Review; and

g. Any other relief that would serve the interests of justice in the circumstances.

19. In a Notification of Appeal and a letter dated 22nd January 2026, Mr. Philemon Kiprop, the Board Secretary notified the Respondents of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the instant Request for Review together with confidential documents concerning the subject tender within five days from 22nd January 2026.

20. On 28th January 2026, the Respondents filed a *Background to the Matter Under Review* dated the same day, together with a Replying Affidavit sworn by Morris Timothy Nyaga, the 2nd Respondent's Chief Supply Chain Officer. In compliance with section 67(3)(e) of the Act, the Respondents also submitted the confidential documents relating to the subject tender to the Board.

21. On 30th January 2026, the Board Secretary issued a Hearing Notice dated the same day to the parties, notifying them that the hearing of the Request for Review would be held virtually on 4th February 2026 at 11:00 a.m. via the provided link.
22. On 2nd February 2026, the Applicant filed its Written Submissions dated the same day.
23. When the Board convened for hearing on 4th February 2026, Counsel for the respective parties were present. The Board confirmed that the parties had exchanged their pleadings, after which Counsel indicated their readiness to proceed. The Board thereafter allocated time for Counsel to present and highlight their respective submissions.

PARTIES' SUBMISSIONS

Applicant's Submissions

24. The Applicant's Counsel submitted that the Respondents invited bids for the subject tender, indicating that subcontracting was permissible, and issued multiple addenda clarifying the requirements, including an Addendum dated 24th October 2025 addressing subcontracting. The Applicant submitted its bid in compliance with the Tender Document, only

to be informed by a letter dated 13th January 2026 that the tender had been terminated due to alleged material governance issues arising from an inconsistency between ITT 4.4 and Mandatory Requirement No. 13 under the evaluation criteria. The Applicant contended that no such inconsistency existed and noted that its bid had been identified as the lowest evaluated bid before termination.

25. Counsel submitted that a Procuring Entity seeking to terminate a procurement process bears the burden of demonstrating that the grounds under Section 63 of the Act exist. Reliance was placed on **PPARB Application No. 50 of 2020 *Danka Africa (K) Limited v Accounting Officer, Kenya Ports & Another***, and **PPARB Application No. 144 of 2020 *County Builders Limited v The Accounting Officer, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works***, which underscore that termination must satisfy both substantive and procedural requirements. The Applicant argued that the Respondents failed the substantive requirement by not demonstrating any material governance issues.
26. The Applicant's Counsel further submitted that the letter terminating the tender referred to a possible inconsistency between ITT 4.4 and Mandatory Requirement No. 13. ITT 4.4 addressed participation as a subcontractor across multiple tenders, while Mandatory Requirement No. 13 set out limits on subcontracting for Local and Foreign Main Contractors,

particularly to ensure local industry promotion. A side-by-side comparison revealed that the provisions were complementary rather than inconsistent.

27. Counsel argued that the two tender provisions complemented each other. ITT 4.4 permitted firms to participate as subcontractors in multiple bids, while Mandatory Requirement No. 13 specified limits in certain scenarios, particularly for Foreign Main Contractors, promoting local industry.
28. Counsel submitted that the Respondents issued an Addendum clarifying subcontracting requirements before the tender closing date. The Applicant argued that it was unreasonable to claim inconsistency after issuing clarifications and after the Applicant had been identified as the successful bidder. Reliance was placed on **PPARB Application No. 115 of 2019 *Kensun Enterprises JV Guangdong Honny Power Tech Company Limited***, emphasizing that any clarification or modification to tender provisions must occur before the closing date.
29. Counsel urged the Board to prevent a precedent allowing Accounting Officers to manipulate tender outcomes by selectively invoking alleged inconsistencies depending on the evaluation result, which would undermine the integrity of the procurement system.

Respondents' Submissions

30. The Respondents' Counsel submitted that the tender documents contained an inconsistency between Clause 4.4 of the Instructions to Tenderers, which permitted non-tendering firms to participate as sub-contractors in multiple tenders, and Mandatory Evaluation Criterion No. 13, which prohibited a sub-contractor from signing agreements with more than one main contractor. This inconsistency created ambiguity, uncertainty, and potential unfairness in the evaluation process.
31. They further submitted that the Evaluation Committee, in an Addendum to the Evaluation Report, recommended that the 1st Respondent consider repeating the tender with the provisions harmonized. Following this, the head of the Procurement Unit prepared a Professional Opinion, in line with Section 84 of the Act, recommending termination of the tender under section 63(1)(e) due to material governance issues. The 1st Respondent approved this recommendation.
32. The Respondents stated that unsuccessful bidders, including the Applicant, were notified on 13th January 2026 of the reasons for non-responsiveness, specifically citing the inconsistency between Clause 4.4 and the mandatory evaluation criteria. No Notification of Intention to Award or Letter of Award had been issued to any bidder at the time of termination.
33. The Respondents' Counsel emphasized that termination was justified because the inconsistency meant no bidder could be lawfully deemed the lowest evaluated bidder, and proceeding to award would have been

unlawful. They averred that some bidders had already been disqualified due to the contradictory clauses, and a repeat tender was necessary to uphold fairness, transparency, and equal treatment.

34. It was submitted that previous clarifications issued by the Respondents regarding joint venture arrangements did not resolve the inconsistency concerning sub-contractors participating in multiple tenders.
35. The Respondents contended that the procurement process had been conducted with integrity, transparency, and fairness in accordance with Articles 10 and 227 of the Constitution, and therefore, the reliefs sought by the Applicant should not be granted.

Applicant's Rejoinder

36. In rejoinder, Counsel for the Applicant submitted that the Board's jurisdiction can only be ousted where a termination has been carried out in accordance with the law. Counsel further submitted that, in the instant Request for Review, both the procedure and substance of the termination do not conform to section 63 of the Act, and, therefore, the Board retains jurisdiction.
37. Counsel for the Applicant submitted that the sections of the Tender document, in this case the Instructions to Tenderers (ITT) and the

evaluation criteria, must be read as complementing and building upon each other.

BOARD'S DECISION

38. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with confidential documents submitted to the Board by the 1st Respondent pursuant to Section 67(3)(e) of the Act and finds the issues that arise for determination are:

A. Whether the Board has jurisdiction over the present Request for Review pursuant to section 167(4)(b) of the Act on account of the termination of the subject tender.

Depending on the finding of the first issue:

B. Whether the Respondents in terminating the subject tender failed to comply with the provisions of section 63 of the Act.

C. What appropriate orders should issue in the circumstances.

Whether the Board has jurisdiction over the present Request for Review pursuant to section 167(4)(b) of the Act on account of the termination of the subject tender.

39. In response to the Request for Review, the Respondents submitted that the Board lacks jurisdiction under Section 167(4) of the Act. Counsel argued that the termination of the tender was conducted in accordance with Section 63 of the Act, thereby divesting the Board of the authority to determine the matter.
40. On the other hand, the Applicant argued that the Board has jurisdiction to determine the Request for Review, as the termination was not carried out in accordance with Section 63 of the Act.
41. We note that the termination of a tender may have the effect of depriving the Board of jurisdiction to entertain a Request for Review. Accordingly, given the jurisdictional nature of the issue, it must be addressed as a matter of priority.
42. We are mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.

43. 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.
44. 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.”

45. The 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.

46. 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.

47. The jurisdiction of this Board is anchored under Part XV of the Act, which governs administrative review of procurement and disposal proceedings. In particular, Section 167 of the Act delineates the matters that may be brought before the Board, those that are excluded from its purview, and the timelines within which such matters must be filed. Sections 172 and 173 of the Act, on the other hand, prescribe the powers exercisable by the Board in the conduct and determination of such proceedings.
48. Therefore, in light of the foregoing, we have no alternative but to examine the Board's jurisdiction by determining whether the Board is divested of jurisdiction pursuant to Section 167(4)(b) of the Act.
49. The Applicant's Counsel submitted that the Respondents invited bids for the subject tender, indicating that subcontracting was permissible, and issued multiple addenda clarifying the requirements, including an Addendum dated 24th October 2025 addressing subcontracting. The Applicant submitted its bid in compliance with the Tender Document, only to be informed by a letter dated 13th January 2026 that the tender had been terminated due to alleged material governance issues arising from an inconsistency between ITT 4.4 and Mandatory Requirement No. 13 under the evaluation criteria. The Applicant contended that no such inconsistency existed and noted that its bid had been identified as the lowest evaluated bid before termination.

50. Counsel submitted that a Procuring Entity seeking to terminate a procurement process bears the burden of demonstrating that the grounds under Section 63 of the Act exist. Reliance was placed on **PPARB Application No. 50 of 2020 *Danka Africa (K) Limited v Accounting Officer, Kenya Ports & Another***, and **PPARB Application No. 144 of 2020 *County Builders Limited v The Accounting Officer, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works***, which underscore that termination must satisfy both substantive and procedural requirements. The Applicant argued that the Respondents failed the substantive requirement by not demonstrating any material governance issues.
51. The Applicant's Counsel further submitted that the letter terminating the tender referred to a possible inconsistency between ITT 4.4 and Mandatory Requirement No. 13. ITT 4.4 addressed participation as a subcontractor across multiple tenders, while Mandatory Requirement No. 13 set out limits on subcontracting for Local and Foreign Main Contractors, particularly to ensure local industry promotion. A side-by-side comparison revealed that the provisions were complementary rather than inconsistent. Counsel argued that the two tender provisions complemented each other. ITT 4.4 permitted firms to participate as subcontractors in multiple bids, while Mandatory Requirement No. 13 specified limits in certain scenarios, particularly for Foreign Main Contractors, promoting local industry.

52. Counsel submitted that the Respondents issued an Addendum clarifying subcontracting requirements before the tender closing date. The Applicant argued that it was unreasonable to claim inconsistency after issuing clarifications and after the Applicant had been identified as the successful bidder. Reliance was placed on **PPARB Application No. 115 of 2019 *Kensun Enterprises JV Guangdong Honny Power Tech Company Limited***, emphasizing that any clarification or modification to tender provisions must occur before the closing date. Counsel urged the Board to prevent a precedent allowing Accounting Officers to manipulate tender outcomes by selectively invoking alleged inconsistencies depending on the evaluation result, which would undermine the integrity of the procurement system.
53. In response to the above, the Respondents' Counsel submitted that the termination of the subject tender was lawful and grounded on verified material governance issues within the meaning of Section 63(1) of the Act.
54. The Respondents' Counsel submitted that the tender documents contained an inconsistency between Clause 4.4 of the Instructions to Tenderers, which permitted non-tendering firms to participate as sub-contractors in multiple tenders, and Mandatory Evaluation Criterion No. 13, which prohibited a sub-contractor from signing agreements with more than one main contractor. This inconsistency created ambiguity, uncertainty, and potential unfairness in the evaluation process.

55. They further submitted that the Evaluation Committee, in an Addendum to the Evaluation Report, recommended that the 1st Respondent consider repeating the tender with the provisions harmonized. Following this, the head of the Procurement Unit prepared a Professional Opinion, in line with Section 84 of the Act, recommending termination of the tender under section 63(1)(e) due to material governance issues. The 1st Respondent approved this recommendation. The Respondents stated that unsuccessful bidders, including the Applicant, were notified on 13th January 2026 of the reasons for non-responsiveness, specifically citing the inconsistency between Clause 4.4 and the mandatory evaluation criteria. No Notification of Intention to Award or Letter of Award had been issued to any bidder at the time of termination.
56. The Respondents' Counsel emphasized that termination was justified because the inconsistency meant no bidder could be lawfully deemed the lowest evaluated bidder, and proceeding to award would have been unlawful. They averred that some bidders had already been disqualified due to the contradictory clauses, and a repeat tender was necessary to uphold fairness, transparency, and equal treatment. It was submitted that previous clarifications issued by the Respondents regarding joint venture arrangements did not resolve the inconsistency concerning sub-contractors participating in multiple tenders.

57. We note that central to this issue is the question of termination and its effect on the Board’s jurisdiction as provided under Section 167(4)(b) of the Act, which is reproduced below:

167. Request for a review

(1)....

(2)....

(3)....

(4)The following matters shall not be subject to the review of procurement proceedings under subsection (1)—

a. the choice of a procurement method;

b. termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act; and

c. where a contract is signed in accordance with section 135 of this Act.

58. We understand the above provision of the law to mean that certain matters in the procurement process are excluded from review. In particular, paragraph (b) focuses on the termination of a procurement or asset disposal in accordance with section 63 of the Act, meaning that once a procuring entity terminates a procurement or disposal process following the procedures set out in section 63, that decision cannot be challenged or subjected to review before the Board. The provision also clarifies that the choice of a procurement method (paragraph a) and situations where

a contract is signed under section 135 (paragraph c) are similarly excluded from review.

59. Superior courts in Kenya have consistently provided guidance on the interpretation of Section 167(4)(b) of the Act, particularly regarding the limitation of the Board's jurisdiction in matters involving the termination of tenders. Judicial precedents have clarified the extent to which the Board's authority is ousted when a procurement process is terminated under Section 63 of the Act.
60. In ***Nairobi High Court Judicial Review Misc. Application No. 390 of 2018; R v Public Procurement Administrative Review Board & Others Ex parte Kenya Revenue Authority***, the High Court examined a judicial review application challenging the Board's decision. The Board had dismissed a preliminary objection asserting that it lacked jurisdiction to hear a Request for Review concerning the termination of a procurement process under Section 63 of the Act. In quashing the Board's decision, the Court affirmed that the Board has jurisdiction to first determine whether the preconditions for termination under Section 63 of the Act have been met before declining to hear the matter.

"33. A plain reading of Section 167(4) (b) of the Act is to the effect that a termination that is in accordance with section 63 of the Act is not subject to review. Therefore, there is a statutory precondition that first needs to be satisfied in the said sub-section namely that the termination proceedings are conducted in

accordance with the provisions of section 63 of the Act, and that the circumstances set out in section 63 were satisfied, before the jurisdiction of the Respondent can be ousted...

61. See also ***Nairobi High Court Judicial Review Misc. Application No. 117 of 2020; Parliamentary Service Commission v Public Procurement Administrative Review Board & Ors v Aprim Consultants***
62. Drawing from the above judicial pronouncements, the Board has jurisdiction to first interrogate whether the preconditions for termination of a tender under Section 63 of the Act were met. Only upon satisfying ourselves that the termination was undertaken in strict compliance with the said preconditions can we decline jurisdiction. Where any of the preconditions are not met, we retain jurisdiction to hear and determine the Request for Review.
63. Section 63 of the Act provides for the termination of public procurement and asset disposal proceedings in the following terms:

63. Termination or cancellation of procurement and asset disposal Proceedings

(1)An accounting officer of a procuring entity, may, at any time, prior to notification of tender award, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies—

(a)....

(b) ...

(c) ...

(d) ...

(e) material governance issues have been detected;

(f) ...

(g) ...

(h) ...

(i) ...

(2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.

(3) A report under subsection (2) shall include the reasons for the termination.

(4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.

64. We understand the above provision of the law to mean that the accounting officer of a procuring entity is legally empowered to terminate or cancel procurement or asset disposal proceedings at any stage before notification of award, provided that one or more of the specified grounds exist,

including where material governance issues have been detected. However, this power is not unfettered, as the accounting officer is required to comply with clear procedural obligations, namely: submitting a written report to the Public Procurement Regulatory Authority within fourteen days explaining the reasons for the termination, and notifying all tenderers within the same period, with such notice expressly stating the reason for termination.

65. From the foregoing, for an accounting officer of a procuring entity to validly terminate a procurement or asset disposal proceeding:
 - i. The termination must be based on one of the grounds outlined under Section 63(1)(a) to (f) of the Act.
 - ii. The accounting officer must submit a written report to the Public Procurement Regulatory Authority (hereinafter referred to as 'the Authority') within 14 days of the termination, detailing the reasons for the decision.
 - iii. The accounting officer must also issue a written notice to all tenderers within the same 14-day period, clearly communicating the reasons for the termination.

66. On the one hand, the substantive requirements under section 63(1) of the Act oblige a procuring entity to specify the particular ground for

terminating a tender and to provide the supporting facts justifying such termination. On the other hand, the procedural requirements, as set out under sections 63(2), (3), and (4) of the Act, include: (i) submitting a written report to the Authority within fourteen (14) days of the termination; and (ii) issuing termination notices to all participating tenderers within the same period, clearly stating the reasons for termination.

67. We shall now examine whether the Respondents complied with both the substantive and procedural requirements prescribed under Section 63 of the Act when terminating the procurement proceedings for the subject tender. We shall first consider the substantive requirements before proceeding to the procedural aspects.
68. The Board perused the Termination letters dated 13th January 2026, which formed part of the confidential documents submitted pursuant to section 67(3)(e) of the Act. In particular, the Applicant's termination letters provided, in part, as follows:

Dear Sir,

***RE: TENDER FOR PROVISION OF IN-LINE INSPECTION
(ILI) SERVICES FOR LINE 5 – RFX 2500001046***

We refer to your tender for the above.

In exercise of our mandate as provided for under section 63(1)(e) of the Public Procurement and Asset Disposal Act 2015, (PPADA, 2015), the above tender is terminated due to material governance issues. It appears that there may have been inconsistency between the Instructions to Tenderers Clause 4.4 and the mandatory evaluation criteria on sub-contracting.

Please arrange to collect your tender security from the General Manager's office Off Nanyuki Road, Industrial Area.

Yours faithfully

Signed

JOE SANG, EBS

MANAGING DIRECTOR

69. A perusal of the above letter indicates that the subject tender was terminated due to the detection of material governance issues that

compromised the integrity of the tendering process. We further note that the stated reason for termination falls within one of the grounds specified under Section 63(1)(e) of the Act. Consequently, the question that arises is what constitutes material governance issues and whether such issues were present in the procurement proceedings for the subject tender to justify its termination.

70. The concept of governance and its relevance to public procurement is explained in the book ***Public Procurement: International Cases and Commentary (2012)***, edited by Louise Knight, as follows:

"Effective procurement practices provide governments with a means of bringing about social, economic and environmental reform. Conversely, malpractice within public procurement demonstrated a failure of governance and typically arises from corruption and fraud."

71. In essence, the principles of governance require that procuring entities and tenderers avoid any form of malpractice that compromises the integrity of a procurement process. The Board has on numerous occasions considered what amounts to material governance issues in public procurement proceedings. In ***PPARB Application No. 50 of 2020, Danka Africa (K) Ltd v The Accounting Officer, Kenya Ports Authority & Another***, the Board deduced the meaning of material governance in public procurement to mean:

"Therefore, the Board observes that one may deduce the meaning of material governance in public procurement to mean: significant or important governance issues detected in a procurement process that negatively affect the capability of a procuring entity to guarantee compliance with principles of governance, leadership, and integrity when procuring for goods and services. Such material governance issues may emanate from malpractice during the procurement process by bidders, or by the bidder while colluding with a procuring entity, or operational challenges attributed from policy decisions influencing a procuring entity's procurement process."

72. We note that a procuring entity that seeks to terminate a procurement process on the basis of detected material governance issues bears the burden of establishing, with specificity, what the said governance issues are in the procurement process and how they affect its ability to ensure compliance with the principles set out under Article 227 of the Constitution of Kenya.
73. In determining this issue, the Board perused the pleadings and the confidential documents to ascertain the basis of the alleged material governance issues. The Board observed that the Respondents rely on an

alleged inconsistency between Clause 4.4 of the Instructions to Tenderers, which permitted non-tendering firms to participate as sub-contractors in multiple tenders, and Mandatory Evaluation Criterion No. 13, which prohibited a sub-contractor from entering into agreements with more than one main contractor.

74. The Board perused the Tender document to ascertain the nature of inconsistency if at all it was there and noted that ITT 4.4 provided as follows:

4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member may participate as a sub-contractor in more than one Tender.

75. The Board understands the above section of the Tender document to mean that a firm which submits a tender, whether on its own or as a member of a joint venture, is prohibited from participating in more than one tender for the same procurement, including participation in the capacity of a sub-contractor, and any such multiple participation automatically attracts disqualification of all tenders in which that firm is involved. However, and of particular significance, the last statement clearly

carves out an exception by permitting a firm that is neither a tenderer nor a joint venture member to participate as a sub-contractor in more than one tender, thereby limiting the restriction strictly to primary bidders and JV members and not extending it to independent sub-contractors.

76. The Board notes that Mandatory Requirement No. 13 provided as follows:

This is a specialized service; the client envisages that bidders will enter a partnership using one of the following arrangements:

i. For Foreign Firms Participation as the Main contractor: Foreign tenderers must submit their bids in association with local firms. Local participation of a minimum of 40% of contract value either on materials locally produced/assembled or on services is required. Foreign firms MUST submit a properly constituted SubContractor agreement. The agreement must indicate the works to be carried out by the sub-contractor. A sub-contractor shall not sign agreement with more than one main contractor. The purpose is to ensure sustainable promotion of local industry. OR

ii. For Local Companies as the main Contractors: Local firms participating as the main contractor and wishing to subcontract part of the work to foreign firms, a sub-contractor agreement shall be provided.

In addition, the following shall be noted:

• The above shall not apply to local companies bidding independently with demonstrated capacity in InLine Inspection of petroleum pipelines

• A bidder shall not enter more than one sub-contract for this tender

77. Notably, all candidates were subjected the same evaluation criteria as above and the presumption therefore is that all benefits and prejudices attendant thereto were equally born by all bidders. The question that arises therefore is whether the perceived inconsistency, if at all could amount to a material governance issue to justify a termination in the circumstances.

78. The Board understands the above section of the Tender document to mean that, given the specialized nature of the services, the Procuring Entity anticipated structured partnerships between bidders, either through

foreign firms associating with local firms as main contractors or local firms subcontracting specific components to foreign firms. In the case of foreign firms bidding as main contractors, mandatory local participation of at least forty percent (40%) of the contract value is required, supported by a properly constituted sub-contractor agreement clearly outlining the scope of works to be undertaken by the local sub-contractor, with the stated objective of promoting sustainable local industry. Similarly, where local firms bid as main contractors and subcontract part of the works to foreign firms, the provision of a sub-contractor agreement is required, save for local firms bidding independently and demonstrating sufficient capacity to undertake the works without subcontracting.

79. Equally apparent is that Mandatory Requirement No 13 appears to offer a distinction between Foreign Firms as Main Contractors and Local Firms as Main Contractors. For Foreign Firms as Main contractors, there is an express limitation that a subcontractor can only be engaged by a single Foreign Main Contractor, with the reason being indicated as the promotion of local industry. However, no such limitation is extended to Local Main Contractors. Therefore, under the Mandatory Requirement, it was open for a subcontractor to be engaged by more than one Local Main Contractor.
80. The Board understands ITT Clause 4.4, particularly its last statement, to expressly permit a firm that is neither a tenderer nor a joint venture member to participate as a sub-contractor in more than one tender,

thereby drawing a clear distinction between primary bidders (and JV members), who are restricted to a single participation, and independent sub-contractors, who are allowed multiple participations without attracting disqualification. The intent of this provision is to confine the prohibition on multiple participation strictly to bidders and JV members, while deliberately allowing flexibility for non-bidding subcontractors to support more than one tender.

81. On its part, Mandatory Requirement No. 13 creates a distinction between subcontractors being engaged by Local Main Contractors and Foreign Main Contractors. Whereas subcontractors engaged by Local Main Contractors are permitted to be subcontractors on multiple bids, a restriction applies when the Main Contractors are Foreign Firms. A subcontractor being engaged by a Foreign Main Contractor could not be engaged in such subcontracting capacity by other bidders.
82. From the Board's view, a wholesome reading of ITT Clause 4.4 and Mandatory Requirement No. 13 shows that these 2 provisions are not inconsistent but complementary. Both provisions permit the simultaneous engagement of common subcontractors by various bidders, with the exception of instances where the Main Contractor is a Foreign Firm. A subcontractor can only be engaged by a single Foreign Main Contractor as far as the tender was concerned. The Tender Document itself offers an explanation for this distinction as being the promotion of local industry.

Therefore, Mandatory Requirement No. 13 is complementary to ITT Clause 4.4.

83. It is not lost on the Board that governments across the globe have procurement laws and policies that tend to favour local suppliers over foreign suppliers. Locally, Part XII of the Public Procurement and Asset Disposal Act contains provisions that address preferences and reservations in procurement processes.
84. The Board notes that, as a result of what the Respondents termed an inconsistency, the Respondents opted to terminate the tender on account of material governance issues. In assessing whether the alleged inconsistency justified the termination of the tendering proceedings, the Board notes that Clause 1.2 of Section III – Evaluation and Qualification Criteria provides as follows:

1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use the Standard Tender Evaluation Report for Goods and Works for evaluating Tenders.

85. The Board understands Clause 1.2 of Section III – Evaluation and Qualification Criteria to mean that the evaluation and qualification of tenders is strictly confined to the criteria, factors, and methods expressly set out in the tender document, and that the Procuring Entity is prohibited from introducing or relying on any extraneous considerations outside those stipulated provisions. This clause further places an obligation on tenderers to fully and accurately submit all information required through the prescribed forms in Section IV, Tendering Forms, while correspondingly mandating the Procuring Entity to conduct the evaluation using the Standard Tender Evaluation Report for Goods and Works, thereby ensuring uniformity, transparency, and objectivity in the evaluation process.
86. In view of Clause 1.2 of Section III – Evaluation and Qualification Criteria, the Board notes that the alleged inconsistency should have been resolved within the Tender Document rather than by terminating the tender. Clause 1.2 specifies which provisions prevail in the event of any inconsistency. Since Section III constitutes the marking scheme, any perceived inconsistency between the evaluation criteria and the Instructions to Tenderers (ITT) is intended to be addressed through the provisions of Section III, which take precedence in the evaluation process.
87. The Board finds that Section III – Evaluation and Qualification Criteria would have prevailed with respect to any inconsistency identified, as

Section II – Tender Data Sheet provides that any of its provisions shall take precedence over those in the Instructions to Tenderers (ITT). In this regard, the Board notes that ITT 35.2(d), contained within Section II – Tender Data Sheet, specifies that additional evaluation factors are set out in Section III – Evaluation and Qualification Criteria. Therefore, the above means that where there is any perceived inconsistency, as in the instant matter, between a provision in the ITT, such as Clause 4.4, and a provision in Section III – Evaluation and Qualification Criteria, such as MR 13, the provision in Section III shall prevail pursuant to the directions in Section II – Tender Data Sheet regarding which provisions take precedence in the event of inconsistency.

88. In view of the foregoing, the Board finds that any perceived inconsistency was curable within the Tender Document and did not constitute a valid reason to invoke material governance issues as a basis for terminating the tender.

89. The contra proferentem rule provides for an ambiguous provision of an instrument to be construed against the drafter of the instrument. The prerequisite for the applicability of the doctrine of Contra Proferentem is the prevalence of ambiguity as was observed in the case of **Horne Coupar v Velletta & Company 2010 BCSC 483** where the Supreme Court of British Columbia held that “**ambiguity in a contract is the precondition to apply this doctrine though where the ambiguity is established, the rule is applied directly.**” Similarly, in the **Civil**

Appeal No. 1942 of 2009 Bank of India & Another V K. Mohandas & Others, 2009 (5) SCC 313 where a question arose with respect to the interpretation of some provisions of the voluntary retirement scheme of 2000 of the Appellant, Justice R.M. Lodha opined that **“it was the Appellant who ultimately formulated the terms in the Contractual Scheme which stated, “the optees of voluntary retirement under that Scheme will be eligible to pension under the Pension Regulation, 1995,” therefore they bear the risk of lack of clarity, if any.”**

90. Turning to the circumstances in the instant Request for Review, we have established that the Tender Document was prepared by the Respondents inviting eligible bidders to submit their bids. As such, the application of its provisions ought to be interpreted against the Respondents, being the drafters of the Tender Document. Put differently, the application of the provisions of the Tender Document ought to be interpreted in favour of the tenderers in the subject tender in view of the admitted oversight that was not rectified prior to the tender submission deadline.
91. The Board is of the considered view that the Evaluation Committee is under a duty to confine itself to the procedures and criteria set out in the Tender Document when evaluating bids as read with provisions of the Act, Regulations 2020 and the Constitution. The integrity of public procurement demands strict adherence to published criteria and this Board is tasked with affirming the primacy of the Tender Document and upholding

procurement fairness and legality. This was the holding of Justice Aburili in **Judicial Review E092 of 2025 Minet Kenya Insurance Brokers Limited v The Public Procurement Administrative Review Board & Others** where the High Court held as follows:

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

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

141. Accordingly, I find and hold that the decision to fail to award to the Applicant the required marks during technical evaluation on the basis of an unstated

requirement namely, a current practicing license was unlawful, irrational and ultra vires. It offended the principles of legality, procedural fairness and legitimate expectation and violated the Applicant's right to fair administrative action under Article 47 of the Constitution under Article 47 of the Constitution and the statutory safeguards under the Public Procurement and Asset Disposal Act.

142. I hasten to add that the integrity of public procurement demands strict adherence to published criteria. The Review Board's expansion of the term "valid registration" undermines this principle and should be corrected, the interpretation having been a post facto interpretation by the tender procuring entity. This case demonstrates the absolute need for the Review Board to always affirm the primacy of the tender document and uphold procurement fairness and legality..."

92. Turning to the procedural aspects of the termination process, the Board notes that the Termination Letter dated 13th January 2025 issued to the Applicant did not clearly state the reasons for termination, leaving the nature of the alleged material governance issues unclear. The Termination letter merely indicated that there appeared to be an inconsistency between Clause 4.4 of the Instructions to Tenderers and the Mandatory Evaluation

Criterion on sub-contracting. The Board finds that this lack of clarity would not enable a bidder to form an informed opinion as to whether to challenge the termination.

93. We note that superior courts have previously cautioned against the growing trend of procuring entities merely reproducing the grounds for termination under Section 63 of the Act without providing any further information or providing little information. In ***Republic v Public Procurement Administrative Review Board Ex parte Nairobi City & Sewerage Company; Webtribe Limited t/a Jambopay Limited [2019] eKLR, Nairobi High Court Judicial Review Application 437 of 2018***, the High Court considered a judicial review application challenging a decision of this Board, which had found that the Procuring Entity had irregularly terminated the tender under consideration. In dismissing the judicial review application, the High Court warned that mere recitation of the grounds for terminating a tender under Section 63 of the Act, without providing information establishing the alleged grounds, is insufficient to justify such termination:

45. The mere recitation of the statutory language, as has happened in this case is not sufficient to establish the grounds or sufficient reasons. The reasons for the termination must provide sufficient information to bring the grounds within the provisions of the law. This is because the tender process and in particular, the termination, must be done in a transparent and

accountable and legal manner as the law demands. This is because the question whether the information put forward is sufficient to place the termination within the ambit of the law will be determined by the nature of the reasons given. The question is not whether the best reasons to justify termination has been provided, but whether the reasons provided are sufficient for a reasonable tribunal or body to conclude, on the probabilities, that the grounds relied upon fall within any of the grounds under section 63 of the Act. If it does, then the party so claiming has discharged its burden under section 63.

94. In line with the above case law and having regard to the Termination Letter discussed above, the Board finds the letter inadequate, as it does not provide the tenderer with sufficient information to understand the reasons for termination or to determine whether to challenge it. This constitutes unfair administrative action and, accordingly, fails to meet the procedural requirement of providing reasons to tenderers as envisaged by law.
95. Another procedural requirement is set out in Section 63(2) of the Act, read together with PPRA Circular 4/2022 dated 1st July 2022, regarding the obligation to furnish the Authority with a written report on the termination within fourteen (14) days. In determining whether this requirement was complied with, we perused the documents filed by the Respondents,

including the confidential documents, and noted that the written report was missing.

96. In view of the reasons explained above, the Board concludes that the termination of the subject tender was not carried out in accordance with the law. Consequently, the Board is vested with jurisdiction to determine the merits of the instant Request for Review. Accordingly, the Board's jurisdiction has not been ousted under section 167(4)(b) of the Act.

Whether the Respondents in terminating the subject tender failed to comply with the provisions of section 63 of the Act

97. The determination of this issue has been substantially addressed in the preceding discussions. In light of the Board's finding that it has jurisdiction, it follows that the termination of the subject tender did not comply with section 63 of the Act.
98. Accordingly, the Board finds and holds that the Respondents failed to comply with the provisions of section 63 of the Act in terminating the subject tender, both procedurally and substantively.

What orders should the Board grant in the circumstances?

99. Having considered the parties' submissions and examined the evidence on record, the Board finds that the subject tender was not terminated in compliance with section 63 of the Act.

100. The Board notes that, prior to the unlawful termination, the tender proceedings had progressed beyond the evaluation stage and were pending award by the Accounting Officer. In the circumstances, it would be prudent for the procurement process to resume from the stage it had reached before the termination. This should be undertaken in consideration of the Board's findings and in compliance with Section 44 of the Act, which mandates that public funds be utilized in a prudent and responsible manner, while ensuring that the procurement process remains compliant with the Constitution, the Act, and the applicable Regulations.
101. Consequently, the instant Request for Review, filed on 22nd January 2026, relating to Tender No. KPC/PU/OT-093/CORR/NBI/25-26 - Tender for the Provision of In-Line Inspection (ILI) Services for Line 5, is hereby allowed as specified in the Final Orders section below.

FINAL ORDERS

102. 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 Termination Letters dated 13th January 2026, issued to the Applicant and all the other bidders with respect to Tender No. KPC/PU/OT-093/CORR/NBI/25-26 - Tender for the

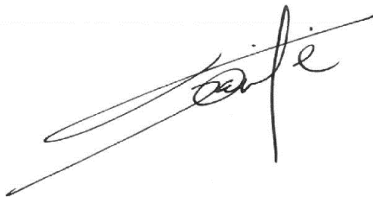
Provision of In-Line Inspection (ILI) Services for Line 5 be and are hereby set aside; and

B. The Addendum Evaluation Report dated 10th December 2025 and Professional Opinion dated 9th January 2026 be and are hereby set aside.

C. The Accounting Officer of the Kenya Pipeline Company Limited is hereby directed to proceed with the subject procurement KPC/PU/OT-093/CORR/NBI/25-26 - Tender for the Provision of In-Line Inspection (ILI) Services for Line 5 while taking into consideration the findings of the Board in this decision and conclude the process within 21 days from the date of this decision .

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

Dated at NAIROBI, this 12th day of February 2026.



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**PANEL CHAIRPERSON
PPARB**



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**SECRETARY
PPARB**