

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 35/2024 OF 17TH APRIL 2024

BETWEEN

KONTARIZA TECHNOLOGIES GROUP LIMITED APPLICANT

AND

MANAGING DIRECTOR,

KENYA POWER AND LIGHTING COMPANY PLC 1ST RESPONDENT

AND

KENYA POWER AND LIGHTING COMPANY PLC 2ND RESPONDENT

CREDIBLE TECHNICAL WORKS LIMITED INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Power and Lighting Company Plc in relation to Tender No. KP1/9A.3/OT/12/23-24) for Supply of Emergency Restoration Towers (ERTs) and Galvanised Structures for Implementation of Premium Customers Schemes and for Various Primary and Secondary Substations.

BOARD MEMBERS PRESENT

- | | | |
|-------------------------|---|-------------------|
| 1. QS. Hussein Were | - | Panel Chairperson |
| 2. Mr. Joshua Kiptoo | - | Member |
| 3. Ms. Jessica Mm'betsa | - | Member |

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IN ATTENDANCE

Mr. Philemon Kiprop - Secretariat

Mr. Anthony Simiyu - Secretariat

PRESENT BY INVITATION

APPLICANT **KONTARIZA TECHNOLOGIES GROUP LIMITED**

Mr. Mwaniki Gachuba Advocate, Mwaniki Gachuba & Co. Advocates

RESPONDENTS **MANAGING DIRECTOR, KENYA POWER AND LIGHTING COMPANY PLC**
KENYA POWER AND LIGHTING COMPANY PLC

Mr. Dennis Maanzo Advocate, Kenya Power and Lighting Company Plc

INTERESTED PARTIES **CREDIBLE TECHNICAL WORKS LIMITED**

Mr. Muchiri -Advocate, Kimani & Muchiri Advocates LLP

BURHANI ENGINEERING LIMITED
Ms. Sarah Bwire - Representative, Burhani Engineering Limited

BACKGROUND OF THE DECISION

The Tendering Process



1. Kenya Power and Lighting Company Plc, the Procuring Entity together with the Respondent herein, invited electronic submission of tenders in response to Tender No. KP1/9A.3/OT/12/23-24) for Supply of Emergency Restoration Towers (ERTs) and Galvanised Structures for Implementation of Premium Customers Schemes and for Various Primary and Secondary Substations using the open tender method. The tender submission deadline was set as Tuesday, 14th November 2023 at 10:00 a.m.

Submission of Tenders and Tender Opening

2. According to the signed Tender Opening Minutes dated 14th November 2023, submitted under the Confidential File submitted by the Procuring Entity, the following 12 tenderers were recorded as having submitted their respective tenders in response to the subject tender by the tender submission deadline:

No.	Name of Tenderer
1.	Steeltech Engineering Limited
2.	Etrade Company Limited
3.	Credible Technical Works Limited
4.	Burhani Engineering Limited
5.	Proteq Automation Limited
6.	Mandeep Enterprises Limited
7.	Takbir General Trading Limited
8.	Sharpcut Designers Limited
9.	Kontariza Technologies Limited
10.	Coricom Limited
11.	Hardexo Company Limited
12.	Brism Africa Limited



Evaluation of Tenders

3. The Respondent constituted a Tender Evaluation Committee (hereinafter referred to as the "Evaluation Committee") to undertake an evaluation of the received tenders in the following 3 stages as captured in the Evaluation Report
 - i. Preliminary Evaluation
 - ii. Technical Evaluation
 - iii. Financial Evaluation

Preliminary Evaluation

4. At this stage of the evaluation, the submitted tenders were to be examined using the criteria set out as Clause 2. Preliminary Evaluation for Determination of Responsiveness under Section III – EVALUATION AND QUALIFICATION CRITERIA on pages 32 to 33 of the Tender Document.
5. The evaluation was to be on a Yes/No basis and tenderers who failed to meet any criterion outlined at this Stage would be disqualified from further evaluation.
6. At the end of the evaluation at this stage, eight tenders including that of the Applicant, were found unresponsive with four tenders, including that of the Interested Party, qualifying for further evaluation at the Technical Evaluation Stage.

Technical Evaluation

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7. The Evaluation Committee was required at this stage to examine tenders successful at the Preliminary Stage using the criteria set out as Technical Evaluation Criteria under Section III – EVALUATION AND QUALIFICATION CRITERIA on pages 33 to 36 of the Tender Document.
8. The tenders were to be examined in 2 Parts i.e. Part I-Mandatory Technical Requirements and Part II- Detailed Technical Stage Tenders were to be responsive to all the requirements under Part I in order to be eligible for further evaluation at Part II. Under Part II tenders were to meet all requirements under the Part to qualify for further evaluation at the Financial Evaluation Stage.
9. At the end of the evaluation at this stage, three tenders were found unresponsive with only the Interested Party's tender qualifying for further evaluation at the Financial Evaluation Stage.

Financial Evaluation

10. At this stage of evaluation, the Evaluation Committee was required to examine the tenders using the Criteria set out as Financial Schedule under Section III– EVALUATION AND QUALIFICATION CRITERIA on pages 36 to 40 of the Tender Document.
11. At the end of the evaluation at this stage, it was established that the Interested Party's tender was the lowest evaluated tender being that it was the only tender that qualified for evaluation at this stage.

Evaluation Committee's Recommendation

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12. Accordingly, the Evaluation Committee recommended the award of the tender to the Interested Party at a cost of **Kenya Shillings Two Hundred and Eighty-Five Million, Eight Hundred and Sixty-Five Thousand, Six Hundred and Twelve and Seventy-Seven Cents Only** (Kshs. 285,865,612.77), inclusive of taxes.

Professional Opinion

13. In a Professional Opinion dated 25th March 2024, the Procuring Entity's General Manager, Supply Chain & Logistics, Dr. John Ngeno reviewed the manner in which the procurement process was undertaken including the evaluation of tenders and agreed with the Evaluation Committee's recommendation for the award of the subject tender to the Interested Party.
14. Thereafter, on 26th March 2024, the Accounting Officer concurred with the Professional Opinion.

Notification to Tenderers

15. Accordingly, tenderers were notified of the outcome of the evaluation of tenders submitted in response to the subject tender *vide* letters dated 26th March 2024.

REQUEST FOR REVIEW

16. On 17th April 2024, Messrs Kontariza Technologies Group Limited (hereinafter, "the Applicant"), through the firm of Mwaniki Gachuba & Co. Advocates, filed a Request for Review dated 15th April 2024 supported by an Affidavit sworn on 15th April 2024 by James Peter

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Maina Kiama, the Applicant's Managing Director, seeking the following orders from the Board:

- a) That the Applicant's Tender for Supply of Emergency Restoration Towers (ERTs) and Galvanised Steel Structures for Implementation of Premium Customers Schemes and for Various Primary and Secondary Substations (Tender No. KP1/9A.3/OT/12/23-24) was responsive at the preliminary examination stage.***

- b) That the Respondent's decision to disqualify the Applicant's Tender for Supply of Emergency Restoration Towers (ERTs) and Galvanised Steel Structures for Implementation of Premium Customers Schemes and for Various Primary and Secondary Substations (Tender No. KP1/9A.3/OT/12/23-24) as non-responsive at the preliminary examination stage be annulled and set aside.***

- c) That the Respondent be directed to re-admit the Applicant's Tender for Supply of Emergency Restoration Towers (ERTs) and Galvanised Steel Structures for Implementation of Premium Customers Schemes and for Various Primary and Secondary Substations (Tender No. KP1/9A.3/OT/12/23-24) and to subject the same to technical evaluation.***

- d) That the due diligence report on the Interested Party's purported manufacturer by the Respondent's Evaluation***



Committee and agents be annulled and set aside.

e) That the Respondent's decision to award of the Interested Party's Tender for Supply of Emergency Restoration Towers (ERTs) and Galvanised Steel Structures for Implementation of Premium Customers Schemes and for Various Primary and Secondary Substations (Tender No. KP1/9A.3/OT/12/23-24) and the notification thereof be annulled and set aside.

f) That costs of the application be awarded to the Applicant.

17. In a Notification of Appeal and a letter dated 17th April 2024, Mr. James Kilaka, the Acting Board Secretary of the Board notified the Respondent of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondent a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days.
18. On 22nd April 2024, the Respondent through Maanzo Dennis-Advocate, filed a Notice of Appointment of Advocates and a Memorandum of Response, both dated 22nd April 2024.
19. Vide letters dated 23rd April 2024, the Acting Board Secretary notified all tenderers in the subject tender via email, of the existence of the

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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 were invited to submit to the Board any information and arguments concerning the tender within 3 days from 23rd April 2024.

20. On 24th April 2024, the Respondent filed Written Submissions which were predated 26th April 2024.
21. On 29th April 2024, the Acting Board Secretary, sent out to the parties a Hearing Notice notifying parties that the hearing of the instant Request for Review would be by online hearing on 2nd May 2024 at 11:00 a.m. through the link availed in the said Hearing Notice.
22. On the same day, 29th April 2024, the Applicant filed Further Affidavit sworn on 29th April 2024 by James Peter Maina Kiama.
23. On 30th April 2024, the Interested Party through the firm of Kimani & Muchiri Advocates LLP filed their Memorandum of Response of even date.
24. On 2nd May 2024 the Interested Party filed its Written Submissions of even date.
25. On the same day, 2nd May 2024 at 11:00 a.m., the parties joined the scheduled online hearing session through their respective Advocates.
26. The Board read out to the parties the documents that had been filed in the Request for Review and sought for each party to confirm that each of the said documents had been served upon them. Counsel for the

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respective advocates acknowledged filing and receipt of service of the documents filed in the matter.

27. However, before the Board gave hearing directions, Counsel for the Applicant, Mr. Gachuba, made an application for adjournment to allow the Applicant file Written Submissions as well as a Further Affidavit to the Interested Party's Memorandum of Response. Mr. Maanzo and Mr. Muchiri, Counsel appearing for the Respondent and Interested Party, respectively, did not object to this.
28. Accordingly, the Board directed the Applicant to file and serve their Further Affidavit and Written Submissions by the close of day on 2nd May 2024. The hearing of the Request for Review was also adjourned to the next day, 3rd May 2024 at 8:00 a.m.
29. On 3rd May 2024, at around 4:16 a.m. the Counsel for the Applicant filed the Applicant's Further Affidavit sworn on 2nd May 2024 by James Peter Maina Kiama and Written Submissions dated 2nd May 2024 by way of email.
30. On 3rd May 2024 at 8:00 a.m. the parties joined the online hearing through their respective Counsels.
31. The Board sought confirmation from parties whether its directions on filing and service of documents had been complied with. Counsel for the Applicant Mr. Gachuba confirmed compliance albeit late, attributing the delay to the nationwide power blackout that affected the country on the evening of 2nd May 2024. The Board excused the delay on the part of the Applicant.



32. The Board observed that since the Respondent had raised a Preliminary Objection, the same would be heard within the Request for review in accordance with Regulation 209 of the Regulations 2020. It then gave hearing directions on the order of address being that the Applicant would go first, thereafter the Respondents with the Applicant closing with a rejoinder on the Respondents' submissions.

PARTIES SUBMISSIONS

Applicant's Submissions

33. Counsel for the Applicant, Mr. Gachuba, indicated that the Applicant would be placing reliance on its filed documents i.e. Request for Review, two further Affidavits and Written Submissions.

34. Mr. Gachuba pointed out that the Applicant objected the Preliminary Objections raised by the Respondent and Interested Party arguing that they were time-barred under Regulation 209 of the Regulations 2020 and thus should be struck out. It was argued that under Regulation 209, any Preliminary Objection should be filed within 3 days from the date of receipt of notice of the Request for Review and the same should be accompanied by filing fees in the sum of Kshs. 5,000. Counsel argued that the Preliminary Objections in the present Request for Review were not filed in the prescribed timelines and were equally not paid for.

35. It was his contention that the Respondent's Preliminary Objection was filed six days after receipt of the Request for Review and that the



Interested Party's Preliminary Objection was filed seven days after receipt of the Request for Review.

36. Counsel relied on ***Speaker of the National Assembly v Karume (Civil Application 92 of 1992) [1992] KECA 42 (KLR) (29 May 1992) (Ruling)*** for the proposition that where statutes prescribes procedures, these should be adhered to.
37. He placed reliance on ***PPARB Application No. 64 of 2023; Trident Insurance Company Limited v Managing Director of Kenya Industrial Estates and Jubilee Health Insurance Limited***, for the proposition that thus Board has previously struck out time-barred Preliminary Objections
38. He argued that by failing to file their Preliminary Objections within the stipulated timeline, the Respondents and Interested Party waived their right to bring the same.
39. He pressed on that the jurisdiction of the Board stems of Section 28 of the Act and that the same is invoked through Section 167 of the Act, within 14 days of the notification of the outcome of an evaluation process or on the occurrence of a breach on the part of the Procuring Entity. Further, in the present case, the Applicant invoked the Board's jurisdiction on the limb of notification of award.
40. Mr. Gachuba maintained that the Respondent had attempted to approbate and reprobate on the date of notification of intention to award. He contented there is no dispute that by an email dated 27th March, 2024, the Respondent purported to notify Kontariza

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Technologies Limited of the notification of intention to award dated 26th March, 2024 and that Kontariza Technologies Limited was neither a candidate nor a tenderer in the subject tender. Further, that the Respondent realizing that he had not notified the Applicant did so on 4th April 2024.

41. According to Counsel, the Applicant having been notified on 4th April 2024, time started running on 4th April 2024 and lapsed on 18th April 2024 and therefore the instant Request for Review having been filed on 17th April 2024 was timeous in the circumstance.
42. Relying on ***Public Procurement Administrative Board v Four M Insurance Brokers Limited & 3 others (Civil Appeal E1009 of 2023) [2024] KECA 79 (KLR) (9 February 2024) (Judgment)*** and ***Migori County Government v INB Management & Consulting Ltd [2021] eKLR*** he emphasized that time of knowledge of the notification was critical and thus the Respondent was wrong when it indicates that the time started to run on 28th March, 2024.
43. Mr. Gachuba submitted that it was not in dispute that by its letter dated 26th May, 2022, the Applicant terminated LPO No. 3000678569 by invoking Clause 7.28 of annexure "PK 9(a)" and Clause 29 of annexure "PK 9(b)". That the Respondent acquiesced with the Applicant's invocation of force majeure as he did not reject the same, encash the Applicant's performance bond, penalise the Applicant for non-performance or request the Public Procurement Regulatory Authority to debar the Applicant.

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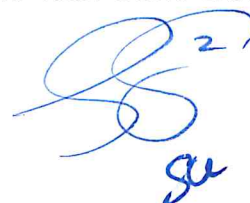


44. He argued that Article 79 of the United Nations Convention on the International Sale of Goods (CISG) exempts a party from liability for non-performance where the failure was due to an impediment beyond his control.
45. Counsel argued that the Applicant indicated “Yes” on the first two interrogatories and that if there was any confusion, the 3rd interrogatory which the Applicant answered “None” would have offered the needed clarity.
46. The Applicant averred that the status of Tower Solutions Inc. as a manufacturer was in serious doubt. It faulted the Respondent for failure to ascertain the true status of Tower Solutions Inc. as a manufacturer of Emergency Restoration Towers (ERTs). It also averred that its evidence printed out from <https://towersolutions.ca> and <https://towersolutionsinc.com> was admissible under Section 33 and 78A of the Evidence Act as the makers of the documents printed could not be found or whose attendance could not be procured without delay or expense which in the circumstances of the case is unreasonable. Further that Regulation 218 of the Regulations 2020 provides that the Board is not bound by the strict rules of evidence.
47. It relied on ***R v PPARB; Kenya Pipeline Company Limited & Anor Ex parte Krohne (PTY) Limited [2018]eKLR; R v PPARB Ex parte University of Eldoret [2017]eKLR*** and ***Rank Construction Inc v Ontario (2014) OAC (CA)*** for the proposition that the due diligence by the Procuring Entity was flawed and sought the Board to allow the Request for Review.



Respondent's Submissions

48. Counsel for the Respondent, Mr. Maanzo, argued that the Respondent's Preliminary Objection was properly before the Board having been raised on 23rd April 2024 upon payment of Kshs. 5,000 filing fees. He further pointed out that it was erroneous for Mr. Gachuba to peg the 3 days to file a Preliminary Objection on receipt of the Request for Review when Regulation 209 pegs the 3 days on receipt of the hearing notice. He argued that the Hearing Notice was received on 30th April 2024, which was long after the Respondent's Notice of Preliminary Objection had been filed and thus was properly before the Board.
49. Mr. Maanzo, relying on ***Aprim Consultants v. Parliamentary Service Commission & Another, CA. No. E039 of 2021*** quoted in ***ADK Technologies Ltd in Consortium with Computer Technologies Ltd v Public Procurement Administrative Review Board & 4 others (Civil Appeal E598 of 2021) [2022] KECA 407 (KLR) (4 March 2022) (Judgment)*** and ***Republic v Public Procurement Administrative Review Board Ex parte Kenya Power & Lighting Company Limited; Energy Sectors Contractors Association & another (Interested Parties) [2020] eKLR*** submitted that under Section 167 of the Act, an Applicant must seek administrative review within 14 days of notification. He argued that the Notification was sent on 27th March 2024 but the Request for Review was filed on 17th April 2024 and thus time-barred. It was his contention that the Respondent forwarded to the Applicant through email a letter dated 26th March 2024. He pointed out that the letter contained a typographical error but it reached the Applicant as it was sent through



the email contained in the Applicant's Confidential Business Questionnaire i.e. info@kontariza.com .

50. Mr. Maanzo submitted that from the CR-12 of Kontariza Technologies Group Limited and Kontariza Technologies Limited they shared a common directorship and shareholding. Further, that the Applicant was aware by 27th March 2024 and not 4th April 2024 when the error was corrected.
51. He added that the Applicant failed to comply with a Mandatory Requirement No. 12 and that under Section 79 of the Act, a tender is non-responsive if it does not comply with mandatory requirement. For this proposition reliance was placed on ***Republic v Public Procurement Administrative Review Board & another; Premier Verification Quality Services (PVQS) Limited (Interested Party) Ex Parte Tuv Austria Turk [2020] eKLR*** and ***Republic v Public Procurement Administrative Review Board & 2 others Ex parte BABS Security Services Limited [2018] eKLR***
52. He argued that Requirement No. 12 at page 33 of the Tender Document contained a mandatory requirement for tenderers to submit dully filled Form 3.2. It was Counsel's contention that the Form contained 2 interrogatories where a tenderer was to indicate "Yes" or "No" and a 3rd interrogatory where if one answered "Yes" to any of the first two interrogatories to provide an explanation. Mr. Maanzo argued that the Applicant responded "Yes" to the first two interrogatories but no explanation on the 3rd interrogatory and thus the Applicant did not duly fill up the Form and was properly disqualified from the subject tender.



53. Counsel also argued that the Respondent did a letter dated indicating that an LPO had not been delivered for over year. Further, that the Applicant did a letter dated 26th May 2022 indicating that there was Covid-19 and the Russo-Ukrainian War. The Applicant did not endeavor to perform its obligation.
54. Mr. Maanzo argued that the Procuring Entity conducted due diligence despite it being a n optional process in the subject tender.

Interested Party's Submission

55. Counsel for the Interested Party, Mr. Muchiri, indicated that the Interested Party was relying on its filed documents in the matter i.e. Memorandum of Response and Written Submissions.
56. He argued that the Interested Party was not bound by Regulation 209 since preliminary objections can be raised at any time. For this proposition reliance was placed on ***Isaak Aliaza v Samuel Kisiavuki [2021]eKLR.***
57. He contended that the instant Request for Review was time-barred since it was filed on 17th April 2024 after the notification was sent on email on 27th April 2024.
58. Mr. Muchiri, relying on ***Republic v Public Procurement Administrative Review Board & anor; Premier Verification Quality Services PVQS) Limited Ex parte Tuv Autria Turk [2020]eKLR*** argued that under Section 79 of the Act a tender is responsive if it meets the eligibility and mandatory requirements.

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59. He contended that Mandatory Requirement No. 12 required tenderers to duly fill Form 3.2 and that it was not in dispute that the Applicant did not deliver on one the LPOs made to the them by the Procuring Entity as they only cited force majeure events. Counsel argued that the failure of the Applicant to disclose the non-delivery of the LPOs in Form 3.2 was a breach of the Mandatory Requirement.
60. Counsel argued that the Applicant was being superfluous when it purported to introduce tender documents in respect of tenders other than the subject tender. Further that any wrongful evaluation of tenders by the Respondent in the previous tenders was not a justification for the continuity of the wrongful evaluation . Relying on ***Republic v Kenya Revenue Authority & 3others Ex parte Five Forty Aviation Limited [2015]eKLR*** he made the argument that no legitimate expectation can lie in respect of illegalities.
61. He equally associated himself with submissions that had been made on behalf of the Respondent and argued that the instant Request for Review was time-barred as the email containing the notification was sent on 27th March 2024. For this proposition reliance was placed on ***R v PPARB Ex parte Intertek International Limited; Accounting Officer , Kenya Bureau of Standard & 6 Ors (Interested Parties) [2022]eKLR.***
62. Mr. Muchiri contended that the Interested Party submitted a responsive tender and that the Applicant was making sensational allegations on meetings between members of the Procuring Entity's Evaluation Committee and official of Tower Solutions Inc.

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63. He argued that Tower Solutions was a manufacturer and that an ISO Certification had been annexed to the Interested Party's Memorandum of Response. Further that the Applicant had not adduced evidence from a regulator or industry accredited institution to substantiate its allegation and that the Applicant's evidence was drawn from an unreliable sources which could not lay an objective basis for establishing whether Tower Solutions Inc was a manufacturer.
64. He equally pointed out that the documentary evidence produced by the applicant was inadmissible under Section 106B of the Evidence Act as it was not accompanied by a certificate.

Applicant's Rejoinder

65. In his rejoinder, Counsel for the Applicant, Mr. Gachuba, submitted that there was an admission on the part of the Respondent that there was a typographical error on the notification of intention to award. He argued that no law had been cited to show that an Accounting Officer has power to correct a notification of intention to award on its motion.
66. Counsel invited the Board to confirm whether the Applicant duly and properly filled Form 3.2.
67. Mr. Gachuba equally invited the Board to consider the effect of invoking a force majeure clause. He submitted the effect of a force majeure clause was to terminate a contract and thus it cannot be said that there were pending cases that the Applicant had to declare in the Form 3.2



Handwritten signature in blue ink, appearing to be 'Gachuba'.

CLARIFICATIONS

68. The Board sought for the Applicant to confirm the email included in its Confidential Business Questionnaire and whether the email is a common email used by Kontariza Technologies Group Limited and Kontariza Technologies Limited. Counsel for the Applicant confirmed that the email address for the two entities was the same, that is, *info@kontariza.com*.
69. The Board inquired from the Respondent on when the 14 days statutory timeline begun to run in view of the correction made on the notification sent to the Applicant. Counsel for the respondent Mr. Maanzo, maintained it was on 27th March 2024 since this was the date the Applicant first learnt that its tender was not successful.
70. The Board asked the Applicant to confirm the email address, postal address and directorship. Counsel for the Applicant, Mr. Gachuba confirmed that the two companies shared the same directorship, shareholding and postal address.
71. The Board asked the Applicant to confirm how it gained knowledge of the Procuring Entity's conduct of a due diligence process when the same is meant to be confidential process. Counsel for the Applicant, Mr. Gachuba confirmed that it got information from Tower Solutions Inc.
72. The Board asked the Applicant to indicate the timeframe for the delivery of the LPO it failed to deliver. Counsel for the Applicant, Mr. Gachuba, indicated that the effect of the force majeure was to terminate the contract and that no period for delivery was provided for in the contract.



73. Asked how it came to know that it was the successful tenderer, Mr. Muchiri stated that the Interested Party got the notification through an email shared on 27th March 2024.
74. Asked whether it was ever subjected to due diligence and who was involved, Counsel for the Interested Party averred that the Interested Party was contacted by the Procuring Entity.

BOARD'S DECISION

75. The Board has considered all documents, submissions and pleadings together with confidential documents submitted to it pursuant to Section 67(3)(e) of the Act and finds the following issues call for determination:
- I. *Whether the Request for Review was filed outside the 14 days' statutory timeline under Section 167(1) of the Act and Regulation 203 of the Regulations 2020 as to divest the Board of jurisdiction to hear and determine it.*

Depending on the Board's finding on the first issue above:

- II. *Whether the Applicant's disqualification from the subject tender was in accordance with the Act, Regulations 2020 and the provisions in the Tender Document.*
- III. *Whether the Procuring Entity's award of the subject tender to the Interested Party was in accordance with the Act and Regulations 2020.*
- IV. *What orders the Board should issue in the circumstance.*



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As to whether the Request for Review was filed outside the 14 days' statutory timeline under Section 167(1) of the Act and Regulation 203 of the Regulations 2020 as to divest the Board of jurisdiction to hear and determine it.

76. The Respondent filed a Memorandum of Response dated 22nd April 2024 and whose paragraph 4 contended that the Request for Review was time-barred under Section 167(1) of the Act and Regulation 203(2) of the Regulations 2020.
77. The Interested Party equally filed a Memorandum of Response dated 23rd April 2024 and whose paragraph 2 reiterated that the Request for Review was time-barred under similar provisions.
78. The Respondent and Interested Party submitted that the Notification of Intention to Award having been sent via email on 27th March 2024, the Applicant had until 10th April 2024 to bring a Request for Review. They maintained that the Applicant having filed the Request for Review on 17th April 2024 was time-barred.
79. On the flip side, the Applicant objected to the Preliminary Objections arguing that they had not been filed within 3 days from the date of receipt of the Request for Review and that no filing fees had been paid in respect of the Preliminary objections in accordance with Regulation 209 of the Regulations 2020.
80. On the computation of time, Counsel for the Applicant, Mr. Gachuba maintained that the Notification of Intention of Award was sent to the



Procuring Entity on 27th March 2024 but was clarified on 4th April 2024 and thus the Applicant had until 18th April 2024 to file the review.

81. Drawing from the above, the Board is at this stage invited to interrogate the competences of the raised Preliminary Objections.
82. Regulation 209 of the Regulations 2020 provides for the filing of Preliminary Objections in response to a Request for Review as follows:

Preliminary objections

(1) A party notified under regulation 206 may file a preliminary objection to the hearing of the request for review to the Secretary of the Review Board within three days from the date of notification.

(2) A preliminary objection filed under paragraph (1) shall set out the grounds upon which it is based on and shall be served to the applicant at least one day before the hearing.

(3) The applicant may file a reply to the preliminary objection before the time of the hearing of the request.

(4) The Review Board may hear the preliminary objection either separately or as part of the substantive request for review and give a separate or one decision.

(5) The fees chargeable for filing a preliminary objection shall be as set out in the Fifteenth Schedule of these Regulations.

83. Regulation 206 on its part provides as follows:

206. Notice of Hearing

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(1) The Review Board Secretary shall give reasonable notice of the date fixed for hearing to all parties to the review.

(2) The notice referred to in paragraph (1) shall be in the format set out in the Sixteenth Schedule of these Regulations.

84. A reading of Regulations 206 and 209 yields that (i) a party can file a Preliminary Objection within 3 days from the date of receipt of a notification of hearing; (ii) the Preliminary Objection should outline its grounds and be served at least a day before the hearing; (iii) the Applicant is at liberty to file a response to the Preliminary Objection; (iv) the Board can hear the Preliminary Objection either separately or as part of the Request for Review; and the Preliminary Objection attracts filing fees set at Kshs. 5,000 under the Fifteenth Schedule.
85. The Board has perused the documents in the Request for Review and notes that the notice of hearing was shared by the Board Secretary *vide* email on 29th April 2024 at 3:34 p.m. It therefore follows that the Respondent's Preliminary Objection as contained in its Memorandum of Response dated 12th April 2024 predates the notification of the hearing and was thus filed in time. The Board has also confirmed that the Respondent paid filing fees of Kshs. 5,000 on the same.
86. For the Interested Party, its Memorandum of Response containing the Preliminary Objection was filed on 30th April 2024, which was also within the 3 days contemplated under Regulation 209 of the Regulations 2020. The Board has also confirmed that payment was made in respect of the Preliminary Objection.



87. In view of the fact that both Preliminary Objections were filed within time and raise the same ground i.e. the Request for Review is time-barred, this objection qualifies for interrogation by this Board.
88. Additionally, the Preliminary Objections raise a jurisdictional question, which superior courts have on numerous occasions endorsed can even be taken up by a court or judicial body on its own motion. In ***Republic v Public Procurement Administrative Review Board Ex Parte Intertek International Limited; Accounting Officer, Kenya Bureau of Standards & 6 others (Interested Parties) [2022] eKLR*** the High Court affirmed that the question of jurisdiction can be taken up by judicial body on a *suo moto* basis:

33. It is obvious to this court that the P.O. raised by the applicant is on a point of law challenging jurisdiction. Jurisdiction goes to the root of a matter and where none exists, the court must down its tools. A point of law touching on jurisdiction can, like any other, be raised at any stage and indeed even on appeal. The court of appeal addressing this point in Kenya Ports Authority v Modern Holdings (E.A) LTD [2017]Eklr stated;

"Generally speaking and on the authority of the Supreme Court decision in Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited & 2 Others, a court can only exercise that jurisdiction that has been donated to it by either the Constitution or legislation or both. Therefore it cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. Jurisdiction is in the end everything since it goes to the



very heart of a dispute. Without it, the court cannot entertain any proceedings and must down its tools. See The Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited (1989) KLR 1.

This Court in Adero & Another V Ulinzi Sacco Society Limited [2002] 1 KLR 577, quite sufficiently summarised the law on jurisdiction as follows;

"1.....

2. The jurisdiction either exists or does not ab initio and the non-constitution of the forum created by statute to adjudicate on specified disputes could not of itself have the effect of conferring jurisdiction on another forum which otherwise lacked jurisdiction.

3. Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.

4. Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.

5. Where a cause is filed in court without jurisdiction, there is no power on that court to transfer it to a court of competent jurisdiction.

6.

7." (Our emphasis).



We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage of the proceedings and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised:

"....at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the Court itself

- provided only that where the Court raises it suo moto, parties are to be accorded an opportunity to be heard."

89. This Board acknowledges 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 inquire into it before doing anything concerning such a matter in respect of which it is raised.

90. 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."

91. On its part, Halsbury's Laws of England (4th Ed.) Vol. 9 defines jurisdiction as:

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"...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision."

92. The locus classicus case on the question of jurisdiction is the celebrated case of ***The Owners of the Motor Vessel "Lillian S" -v- Caltex Oil Kenya Ltd (1989) KLR 1*** where Nyarangi J.A. 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 other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction."

93. In the case of ***Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR***, the Court of Appeal emphasized the centrality of the issue of jurisdiction and held that:

"...So central and determinative is the issue of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts



out of a decent respect for economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. Courts, like nature, must not act and must not sit in vain....”

94. In terms of timelines of invoking the Board’s jurisdiction Section 167(1) of the Act sets the timeline as 14 days in the following terms:

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.

95. Regulation 203(2) (c) of the Regulations 2020 equally affirms the 14-days timeline in the following terms:

Request for a review

1) A request for review under section 167(1) of the Act shall be made in the Form set out in the Fourteenth Schedule of these Regulations.

2) The request referred to in paragraph (1) shall—

a) state the reasons for the complaint, including any alleged breach of the Constitution, the Act or these Regulations;



b) be accompanied by such statements as the applicant considers necessary in support of its request;

c) be made within fourteen days of —

i. the occurrence of the breach complained of, where the request is made before the making of an award;

ii. the notification under section 87 of the Act; or

iii. the occurrence of the breach complained of, where the request is made after making of an award to the successful bidder

96. From the above provisions the Board is able to discern that an Applicant seeking the intervention of the Board in any procurement proceedings must file a request within the 14-day statutory timeline. Requests for Review made outside the 14 days would be time-barred and the Board would be divested of the jurisdiction over the matter.

97. It is therefore clear from a reading of Section 167(1) of the Act, Regulation 203(1)(2)(c) & 3 of Regulations 2020 and the Fourteenth Schedule of Regulations 2020 that an aggrieved candidate or tenderer invokes the jurisdiction of the Board by filing a Request for Review within 14 days of (i) occurrence of breach complained of, having taken place before an award is made (ii) notification of intention to enter in to a contract having been issued or (iii) occurrence of breach complained of, having taken place after making of an award to the successful tenderer.



98. Simply put, an aggrieved candidate or tenderer can invoke the jurisdiction of the Board in three (3) instances namely (i) before notification of intention to enter into a contract is made (ii) when notification of intention to enter into a contract has been made and (iii) after notification to enter into a contract has been made. The option available to an aggrieved candidate or tenderer in the aforementioned instances is determinant on when occurrence of breach complained of took place and should be within 14 days of such breach.
99. Section 167 of the Act and Regulation 203 of the 2020 Regulations 2020 identify the benchmark events for the running of time to be the date of notification of the award or the date of occurrence of the breach complained of. In the instant Request for Review, the Applicant informed the Board that its jurisdiction was being invoked under the limb of Notification of Intention of Award which, according to the Applicant, was sent on 4th April 2024. It contended that the earlier Notification of Intention to Award was sent via email on 27th March 2024 was addressed to a different entity other than the Applicant.
100. The Respondent produced the email printout of the email sharing the Notification dated 26th March 2024 and which was marked as Annexure KPLC 2. The contents of the annexure are herein reproduced:

From: Michael Nyagate BaswetiMBasweti@KPLC.co.ke

Sent: 27th March 2024 19:03

To: info@kontariza.com

Subject: NOTIFICATION OF INTENSION (SIC) TO AWARD

Attachments: NOTIFICATION OF INTENSION (SIC) TO AWARD

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Good evening,

Attached please find a soft copy notification of intension (sic) to award.

Your hard copy may be collected from 3^d Floor, Supply Chain-Stima Plaza

Regards"

101. From the above email, it is apparent that the addressee is indicated as info@kontariza.com, which is the email address contained in the Confidential Business Questionnaire submitted as part of the Applicant's tender.

102. The attachment in the email is a notification of Intention to Award dated 26th March 2024, which the Respondent annexed as KPLC 1. The said notification is reproduced here below as:

Our Ref-KP1/9A.3/OT/12/23-24/JN/mb

Your Ref:

26th March 2024

M/s Kontariza Technologies Limited

P.O. Box (Details withheld)

Nairobi

Tel: (Details withheld)

Dear Sir/Madam,

RE: NOTIFICATION OF INTENTION TO AWARD FOR TENDER NO

KP1/9A.3/OT/12/23-24 SUPPLY OF EMERGENCY

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RESTORATION TOWERS (ERTs) AND GALVANISED STEEL STRUCTURES FOR IMPLEMENTATION OF PREMIUM CUSTOMER SCHEMES AND FOR VARIOUS PRIMARY AND SECONDARY SUBSTATIONS.

1. This Notification of Intention to Award is sent by the office of the General Manager, supply Chain & Logistics Division, Kenya Power & Lighting Co. PLC

Email: Procurement@kplc.co.ke

We wish to notify you of our decision to award the above contract. The transmission of this Notification marks the beginning of the Standstill Period. During the Standstill Period, you may:

- i. Request a debriefing in relation to the evaluation of your tender.**
- ii. Submit a Procurement related complaint in relation to the decision to award the contract**

a)The successful tenderers

No.	Response Number	Bidder Name
1	4000070515	CREDIBLE TECHNICAL WORKS LIMITED

b)The unsuccessful Tenderers

No.	Response No.	Bidder Name
1
..
8	...	KONTARIZA TECHNOLOGIES LIMITED

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Reasons for non-responsiveness;

- ✓ ***Bidder has pending orders/awards with more than 50% outstanding deliveries. Refer to LPO 3000678569 (attached)***
- ✓ ***Historical form not duly filled***

2.How to request for debriefing

....

3.How to make a complaint

...

4.Standstill Period

...

Yours sincerely

Signed

DR (ENG.) JOSPEH SIROR, FIEK

MANAGING DIRECTOR & CEO

103. It is apparent that the notification, although sent to the Applicant's email address, was addressed to "*Kontariza Technologies Limited*" and not "*Kontariza Technologies Group Limited*."

104. The Applicant, having noted the error, wrote a letter dated 3rd April 2024 to the Procuring Entity pointing out the mistake. It letter read:

"03^d May, 2024

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Your reference:

Our Refence: KONTAGRP/2024/002

The General Manager, Supply Chain

Kenya Power & Lighting Company Limited

P.O. Box 30099-00100

Nairobi, Kenya

Dear Sir

TENDER NO KP1/9A.3/OT/12/23-24

The above tender refers.

Kontariza Technologies Ltd, has informed us that you notified them of your intention to award the Tender and you gave them reasons why they did not qualify.

But to their and our surprise, Kontariza Technologies Ltd have confirmed that they did not participate in the Tender quoted above.

This is to confirm that we participated in the abovementioned Tender as Kontariza Technologies Group Limited and we have our own rights and obligations as a legal person registered as a limited company including those that are related to the above-mentioned Tender.

This is to therefore inform you that you have not notified us of your intention to award the Tender. Legally, under the Public Procurement and Disposal Act, 2015 Section 87, and subsequent subsidiary legislations envisioned in the Act, we have the right to be notified concurrently with other winning and losing bidders.

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We therefore ask you to notify us immediately of our status in this Tender so that we can raise any issue within the stipulated 14 Days. We suppose that this means you have to recall the letters issued to the other bidders for you to be not only compliant to the law but also give us our rightful 14 days' period to lodge a complaint, a situation that we believe cannot be avoided under the prevailing situation.

Further we imagine that you have misled all the participants in believing that Kontariza Technologies Limited participated in this Tender in the letters you sent to them, the more reasons to make you recall the Letters.

Kindly note that the undersigned is not a director of Kontariza Technologies Ltd but is a Director of Kontariza Technologies Group Ltd.

Yours faithfully,

Signed

Richard Wanjau,

Director."

105. The Procuring Entity responded to the Applicant's letter via email as follows:

"From: Michael Nyagate Basweti

Sent: 04 April 2024 17:45

To: Kontariza Technologies Group info@kontariza.com

Cc: Jane Muigai@kplc.co.ke>; Peter Kinaro

Muchoripmuchori@kplc.co.ke james@kontariza.com

Subject: RE: notification Letter



Good evening

Reference is made to your complaint made in respect to TENDER NO. KP1/9A.3/OT/12/23-24 and would like to make the following comments:

I. There was a typographical error in the referenced Notification of Intension to award, whereby the bidder's name was inadvertently written as Kontariza Technologies Limited instead of Kontariza Technologies Group Limited

II. The rest of the contents being communicated are correct and reflect the outcome of the evaluation carried out by the Evaluation Committee.

III. The Notification of intention to award letter sent out, was emailed correctly to yourselves to the email address (info@kontariza.com) as provided in the CBQ (See attached copy)

IV The Notification of intension to award has now been corrected to read your name Kontariza Technologies Group Limited and is hereby attached.

V. You are fully entitled to all rights and obligations as provided for in law including 14 days as stipulated in the Act.

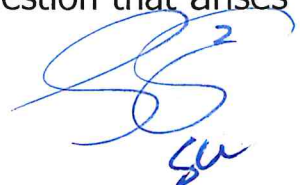
VI. In case of any further clarification, do not hesitate to reach us

Please receive our quick response. We apologise for any inconvenience caused."

106. From the Procuring Entity's emails of 27th March 2024 and 4th April 2024 and the Applicant's email of 3rd April 2024 the question that arises

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is whether the Applicant was notified of the outcome of the evaluation in accordance with the provisions of Section 87 of the Act. The said section states as follows:

"(1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted.

(2)

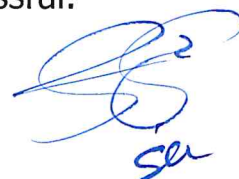
(3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof."

107. From the reading of Section 87 of the Act, the salient features of a notification of intention to award are three: (i) the successful bidder must be notified in writing; (ii) award must be within the validity period of the tender; (iii) unsuccessful bidders must be notified at the same time the successful bidder is notified, that their tenders were not successful; (iv) successful tenderer is disclosed to the unsuccessful tenderers; (v) reasons given as to why they were unsuccessful.

108. It is not in contention that the notification dated 26th March 2024 to the successful tenderer was in writing and the same was issued within the tender validity period. It is further not in contention that unsuccessful bidders were notified *vide* the letters dated 26th March 2024 and emailed on 27th March 2024, disclosing the successful tenderer and the reasons why they were unsuccessful.

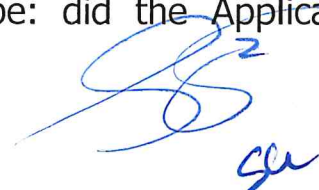
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109. What is in contention is whether the Notification sent to the Applicant on 27th March 2024 can be deemed to be a notification within the meaning of Section 87 of the Act thereby opening the 14 day statutory window for seeking administrative review before the Board.
110. On the face of it the notification was addressed to Kontariza Technologies Limited and not Kontariza Technologies Group Limited, the Applicant herein. The Applicant has stated that it was informed by Kontariza Technologies Limited of the Procuring Entity's intention to award the tender. By the Applicant's own admission during the hearing of the request for review Kontariza Technologies Limited and Kontariza Technologies Group Limited share a common email address, info@kontariza.com, which email address was provided by the Applicant as its official address in its bid document.
111. The Respondent herein demonstrated that on 27th March 2024 it sent a letter of notification dated 26th March 2024 through the official email address of the Applicant. Save for the word "Group" all the particulars of the letter of notification were correct with regard to the name of the Applicant. It is safe to deduce that the omission of "Group" from Kontariza Technologies Group Limited was not so fatal as to make the letter dated 26th March 2024 and emailed through info@kontariza.com an invalid notification to the Applicant. The omission was a minor error which in any event was corrected following an inquiry by the Applicant on 3rd April, 2024.
112. Assuming, even for a moment, that the letter of notification was emailed to a wrong address, the test would be: did the Applicant

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become aware of the outcome of the evaluation process of the subject tender? The answer is yes. The Applicant became aware through Kontariza Technologies Limited, an entity that shares an email address with the Applicant. When did Kontariza Technologies Limited become aware of the outcome of the tender? The Board cannot find any other answer but on 27th March 2024 when the Procuring Entity emailed the letter. It is the Board's considered view that what matters in this case is not how the Applicant became aware but, rather, whether it became aware of the outcome of the tender process. The Applicant was informed through its sister company Kontariza Technologies Limited that its tender was unsuccessful. Knowledge of the notification of intention of award is central towards identifying the benchmark date.

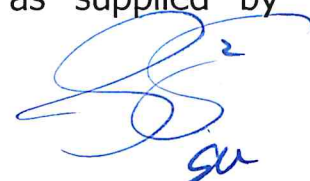
113. The High Court, in ***Nairobi High Court Judicial Review Application No. 102 of 2023; Republic v Public Procurement Administrative Review Board and Anor Ex parte Sheemax Consulting***, endorsed the above position. In the Court's view the 14 days' statutory timeline starts to run when a candidate or tenderer learns of the breach being complained of:

"120. In Republic v Public Procurement Administrative Review Board & 2 others Ex- parte Kemotrade Investment Limited [2018] eKLR the High Court noted that to determine when time starts to run, such determination can only be made upon examination of the alleged breach and when the aggrieved tenderer had knowledge of the said breach"

114. Additionally, the Board has perused the CR-12 Forms for the Applicant and Kontariza Technologies Limited as supplied by the

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Respondent indicating common shareholding and directorship in the two companies i.e. Frashia Wambui and James Peter Maina Kiama are directors and shareholders in both companies. Plausibly, this explains why Kontariza Technologies Limited have access to the Applicant's emails.

115. Email systems by their very nature are an instantaneous media of communication such that a recipient email address will instantly receive any email sent to it. It therefore follows that the benchmark date for computing the 14 day timeline under section 167(1) of the Act is 27th March 2024, being the date that the Notification of Intention to Award was forwarded to the Applicant by way of email.

116. The Board is persuaded that the Applicant was notified on 27th March 2024 when the Procuring Entity sent the notification to the Applicant's email address info@kontariza.com, which email address was contained in its Confidential Business Questionnaire. Accordingly, the 14 days statutory period for the filing of a request for Review begun running on 27th March 2024.

117. In computing the 14 days contemplated under the Act, we take guidance from section 57 of the Interpretation and General Provisions Act:

"57. Computation of time

In computing time for the purposes of a written law, unless the contrary intention appears—

(a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of



the day on which the event happens or the act or thing is done;

(b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;

(c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time”

118. When computing time in the instant case, 27th March 2024 is excluded as per Section 57(a) of the IGPA being the day that the Applicant received the Notification of Intention of Award. This means time started to run on 28th March 2024 and lapsed on 10th April 2024. In essence, the Applicant had between 27th March 2024 and 10th April 2024 to seek administrative review before the Board. The instant Request for Review was filed on 17th April 2024, the date the filing fee was paid and which, therefore, was seven days after the lapse of the 14 day's filing timeline. Consequently, this ground of the Preliminary Objections succeeds.



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119. The Board therefore finds that the instant Request for Review was filed outside the 14 days' statutory timeline under Section 167(1) of the Act as to divest the Board of jurisdiction to hear and determine it. Accordingly, the Board downs its tools and shall not determine the instant Request for Review on its merits.

As to whether the Applicant's disqualification from the subject tender was in accordance with the Act, Regulations 2020 and the provisions in the Tender Document.

120. Having found that the Board lacks jurisdiction over the instant Request for Review, the Board shall not delve into discussing the merits of this issue as framed for determination.

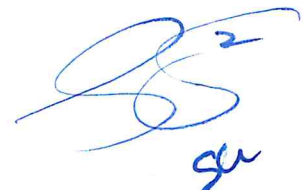
As to whether the Procuring Entity's award of the subject tender to the Interested Party was in accordance with the Act and Regulations 2020.

121. Having found that the Board lacks jurisdiction over the instant Request for Review, the Board shall not delve into discussing the merits of this issue as framed for determination.

As to what orders the Board should grant in the circumstances.

122. The Board has found that it is divested of the jurisdiction to hear and determine this Request for Review.

123. The upshot of the finding is that the Request for Review fails in the following specific terms:




FINAL ORDERS

124. 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 this Request for Review:

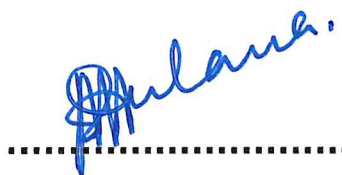
- 1. The Preliminary Objections raised in the Respondent's and Interested Party's Memoranda of Response be and are hereby upheld.**
- 2. The Request for Review dated 15th April 2024 and filed on 17th April 2024 in respect of Tender No. KP1/9A.3/OT/12/23-24) for Supply of Emergency Restoration Towers (ERTs) and Galvanised Structures for Implementation of Premium Customers Schemes and for Various Primary and Secondary Substations for Kenya Power & Lighting Company PLC be and is hereby struck out.**
- 3. The Respondent be and is hereby directed to proceed with the subject to its logical conclusion.**
- 4. Given the outcome of this Request for Review each party shall bear its own costs in the review.**

Dated at NAIROBI, this 8th Day of May 2024



PANEL CHAIRPERSON

PPARB



SECRETARY

PPARB

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