

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 149/2020 OF 7TH DECEMBER 2020

BETWEEN

PINNIE AGENCY LIMITED.....APPLICANT

AND

**THE ACCOUNTING OFFICER,
MINISTRY OF TRANSPORT, INFRASTRUCTURE,
HOUSING, URBAN DEVELOPMENT & PUBLIC WORKS,
STATE DEPARTMENT FOR HOUSING & URBAN
DEVELOPMENT.....RESPONDENT**

AND

INFINITY DEVELOPMENT LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer of the Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works, State Department for Housing & Urban Development with respect to Tender No. MTIHU DPW/SDHUD/SUD/009/2020-2021, Social Housing at Meteorological Site for Proposed Civil Works for Roads and Other External Works (Lot 2).

BOARD MEMBERS

- | | |
|---------------------------|--------------|
| 1. Ms. Faith Waigwa | -Chairperson |
| 2. Ms. Phyllis Chepkemboi | -Member |
| 3. Mr. Alfred Keriolale | -Member |
| 4. Ms. Rahab Chacha | -Member |

5. Eng. Mbiu Kimani -Member

IN ATTENDANCE

1. Mr. Stanley Miheso -Holding brief for the Secretary

THE REQUEST FOR REVIEW

M/s Pinnie Agency Limited (hereinafter referred to as "the Applicant") lodged a Request for Review dated 7th December 2020 and filed on even date together with a Statement in Support of the Request for Review sworn on 7th December 2020 and filed on even date and a Further Statement sworn on 21st December 2020 and filed on even date, through the firm of Gerivia Advocates LLP, seeking the following orders: -

- i. An order annulling and setting aside the Respondent's decision awarding Tender Number MTIHU DPW/SDHU/SUD/010/2020-2021 Social Housing at Meteorological Site for Proposed Civil Works for Roads and Other External Works (LOT 2);*
- ii. An order annulling and setting aside the Respondent's letter dated 26th November 2020 notifying the Applicant that it had not been successful in Tender Number MTIHU DPW/SDHU/SUD/010/2020-2021 Social Housing at Meteorological Site for Proposed Civil Works for Roads and Other External Works (LOT 2);*
- iii. An order declaring that the Procuring Entity failed to evaluate the Applicant's bid at the financial evaluation stage in*

- accordance with the criteria and procedures under the Tender Document and the provisions of Sections 80 (2) & 82 of the Act;*
- iv. An order directing the Procuring Entity to re-admit the Applicant at the financial stage and to carry out a re-evaluation at the financial stage whilst observing and applying the criteria in the Tender Document as required by Sections 80 (2) 82 of the Act or in the alternative, an order directing the Respondent to redo or correct anything within the entire procurement process found to not have been done properly to ensure compliance with the law;*
 - v. An order compelling the Respondent to pay the costs arising from/and incidental to this Request for Review to the Applicant; and*
 - vi. Such and further orders as the Board may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.*

In response, the Respondent addressed a letter dated 10th December 2020 and filed with the Board Secretary on 16th December 2020 in response to the Request for Review while the Interested Party lodged a Replying Affidavit sworn on 18th December 2020 and filed on 21st December, a Notice of Motion dated 23rd December 2020 through a Certificate of Urgency filed on 24th December 2020 and a Further Affidavit sworn on 23rd December 2020 and filed on 24th December 2020 through the firm of HMS Advocates LLP.

In a letter dated 21st December 2020 addressed to the Board Secretary, the Applicant's Advocates expressed the Applicant's willingness to withdraw the instant Request for Review as follows: -

"RE: WITHDRAWAL OF PPARB APPLICATION NO. 149 OF 2020, PINNIE AGENCY LIMITED V. THE ACCOUNTING OFFICER, MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT & PUBLIC WORKS, STATE DEPARTMENT FOR HOUSING & URBAN DEVELOPMENT

We refer to the above matter.

The Applicant hereby withdraws Application No. 149 of 2020 being the request for review dated 7th December 2020 and filed on even date.

Kindly treat the request for review as withdrawn"

Upon receipt of the said withdrawal notice, the Board Secretary, through a letter dated 21st December 2020, informed the Applicant of the requirements for withdrawal of a Request for Review as specified in Regulation 216 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as "Regulations 2020") as follows: -

"RE: NOTICE OF WITHDRAWAL OF REQUEST FOR REVIEW APPLICATION NO. 149 OF 2020

We acknowledge receipt of your notice of withdrawal dated 21st December 2020 (attached) and filed with the

Board on the same date with respect to the above referenced application, contents whereof are noted with thanks

As you are aware, the Public Procurement and Asset Disposal Regulations, 2020 ("the 2020 Regulations") are in force and as such your notice of withdrawal must comply with Regulation 216 of the 2020 Regulations which provides as follows: -

- 216 (1) A request for review may be withdrawn at any time before or during the hearing by notice in writing to the Review Board Secretary signed by the applicant***
- (2) The withdrawal under paragraph (1) shall be based on consent signed between parties concerned and registered with the Review Board***
- (3) Upon such a withdrawal notice under paragraph (1) being received by the Review Board Secretary the request for review shall be deemed to have been withdrawn***
- (4) When a request for review is withdrawn the Review Board Secretary shall forthwith inform the Review Board and all parties to the review of the withdrawal.***

Your notice of withdrawal filed with the Board on 21st December 2020 must comply with the above provisions including Regulation 216 (2) thereof before it is MARKED as withdrawn by the Board”

Consequently, on 28th December 2020, a Consent was filed with the Board Secretary signed by all parties to the Request for Review with the following details: -

“Pursuant to Regulation 216 (2) of the Public Procurement and Asset Disposal Regulations, 2020

By consent:

- 1. The Request for Review dated 7th December 2020 filed by the Applicant on even date is hereby withdrawn.***
- 2. This matter should be marked as withdrawn.***
- 3. Each party to bear its own costs.”***

BOARD’S DECISION

The Board having considered parties’ consent filed before it and in exercise of the powers conferred upon it by section 173 of the Public Procurement and Asset Disposal Act, 2015 hereby makes the following orders: -

- 1. The Request for Review filed by the Applicant on 7th December 2020 with respect to Tender No. MTIHU DPW/SDHUD/SUD/009/2020-2021, Social Housing at Meteorological Site for Proposed Civil Works for Roads and**

Other External Works (Lot 2), be and is hereby marked as withdrawn pursuant to Regulation 216 (3) of the Public Procurement and Asset Disposal Regulations, 2020.

2. Each party shall bear its own costs.

Dated at Nairobi this 28th day of December 2020

CHAIRPERSON

SECRETARY

PPARB

PPARB