

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 126 OF 2024 DATED 23RD DECEMBER, 2024

BETWEEN

GUKEM CONSTRUCTION LIMITEDAPPLICANT

AND

THE ACCOUNTING OFFICER

KENYA URBAN ROADS AUTHORITY RESPONDENT

SAFE ROADS CONSTRUCTION LIMITED INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Urban Roads Authority in relation to Tender No: KURA/RMLF/NRB/034/2024-2025 for Periodic Maintenance of Bogani Road.

BOARD MEMBERS PRESENT

1. Mr. George Murugu, FCI Arb, I.P - Chairperson
2. QS Hussein Were - Member
3. Mr. Jackson Awele - Member

IN ATTENDANCE

1. Mr. Philemon Kiprop - Holding brief for Acting Board Secretary
2. Ms. Evelyn Weru - Secretariat
3. Mr. Anthony Simiyu - Secretariat



PRESENT BY INVITATION

APPLICANT

GUKEM CONSTRUCTION LIMITED

Mr. Peter Muuo h/b

for Mrs. Mbabu

- Advocate, P.K.Mbabu & Company Advocates

RESPONDENT

**ACCOUNTING OFFICER,
KENYA URBAN ROADS AUTHORITY**

Mr. Peter O. Bosire

- Advocate, Kenya Urban Roads Authority

INTERESTED PARTY

SAFE ROADS CONSTRUCTION LIMITED

N/A

DECISION OF THE BOARD

1. On 23rd December 2024, Gukem Construction Limited, the Applicant herein, filed a Request for Review dated 23rd December 2024 together with a Supporting Affidavit sworn by Mark Ngumbau Mutinda, its Managing Director on 23rd December 2024 and an Authority to Represent dated 23rd December 2024 (hereinafter referred to as the "instant Request for Review") through the firm of P. K. Mbabu & Company Advocates seeking the following orders from the Board:

a) The Respondent's decision awarding the tender for the Periodic Maintenance of Bogani Road- Tender No: KURA/RMLF/NRB/034/2024-2025 to the Interested be and is hereby set aside.



b) The Respondent's decision contained in the letter dated 10th December 2024 notifying the Applicant that its tender was unsuccessful be and is hereby set aside.

c) A declaration that the Respondent failed to evaluate the Applicant's tender in accordance with the tender document, the Act and the regulations.

d) Consequent to (c) above, the Respondent be ordered to re-admit the Applicant's tender and proceed to evaluate it in accordance with the tender document and conclude the procurement process to its logical conclusion in accordance with the tender document, the Public Procurement and Asset Disposal Act and the Constitution.

e) In alternative to (d) above, the Honorable Board be pleased to review all records of the procurement process relating to the tender for the Periodic Maintenance of Bogani Road- Tender No: KURA/RMLF/NRB/034/2024-2025 and do substitute the decision of the Respondent with an order awarding the tender to the Applicant.

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



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

2. In a Notification of Appeal and a letter dated 23rd December 2024, Mr. James Kilaka, the Acting Secretary of the Board notified the Respondent of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Procuring Entity was requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 23rd December 2024.
3. Vide a Hearing Notice dated 30th December 2024, the Acting Board Secretary, notified parties and all tenderers of an online hearing of the instant Request for Review slated for 7th January 2025 at 11:00 a.m. through the link availed in the said Hearing Notice.
4. Vide a letter dated 2nd January 2025, the Acting Board Secretary sent a reminder to the Respondent referring to the Notification of Appeal for the instant Request for Review dated 23rd December 2024 and notified the Respondent of the provisions under Regulation 205(3) & (4) of the Public Procurement and Asset Disposal Regulations 2020 (hereinafter referred to as "Regulations 2020") with regard to the five (5) days within which they were required to submit a response being



on or about 28th December 2024 noting that the operations of the Board are time bound and require matters to be concluded within 21 days.

5. Vide email dated 7th January 2025, the Acting Board Secretary sent another reminder to the Respondent referring to the Reminder dated 2nd January 2025, the Notification of Appeal for the instant Request for Review dated 23rd December 2024 and notified the Respondent of the provisions under Regulation 205(3) & (4) of the Public Procurement and Asset Disposal Regulations 2020 (hereinafter referred to as "Regulations 2020") with regard to the five (5) days within which they were required to submit a response being on or about 28th December 2024 noting that the operations of the Board are time bound and require matters to be concluded within 21 days.
6. When the matter came up for hearing on 7th January 2025 at 11.00 a.m. the Board read out pleadings filed by parties in the matter. Mr. Bosire for the Respondent sought for a continuance and indicated that he had just learnt of the matter and sought for more time to enable him file a response to the Request for Review Application and to submit to the Board confidential documents regarding the subject tender pursuant to Section 67(3)(e) of the Act. On his part, Mr. Muuo indicated that he was ready to proceed with the hearing and had served the Respondent with the pleadings in the matter though he had not filed a return of service. He was however not strenuously objected to the request for adjournment.



7. Having considered parties' submissions and pleadings, the Board issued the following directions to parties, which were also forwarded to the parties by the Acting Board Secretary vide letter dated 7th January 2025:

a) The Respondent be granted leave to file and serve its response to the Request for Review together with its written submissions and to submit to the Board the Confidential documents relating to the matter by 9.00 a.m. on 8th January 2025.

b) Any Interested Party in the matter be granted leave to file and serve its response to the Request for Review and its written submissions by 9.00 a.m. on 8th January 2025.

c) The Applicant, be granted leave to file and serve a further affidavit in response to the Respondent and Interested Party, if necessary, upon all parties together with its written submissions by 6.00 p.m. on 8th January 2025.

d) Hearing of Request for Review No. 126 of 2024 be rescheduled to Thursday, 9th January 2024 at 11.00 a.m.

e) Parties are cautioned to adhere to the strict timelines as specified in these directions as the Board will strictly rely on the documentation filed before it within the timelines specified.

8. The Board also informed parties that the instant Request for Review having been filed on 23rd December 2024 was due to expire on 13th



January 2025 and that the Board would communicate its decision on or before 13th January 2025 to all parties to the Request for Review via email.

9. On the morning of 8th January 2025, the Respondent through his Advocate filed via email a Notice of Appointment dated 7th January 2025, a Procuring Entity's Memorandum of Response dated 7th January 2025 and confidential documents pursuant to Section 67(3)(e) of the Act.
10. On the same day of 8th January 2025, the Applicant through its advocates filed a Consent dated 8th January 2025 and duly signed by the parties' respective advocates on record to have the matter marked as withdrawn with no orders as to costs.
11. In the circumstances, the Request for Review dated 23rd December 2024 and filed on even date is hereby marked as withdrawn on 8th January 2025 by consent of parties with no orders as to costs.

FINAL ORDERS

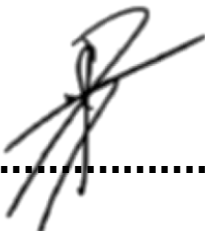
12. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders by consent of all parties to the instant Request for Review:



A. The Applicant's Request for Review dated 23rd December 2024 and filed on even date be and is hereby marked as withdrawn by consent of parties.

B. There shall be no orders as to costs.

Dated at NAIROBI, this 13th Day of January, 2025.


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CHAIRPERSON

PPARB


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SECRETARY

PPARB

