

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO. 79/2025 OF 4<sup>th</sup> JULY 2025**

**BETWEEN**

**EMEC SERVICES LIMITED .....APPLICANT**

**AND**

**PRINCIPAL SECRETARY, STATE DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT ..... 1<sup>ST</sup> RESPONDENT**

**STATE DEPARTMENT OF HOUSING**

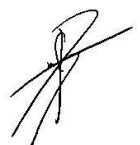
**AND URBAN DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**

**NIGHTIGALE E.A. LTD ..... INTERESTED PARTY**

Review against the decision of the Principal Secretary, State Department of Housing and Urban Planning in relation to Tender No. MLPWHUD/HUD/AHP/415/2023-2024 for Proposed Construction of the Gatundu Town AHP Project in Gatundu South Constituency, Kiambu County with Associated Infrastructure

**BOARD MEMBERS PRESENT**

- |                                    |                             |
|------------------------------------|-----------------------------|
| 1. Mr. George Murugu, FCI Arb, I.P | - Chairperson               |
| 2. Ms. Alice Oeri                  | - Vice Chairperson & Member |
| 3. QS Hussein Were                 | - Member                    |
| 4. Eng. Lilian Ogombo              | - Member                    |
| 5. Ms. Jessica M'mbetsa            | - Member                    |



## **IN ATTENDANCE**

- |                      |   |
|----------------------|---|
| 1. Mr. Robert Kimani | - Holding brief for the Board Secretary |
| 2. Ms. Sarah Ayoo    | - Secretariat                           |
| 3. Ms. Evelyn Weru   | - Secretariat                           |

## **PRESENT BY INVITATION**

### **APPLICANT**

### **EMEC SERVICES LIMITED**

Mr. Edward Ratemo	- Advocate, ROM Law Advocates LLP
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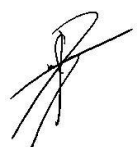
## **RESPONDENTS PRINCIPAL SECRETARY, STATE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT & PRINCIPAL SECRETARY, STATE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

- |                       |   |
|-----------------------|---|
| 1. Ms. Charity Kagiri | - State Counsel   |
| 2. Mr. John Maina     | - Head, Supply Chain Management, State Department of<br>Housing & Urban Development |
| 3. Ms. Emily Korir    | - Procurement Officer, State Department of Housing &<br>Urban Development           |

### **INTERESTED PARTY**

### **NIGHTIGALE E.A. LTD**

Mr. Emmanuel Mumia	- Advocate, Mwaniki Gachoka & Co. Advocates
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## **DECISION OF THE BOARD**

1. On 4<sup>th</sup> July 2025, EMEC Services Limited, the Applicant herein, filed a Request for Review dated 3<sup>rd</sup> July 2025 together with an Authority to Swear Affidavit dated 3<sup>rd</sup> July 2025, a Verifying Affidavit sworn on 3<sup>rd</sup> July 2025 by Hamisi Njenga, its Director, a Supporting Affidavit sworn on 3<sup>rd</sup> July 2025 by Hamisi Njenga, its Director (hereinafter referred to as "the instant Request for Review") through ROM Law Advocates LLP seeking the following orders from the Board:

***A. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' failure to notify the Applicant of the outcome of Tender No; MLPWHUD/HUD/AHP/415/2023-2024 FOR PROPOSED CONSTRUCTION OF THE PROPOSED AHP PROJECT IN GATUNDU, KIAMBU COUNTY WITH INFRASTRUCTURE WORKS is a breach of the Public Procurement and Asset Disposal Act, 2015.***

***B. An Order be and is hereby issued nullifying any award made by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' in respect of Tender No; MLPWHUD/HUD/AHP/415/2023-2024 FOR PROPOSED CONSTRUCTION OF THE PROPOSED AHP PROJECT IN GATUNDU, KIAMBU COUNTY WITH INFRASTRUCTURE WORKS.***



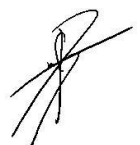
***C. An Order be and is hereby issued directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' to issue proper notifications of intention to award to the Applicant and all bidders alike.***

***D. In the alternative, an Order be and is hereby issued directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' to re-evaluate the bids in Tender No; MLPWHUD/HUD/AHP/415/2023-2024 FOR PROPOSED CONSTRUCTION OF THE PROPOSED AHP PROJECT IN GATUNDU, KIAMBU COUNTY WITH INFRASTRUCTURE WORKS in accordance with the provisions of the Tender document, Constitution, the PPADA,2015 and the PPADA Regulations, 2020.***

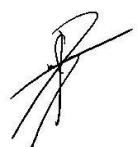
***E. An Order be and is hereby issued staying any further implementation of the award and or tender with respect to Tender No; MLPWHUD/HUD/AHP/415/2023-2024 FOR PROPOSED CONSTRUCTION OF THE PROPOSED AHP PROJECT IN GATUNDU, KIAMBU COUNTY WITH INFRASTRUCTURE WORKS pending hearing and determination of this Request for Review.***

***F. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents be and are hereby ordered to pay the costs of and incidental to these proceedings; and***

***G. Such other or further reliefs as this Board shall deem just and expedient.***

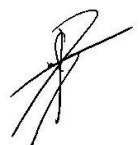


2. In a Notification of Appeal and a letter dated 4<sup>th</sup> July 2025, Mr. James Kilaka, the Secretary of the Board notified the 1<sup>st</sup> and 2<sup>nd</sup> Respondent of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the subject tender within five (5) days from 4<sup>th</sup> July 2025.
3. Vide a Hearing Notice dated 11<sup>th</sup> July 2025, the Board Secretary, notified parties and all tenderers in the subject tender of an online hearing of the Request for Review slated for 17<sup>th</sup> July 2025 at 11.00 a.m., through the link availed in the said Hearing Notice.
4. On 14<sup>th</sup> July 2025, the Respondents filed through PS Charles M. Hinga, CBS, CA (SA) a Response on Appeal of the subject tender dated 10<sup>th</sup> July 2025, a Preliminary Objection to Request for Review dated 11<sup>th</sup> July 2025 together with a file containing confidential documents concerning the subject tender pursuant to Section 67(3)(e) of the Act.
5. Vide email dated 14<sup>th</sup> July 2025, the Board Secretary notified all tenderers in the subject tenders via email, of the existence of the 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 24<sup>th</sup> March



2020. All tenderers in the subject tender were invited to submit to the Board any information and arguments concerning the tender within three (3) days.

6. On the morning of 17<sup>th</sup> July 2025, the Interested Party filed through Mwaniki Gachoka & Co. Advocates a Notice of Motion dated 16<sup>th</sup> July 2025 together with a Supporting Affidavit sworn on 16<sup>th</sup> July 2025 by Edward Njenga Muniu, its Executive Director, an Interested Party's Replying Affidavit sworn on 16<sup>th</sup> July 2025 by Edward Njenga Muniu, Interested Party's Submissions dated 16<sup>th</sup> July 2025, and an Interested Party's List of Authorities dated 16<sup>th</sup> July 2025.
7. When the matter first came up for hearing on 17<sup>th</sup> July 2025 at 11.00 a.m., the Board read out pleadings filed by parties in the matter. Mr. Mumia for the Interested Party brought to the attention of the Board the Interested Party's Notice of Motion application dated 16<sup>th</sup> July 2025 seeking (a) for Nightingale E.A Ltd being the successful tenderer in the subject tender be joined as an Interested Party in the instant proceedings pursuant to Section 170(c) of the Act, (b) the instant Request for Review be struck out for being contra statute to Section 167(1) and (4)(c) of the Act, and (c) Costs of the application be provided for and sought for the same to be allowed.
8. In response, Mr. Ratemo for the Applicant confirmed having had sight of the Interested Party's Notice of Motion application, Replying Affidavit and Written Submissions and indicated that prayer 1 of the said application



can be dispensed with and allowed. He sought for more time to appreciate the Interested Party's Replying Affidavit and submissions to enable him file his rejoinders. On her part, Ms. Kagiri for the Respondents indicated that though she had not had sight of the Interested Party's pleadings, she was not opposed to their joinder in the matter as it is its statutory right under Section 170 (c) of the Act.

9. In a rejoinder, Mr. Mumia indicated that he was ready to compromise on prayer 2 of the Notice of Motion application as the same would be substantively canvassed by parties in the instant Request for Review noting that there was no objection to joinder of the Interested Party to the instant proceedings. Subsequently, the Board upon considering the application by the Interested Party to be joined in the instant proceedings allowed the same in terms of prayer 1 and issued the following directions;
- i. The Replying Affidavit sworn by Edward Njenga Muniu on 16<sup>th</sup> July 2025 together with Written Submissions dated 16<sup>th</sup> July 2025 as presented by the Interested Party as its pleadings be and are hereby admitted on record and considered as regularly filed.
  - ii. Having admitted the Interested Party to the instant proceedings and deeming its pleadings as properly filed, the Interested Party shall serve afresh its pleadings upon the Applicant and Respondents by 1.00 p.m. today, 17<sup>th</sup> July 2025 and copy the Board on that service.
  - iii. The Applicant and the Respondents be and are hereby granted leave to file and serve their replying affidavits to the Interested



Party's pleadings in addition to filing comprehensive written submissions and list & bundle of authorities by 6.00 p.m. on 18<sup>th</sup> July 2025.

- iv. The Interested Party be and is hereby granted corresponding leave to file and serve its supplementary submissions, if need be, in response to the Applicant's and Respondents' rejoinders by 10.00 a.m., Monday, 21st July 2025.
- v. Hearing of the matter is set on Tuesday, 22nd July 2025 at 9.00 a.m. Parties will join the virtual meeting using the link shared.
- vi. Parties are cautioned to adhere to the strict timelines.

10. The Respondents filed Written Submissions dated 18<sup>th</sup> July 2025 together with authorities relied upon.

11. At the hearing on 22<sup>nd</sup> July 2025 at 9.00 a.m., the Board read out pleadings filed by parties in the instant Request for Review. Counsel for the Applicant made an application to withdraw the instant Request for Review with no orders as to costs having read the responses filed.

12. Mr. Mumia for the Interested Party in response to the Applicant's application to withdraw the instant Request for Review submitted that he was not opposed to the withdrawal of the same. On her part, Ms. Kagiri for the Respondents submitted that she was also not opposed to the withdrawal of the instant Request for Review.





13. Subsequently, the Board in view of consensus by parties to have the matter marked as withdrawn proceeded to adopt the same as an order of the Board.

14. In the circumstances, the Request for Review dated 3<sup>rd</sup> July 2025 and filed on 4<sup>th</sup> July 2025 is hereby marked as withdrawn on 22<sup>nd</sup> July 2025 by consent of parties with no order as to costs.

### **FINAL ORDERS**

15. 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:

**A. The Request for Review dated 3<sup>rd</sup> July 2025 and filed on 4<sup>th</sup> July 2025 be and is hereby marked as withdrawn by consent of parties.**

**B. There shall be no orders as to costs.**

**Dated at NAIROBI this 23<sup>th</sup> Day of July 2025.**

  
.....  
**CHAIRPERSON**

**PPARB**

  
.....  
**SECRETARY**

**PPARB**