

REPUBLIC OF RWANDA



**NATIONAL INDEPENDENT REVIEW PANEL (NIRP)
PUBLIC PROCUREMENT**

KN 3 AV, 2 KIGALI/RWANDA
10th FLOOR, GRAND PENSION PLAZA
P. O .Box: 4276,
E-mail: rppa@rwanda1.rw

28/05/2015
MINAGRI RECEPTION

RPPA
POUR RECEPTION
DATE: 01/06/2015
SIGNATURE: [Signature]

Kigali, on

N° 010/2015-062/NIRP

**THE PERMANENT SECRETARY OF MINISTRY OF
AGRICULTURE AND ANIMAL RESOURCES**

Dear Sir,

SUBJECT: TRANSMISSION OF THE DECISION

Pursuant to article 70 of the Law N° 12/2007 of 27/03/ 2007 on Public Procurement as modified and complemented to date, find herewith attached, the decision of the National Independent Review Panel "NIRP" related to the appeal introduced by ENTREPRISE DE CONSTRUCTION ET DE MENUISERIE LTD contesting the decision taken on the tender N° 254/M/014/LWH for Constructions works for transformation and extension of a horticulture pack house, supply and installation of cold room and related equipment in Kigali City.

Sincerely,

[Signature]

BUGINGO Emma Marie

Chairperson

Received by HABI MANA J. Bwacu
on June 1, 2015 - Accountant
E.C.M LTD
Tel: 0750212827
[Signature]

CC:

- Manager of ENTREPRISE DE CONSTRUCTION ET DE MENUISERIE LTD
- Director General of RPPA
- Coordinator of Land Husbandry Water Harvesting & Hillside Irrigation Project



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DECISION N° 020 /2015/NIRP ON THE TENDER N° 254/W/014/LWH FOR CONSTRUCTIONS WORKS FOR TRANSFORMATION AND EXTENSION OF A HORTICULTURE PACK HOUSE, SUPPLY AND INSTALLATION OF COLD ROOM AND RELATED EQUIPMENT IN KIGALI CITY

COMPLAINANT: ENTREPRISE DE CONSTRUCTION ET DE MENUISERIE LTD (ECM)
AGAINST : MINISTRY OF AGRICULTURE AND ANIMAL RESOURCES - LWH-RSSP
PROJECTS (MINAGRI)

COMPLAINT: APPEAL AGAINST THE DECISION ON THE TENDER AWARD

1. INTRODUCTION

Pursuant to the article 70 of the Law N° 12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date, the National Independent Review Panel (NIRP), on 19/05/2015 analysed the appeal introduced by ECM contesting the decision for the above tender.

2. SUMMARY OF THE COMPLAINT

ECM is contesting the MINAGRI's decision to disqualify their bid on the argument that the presented "*Written confirmation of authorization to sign the Bid such as a Power of Attorney*" is not responsive.

ECM states that the said non responsiveness is due to misinterpretation of the clause included in that document.

3. SUMMARY OF FACTS

- On 31/10/2014, MINAGRI advertised the tender;
- On 17/12/2014, Bids were opened;
- On 31/03/2015, ECM received the provisional notification letter;
- On 10/04/2015, ECM introduced the initial appeal;
- On 06/04/2015, ECM received the response to the initial appeal;
- On 17/04/2015, NIRP received the appeal from ECM;



- On 20/04/2015, NIRP requested MINAGRI to suspend the procurement process and submit all documents related to this tender;
- On 14/05/2015, MINAGRI submitted the requested documents, "twenty four days after";
- On 15/05/2015, NIRP informed both ECM and MINAGRI that an additional time not exceeding 30 days will be required for an appropriate decision to be taken.

4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The documents comprising the bid as requested by the tender document include the following criterion: **"Written confirmation authorizing the signatory of the Bid to commit the Bidder"** (Section I. Instructions to Bidders, (e). Page 12);
- One of the clauses of the ECM's minutes related to the *"Written confirmation authorizing the signatory to sign on behalf of the bidder states: **"Hemejwe ko amakosa yose yaboneka ku mpamvu iyo ariyo yose mu itegurwa ry'inyandiko z'ipiganwa yabazwa KAGENZI Jackson"***;
- In the letter addressed to NIRP, ECM interpret on the clause in question saying that: *"...ni uko mu gihe cyose KAGENZI Jackson yakora ibinyuranyije n'inshingano yahawe mu izina rya ECM ltd mu itegurwa ry'inyandiko z'ipiganwa , urugero: nko kuba yashyira impapuro mpimbano,..."*
- The article 33, para 1, of the Organic Law N^o 01/2012/OL of 02/05/2012 Instituting the Penal Code stipulates that: *"State institutions, public or private companies, enterprises, associations or organizations with legal personality shall be held liable for offences provided under this Organic Law, if they are committed by their representatives or by those who hold leadership positions while they are acting for the benefit of these legal persons on the basis of:*
 - *Power of representation;*
 - *Power to take decisions;*
 - *Power of supervision";*
- The article 12, para 2, of the law N^o 05/2013 of 13/02/2013 modifying and completing the Law N^o 12/2007 of 27/03/2007 on Public Procurement stipulates: *"He/she shall be debarred from participation in public procurement for five (5) years any bidder who provides false information regarding the company, its documents, its capacity, who is found guilty of violating laws to obtain a procurement contract, who is found guilty of forgery and the use of forged documents in public procurement, who uses false public procurement contract so as to get a bank loan, who changes address without informing the contracting authority".*

5. COMMENT BY THE PANEL MEMBERS

Considering the article 33 of the Organic Law N^o 01/2012/OL of 02/05/2012 instituting the Penal Code, and the article 12 of the law 05/2013 of 13/02/2013 modifying and completing the Law N^o 12/2007 of 27/03/2007 on Public Procurement,

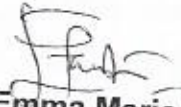
Given the clause included in the ECM minutes on the authorizing the signatory, NIRP members consider that the bidder (ECM) tempt to avoid the criminal liability on the mistake, like forged document, which can be found in the tender document. Therefore, the "Written confirmation authorizing the signatory of the Bid to commit the Bidder" is invalid.

For that reason, the panel members do agree with the decision taken by MINAGRI on this issue.


6. DECISION BY THE PANEL MEMBERS

Basing on the above background and comments;

Pursuant to articles 69 and 70 of the Law N^o 12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date, NIRP members dismiss the ECM appeal because it is unfounded.


BUGINGO Emma Marie
Chairperson


BAGILIZINA Emmanuel
Vice Chairperson


MUNYURA Pierre
Member


MUKANTABANA Crescence
Member


BIRANGWA Amri
Member

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Considering the article 33 of the Organic Law N° 01/2012/OL of 02/05/2012 instituting the Penal Code, and the article 12 of the law 05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement,

Given the clause included in the ECM minutes on the authorizing the signatory, NIRP members consider that the bidder (ECM) tempt to avoid the criminal liability on the mistake, like forged document, which can be found in the tender document. Therefore, the "Written confirmation authorizing the signatory of the Bid to commit the Bidder" is invalid.

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Basing on the above background and comments;


Pursuant to articles 69 and 70 of the Law N° 12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date, NIRP members dismiss the ECM appeal because it is unfounded.


BUGINGO Emma Marie
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