

REPUBLIC OF RWANDA



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

KN 3 AV, 2 KIGALI/RWANDA  
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Received by HIGIRO JULIUS  
Procurement Officer  
Kicukiro District

24/04/2015



Kigali, on

24 AVR 2015

N° 010/2015-050/NIRP

**THE EXECUTIVE SECRETARY OF KICUKIRO DISTRICT**

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 HORIZON CONSTRUCTION LTD contesting the decision taken on the tender N° 22/T/2014-2015KICU-DISTRICT for Execution works for construction of Asphalt Road Rubirizi-Busanza (5,832) in Kanombe-Nyarugunga Sectors in Kicukiro District.

Sincerely,

**BUGINGO Emma Marie**  
Chairperson

Received by Nyungu George  
(office messenger)  
27/04/2015  
0788446132

CC:

- Director General of RPPA
- Manager of HORIZON CONSTRUCTION LTD



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**DECISION N° 017/2015/NIRP ON THE TENDER N° 22/T/2014-2015 KICU-DISTRICT FOR EXECUTION WORKS FOR CONSTRUCTION OF ASPHALT ROAD RUBIRIZI-BUSANZA (5,832) IN KANOMBE-NYARUGUNGA SECTORS IN KICUKIRO DISTRICT.**

**COMPLAINANT : HORIZON CONSTRUCTION LTD  
AGAINST : KICUKIRO DISTRICT  
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, members of the National Independent Review Panel (NIRP), on 14 and 21/03/2015 analysed the appeal introduced by HORIZON CONSTRUCTION LTD contesting the decision for the above tender.

### 2. SUMMARY OF THE COMPLAINT

HORIZON CONSTRUCTION LTD is contesting the KICUKIRO DISTRICT's decision to disqualify their bid. KICUKIRO DISTRICT rejected the bid due to Lack of experience required in the Tender document (10 years of works related to the asphalted roads).

HORIZON CONSTRUCTION LTD argues that the provisional successful bidder (NPD COTRACO) had no experience than they do, since they had begun to build asphalt roads in 2007, while NDP COTRACO had started in 2010.

### 3. SUMMARY OF FACTS

- On 03/01/2015, KICUKIRO DISTRICT advertised the tender;
- On 02/03/2015, Bids were opened;
- On 19/03/2015, HORIZON CONSTRUCTION LTD received the provisional notification letter;
- On 23/03/2015, HORIZON CONSTRUCTION LTD introduced the initial appeal;
- On 24/03/2015, HORIZON CONSTRUCTION LTD received the response of the initial appeal;
- On 30/03/2015, NIRP received the appeal from HORIZON CONSTRUCTION LTD;
- On 31/03/2015, KICUKIRO DISTRICT requested NPD COTRACO to prove, by a Certificate of Good Completion, experience carried out since 1996;
- On 01/04/2014, NIRP requested KICUKIRO DISTRICT to suspend procurement process and submit all documents related to this tender;

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On 02/04/2015, HORIZON CONSTRUCTION LTD informed NIRP that they were withdrawing their appeal as they were settling the matter amicably;  
On 06/04/2015, KICUKIRO DISTRICT requested NIRP to let them progress the tender procedures;  
On 13/04/2015, KICUKIRO DISTRICT submitted the requested documents;  
On 15/04/2015, NIRP requested KICUKIRO DISTRICT and HORIZON CONSTRUCTION LTD representatives to attend the panel meeting on 21/04/2015 and provided further clarification;  
On 21/04/2015, NIRP met KICUKIRO DISTRICT and HORIZON CONSTRUCTION LTD representatives.

#### 4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The HORIZON CONSTRUCTION LTD's letter addressed to NIRP states "*This is to inform you that we are withdrawing our appeal request as we are settling the matter amicably with the district*";
- In the letter N<sup>o</sup>1020/07.0103.05/14 of 06/04/2015 addressed to NIRP, KICUKIRO DISTRICT was silent on how the matter between them and HORIZON CONSTRUCTION LTD was settled;
- During clarification session, KICUKIRO DISTRICT representatives informed the panel members that the matter is not yet resolved;
- Among the requirements of the tender document, is "*Experience under contracts in the role of Contractor, Subcontractor, or Management Contractor for at least the last (10 years) prior to the applications submission deadline, and with activity in at least nine (9) months in each year*";
- The evaluation report rejected the bid of the complainant based on the following criterion "*Management Contractor for at least the last (10 years) prior to the applications submission deadline*";
- On 31/3/2015 KICUKIRO DISTRICT wrote to NPD COTRACO requesting for further information on their bid after the HORIZON CONSTRUCTION LTD had appealed to NIRP. In the letter KICUKIRO District stated that: "*...turabasaba amakuru afatika agaragaza uburambe mu myaka mufite mu gukora imihanda ya kaburimbo bigaragazwa na **Attestation de bonne fin (certificate of good completion)** ya mbere mwahawe n'urwego mwubakiye uwo muhanda wa kaburimbo*";
- During the clarification session with the panel members, KICUKIRO DISTRICT representatives admitted the mistakes made in the evaluation of this tender, especially on the part of the technical experience of the bidders.

#### 5. COMMENTS BY THE PANEL MEMBERS

As HORIZON CONSTRUCTION LTD in their withdrawal letter didn't state how the matter was settled, and in addition, during clarification session both parties pointed that the matter is not yet resolved, NIRP members decided to examine this appeal;

Considering that KICUKIRO DISTRICT didn't evaluate the criterion related to the Firm's experience as per the tender document specification;


NIRP members denounce unfair evaluation carried out by KICUKIRO DISTRICT on this tender.


## 6. DECISIONS BY THE PANEL MEMBERS

Basing on the above background and comments;

Pursuant to article 41, para 2, 3<sup>o</sup> of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement, NIRP members nullified the evaluation made by KICUKIRO DISTRICT;

Pursuant to article 41, para 2, 5<sup>o</sup> of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement, NIRP members order KICUKIRO DISTRICT to re-evaluate the bids and award the tender to the responsive and lowest bidder.

  
**BUGINGO Emma Marie**  
Chairperson

  
**KAYITESI Eugenia**  
Member

  
**SANGANO Yves**  
Member

  
**MUKANTABANA Crescence**  
Member

  
**BIRANGWA Amri**  
Member