



**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

Kigali, on 05 MAI 2015
N° 010/2015-056/NIRP

**THE DIRECTOR GENERAL OF RWANDA
NATURAL RESOURCE AUTHORITY**

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 LIVING ENVIRONMENTAL SERVICES COMPANY LTD contesting the decision taken on the tender N° 012/PGRéF/RNRA/2014/15 for Reperation of old or degraded forest plantations in the districts of Huye, Kamonyi, Muhanga Ruhango, Nyanza, Gisagara, Nyamagabe, and Nyaruguru.

Sincerely,

BUGINGO Emma Marie

Chairperson

CC:

- Director General of RPPA
- Manager of LIVING ENVIRONMENTAL SERVICES COMPANY LTD



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

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

**DECISION N° 018/2015/NIRP ON THE TENDER N° 012/PGR_eF/RNRA/2014/15 FOR
REGENERATING OF OLD OR DEGRADED FOREST PLANTATIONS IN THE
DISTRICTS OF HUYE, KAMONYI, MUHANGA RUHANGO, NYANZA, GISAGARA,
NYAMAGABE, AND NYARUGURU**

**COMPLAINANT : LIVING ENVIRONMENTAL SERVICES COMPANY LTD (LESCO)
AGAINST : RWANDA NATURAL RESOURCE AUTHORITY (RNRA)
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, on 28/04/2015, members of National Independent Review Panel (NIRP) analysed the appeal introduced by LESCO against the decision taken on the above tender.

2. SUMMARY OF THE COMPLAINT

LESCO is contesting the RNRA's decision to disqualify them on the argument that they provided a confused CV of the proposed Coordinator, and the provided certificate of good completion is irrelevant.

3. SUMMARY OF FACTS

- On 02/08/2014, RNRA advertised the tender;
- On 12/09/2014, Bids were opened;
- On 19/02/2015, RNRA issued a provisional notification letter to LESCO;
- On 24/02/2015, RNRA received an initial appeal letter from LESCO;
- On 30/02/2015, LESCO received the RNRA's response to their initial appeal;
- On 01/04/2015, LESCO introduced the appeal to NIRP;



- On 02/04/2015, NIRP requested RNRA to suspend the procurement process and submit all documents related to this tender;
- On 08/04/2015, RNRA submitted the requested documents;
- On 14/04/2015, RNRA submitted other requested documents not submitted before ;
- On 30/04/2015, NIRP informed both RNRA and LESCO 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 tender document specifies that: *"To have a Forestry Graduate or Agriculturist A0 key person of at least 3 years of experience to coordinate the works and an A1 Forest Technician as a field officer. To provide their recent CV, their notified copies of degrees or Diplomas and availability proof"*;
- In the response of the initial appeal, RNRA advanced the reason of the LESCO's disqualification as follows:
 - o *"The experience of the proposed Coordinator is confusing since his CV shows that from 2013 up to now and from 2007 up to now he was working for different institutions, which means that he served two different institution at the same time. In addition, as the date of issue of his degree is 2007, we therefore considered the experience starting from 2007 which shows that no any forestry related activity executed among his duties"*;
 - o *For the case of certificate of good completion, you mentioned that you were subcontracted by FSC LTD in the contract N° RWA 701/03/W/RNRA/PAREF Be2. In this contract, in its section V of the annexes, it stipulates that the bidders can subcontract other companies, cooperatives or NGO only if they have included them in their technical offer. In this regard, since you were not included in the FSC technical offer as subcontractor, your certificate of good completion is therefore irrelevant"*;
- The bid of LESCO presented MUVUNYI Jean Damascene as a Coordinator and its CV shows that he has more than three years of the required experience;
- The article 15, para 2 of the Law N° 13/2009 of 27/05/2009 of the law regulating labour in Rwanda stipulates that: *"It can be a fixed term contract an open-ended contract or for a well defined work. In all cases, contract of employment between worker and various employers if they are not compromising one another are accepted"*;
- RNRA submitted to NIRP a Contract between FSC LTD and OFFICE RWANDAIS DES RESSOURCES NATURELLES dated June 2013;
- The bid of LESCO presented a Certificate of Good completion from FSC LTD as the Subcontractor of the above contract.

5. COMMENTS BY THE PANEL MEMBERS

Since the law allows an employee to sign two employment contracts, there is no problem for MUVUNYI Jean Damascene to have two contracts at the same time.

J.P.

2

H.

S.

B.K.



On the Certificate of Good Completion, FSC LTD, as a company, can deliver that certificate to any contractor, but not allowed to issue the certificate to a subcontractor.

Only the procuring entity, namely RNRA, is competent to deliver, upon request, the above certificate to the subcontractor, in accordance with the article 48, para 2 & 3 of the Ministerial order N° 001/14/10/TC of 19/02/2014 establishing regulations on public procurement, standard bidding documents and standard contracts. Consequently, this certificate is invalid.

6. DECISION BY THE PANEL MEMBERS

Basing on the above background and comments;

Pursuant to article 70 of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date, NIRP members decide to dismiss the appeal introduced by LESCO because it is unfounded.



BAGILIZINA Emmanuel
Vice Chairperson



KAYITESI Eugenia
Member



MUKANTABANA Crescence
Member



BIRANGWA Amri
Member



SANGANO Yves
Member