

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,
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Eng. MUTI RWA
JASSIN

6/15/07/2015

Kigali, on 14 JUL 2015

N° 010/2015-077/NIRP

THE EXECUTIVE SECRETARY OF BURERA 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 SEBUKANGAGA CÉLESTIN (ECOSEC) contesting the decision taken on the tender N° 043/2014-2015/T/B for the execution works for construction of Cross Border Market in Cyanika Sector.

Sincerely,



BUGINGO Emma Marie

Chairperson

CC:

- Director General of RPPA
- Manager of SEBUKANGAGA CÉLESTIN (ECOSEC)



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**DECISION N° 024 /2015/NIRP ON THE TENDER N° 043/2014-2015/T/B FOR THE EXECUTION
WORKS FOR CONSTRUCTION OF CROSS BORDER MARKET IN CYANIKA SECTOR**

COMPLAINANT : SEBUKANGAGA CÉLESTIN (ECOSEC)
AGAINST : BURERA 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 23/06/2015 and 07/07/2015 analysed the appeal introduced by SEBUKANGAGA CÉLESTIN (ECOSEC) contesting the decision for the above tender.

2. SUMMARY OF THE COMPLAINT

SEBUKANGAGA CÉLESTIN (ECOSEC) is contesting the BURERA DISTRICT's decision to disqualify their bid on the argument that they don't fulfil the tender document requirement related to the *"Average annual turnover of NOT less than seven hundred million Rwandan francs supported by financial statements for 3 last year's stamped by the RRA. The period is: 3 last years"*.

SEBUKANGAGA CÉLESTIN (ECOSEC) is arguing that the no responsiveness of that criterion should be taken as minor deviation as per the article 25 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.

SEBUKANGAGA CÉLESTIN (ECOSEC) is also arguing that the article 4 of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date should be applied for fairness and economy (value of money).

3. SUMMARY OF FACTS

On 05/03/2015, BURERA DISTRICT advertised the tender;
On 06/04/2015, Bids were opened;
On 22/04/2015, SEBUKANGAGA CÉLESTIN (ECOSEC) received the first provisional notification letter as the provisional successful bidder;
On 30/04/2015, JV FOLIOS DEVELOPMENT COMPANY & PRIME CARE CONSULTANTS introduced the initial appeal;



On 04/05/2015, BURERA DISTRICT requested for information from RWANDA REVENUE AUTHORITY/MUSANZE;

On 05/05/2015, BURERA DISTRICT re evaluated the tender;

On 15/05/2015, SEBUKANGAGA CÉLESTIN (ECOSEC) received the second provisional notification letter disqualifying their bid;

On 21/05/2015, SEBUKANGAGA CÉLESTIN (ECOSEC) introduced the initial appeal to BURERA DISTRICT;

On 27/05/2015, SEBUKANGAGA CÉLESTIN (ECOSEC) received the response of the initial appeal;

On 01/06/2015, SEBUKANGAGA CÉLESTIN (ECOSEC) introduced the appeal before the INDEPENDENT REVIEW PANEL OF BURERA DISTRICT;

On 03/06/2014, SEBUKANGAGA CÉLESTIN (ECOSEC) received the decision of the INDEPENDENT REVIEW PANEL OF BURERA DISTRICT;

On 08/06/2015, NIRP received the appeal from SEBUKANGAGA CÉLESTIN (ECOSEC);

On 10/06/2014, NIRP requested BURERA DISTRICT to suspend procurement process and submit all documents related to this tender;

On 18/06/2015, BURERA DISTRICT submitted the requested documents;

On 02/07/2015, NIRP invited BURERA DISTRICT representative for clarifications;

On 07/07/2015, NIRP informed both SEBUKANGAGA CÉLESTIN (ECOSEC) and BURERA DISTRICT that an additional time not exceeding 30 days will be needed to issue an appropriate decision to the appeal;

On 07/07/2015, NIRP met BURERA DISTRICT representative and provided other requested documents not submitted before.

4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The second provisional notification letter of BURERA DISTRICT states that: "...la notification provisoire du 22/04/2015 que vous avez reçu n'a plus de valeur", and provisionally award the tender to JV FOLIOS DEVELOPMENT COMPANY & PRIME CARE CONSULTANTS for the corrected price from 994,828,537 Frw to 1,346,428,537 Frw;
- The difference between the offer of the provisional successful bidder and the offer proposed by the complainant, after the arithmetical verification, is equivalent to 401,995,209 Frw;
- Among the requirements set in the tender document is:
"Multiple is: average annual turnover of NOT less than **seven hundred million Rwandan francs supported by financial statements for 3 last year's stamped by the RRA. The period is: 3 last years**";
- The bid of SEBUKANGAGA CÉLESTIN (ECOSEC) was disqualified for not complying with that criterion because the average of the turnover provided is presented as follows:
390,549,624 Frw (2012) + 797,206,420 Frw (2013) + 834,308,235 Frw (2014)
=2,022,064,279 Frw/3 ; the average is equivalent to **674,021,426 Frw** per year ;
- Other requirements set in the tender document are notably:
 - o The essential equipment to be made available for the contract by the successful bidder shall be (ITB 5.5 (c));
 - Two truck Benn with 10 m³ and Two truck Benn with 5 m³ of capacity;
 - One Pick Up;
 - One auto power welding machine;
 - One vibrator;

The bidder must provide the proof of ownership of the materials.



- The key personal for the works (ITB 5.5 (d)):
 - One (1) director of project, a civil engineer in Construction A₀ with at least of 8 years of experience in similar works and at least 5 years as director of the project in similar works, join detailed Cv, update and signed with certified copies of diploma or degree, availability and exclusivity certificate; and copies of ID;
 - One (1) site foreman with at least A₁ level in Public works and construction with at least of 10 years of experience and 8 years of experience in similar works, join detailed Cv's, update and signed with certified copies of diploma or degree; availability and exclusivity certificate; and copies of ID;
 - Electricity engineer with at least of 8 years of experience in similar works, join detailed Cv's, update and signed with certified copies of diploma or degree; availability and exclusivity certificate; and copies of ID;
- Any additional materials required to be completed and submitted by the Bidders are (ITB 13.1):
 - Proof of Purchase the tender document;
 - Site visit certificate;
- The bid of JV FOLIOS DEVELOPMENT COMPANY & PRIME CARE CONSULTANTS does not provide the proof of ownership for (i) One auto power welding machine and (ii) One vibrator, while the evaluation report judged it "Fourni conforme";
- The key staffs proposed by SEBUKANGAGA CÉLESTIN (ECOSEC) do not have copies of ID and do not comply with the following specific requirements:
 - The proposed Project Director, Mr MPAKANIYE Emmanuel, does not show projects done as Director in similar works for at least 5 years;
 - The proposed Site foreman, Mr UBWIRWINEZA Jean Baptiste, does not show experience in similar works for 8 years as required by the tender document;
 - The proposed Electricity engineer, Mr BIZIYAREMYE Jean Pierre, does not also show experience in similar works for 8 years as required by the tender document;
- The evaluation report considered all the key staff proposed by SEBUKANGAGA CÉLESTIN (ECOSEC) as "Fourni conforme";
- The Electricity engineer proposed by JV FOLIOS DEVELOPMENT COMPANY & PRIME CARE CONSULTANTS, Mr DENIS OMONDI OPAR, does not have 8 years of experience in similar works as required by the tender document;
- The evaluation report considered the "Electricity engineer" proposed by the JV FOLIOS DEVELOPMENT COMPANY & PRIME CARE CONSULTANTS as "Fourni conforme";
- EBEMEX-CONSULT Ltd and JV PCC Ltd & ELOHIM COMPANY Ltd do not provide the "Proof of Purchase the tender document" and "Site visit certificate" respectively, however these were considered as minor deviation;
- During the clarification session, BURERA DISTRICT's Executive Secretary recognizes the mistakes made during the evaluation process.



5. COMMENTS BY THE PANEL MEMBERS

The evaluation report breaches the article 25, para 2, 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, where some technical requirements of the provisional successful bidder and the complainant were not

complying with the tender document requirements; however the evaluation report judged them conforming to the requirements;

Considering that the disrespect of the above provision of law in the first evaluation caused the appeal process leading to the second evaluation, and the latter instead of improving the quality of evaluation repeated the same mistake causing a long time of appeal process from 30/04/2015 to date, meaning more than two months;

Given that:

- All bids are not responsive as per the tender document requirements;
- BURERA DISTRICT wrongly admitted several no responsive technical requirements as "Fourni conform" without any explanation in the evaluation report.

With respect of the conditions of fairness, transparency and economy (value of money) that were not observed during the tender award process in accordance with the provision of the Law and regulation on Public Procurement; NIRP members recommend the cancellation of the tender.

6. DECISIONS BY THE PANEL MEMBERS

Basing on the above background and comments;

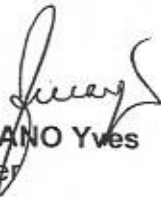
Pursuant to article 41, para 2, 3^o of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and completed to date, NIRP members order that the procurement proceedings be terminated and recommend BURERA DISTRICT to re-advertise the tender.



BUGINGO Emma Marie
Chairperson



BAGILIZINA Emmanuel
Vice Chairperson



SANGANO Yves
Member



MUKANTABANA Crescence
Member



BIRANGWA Amri
Member