

REPUBLIC OF RWANDA



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

KN 3 AV, 2 KIGALI/RWANDA  
10<sup>th</sup> FLOOR, GRAND PENSION PLAZA  
P. O .Box: 4276,  
E-mail: [rppa@rwanda1.rw](mailto:rppa@rwanda1.rw)

Kigali, on

12 3 2015

N° 010/2015-040/NIRP

**THE DIRECTOR GENERAL OF RWANDA  
TRANSPORT DEVELOPMENT AGENCY (RTDA)**

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 MUBILIGI PAUL LTD (E.M.P) contesting the decision taken on the tender N° 011/W/2014-2015-NO/MNT/RTDA-RMF for Urgent works for the deviation from Giswi to Nshili Kivu tea Factory unpaved road (17,912 Km) in NYARUGURU District, Southern Province: Lot 2.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bugingo Emma Marie', is written over a faint circular stamp.

**BUGINGO Emma Marie**

Chairperson

CC:

- Director General of RPPA
- Manager of E.M.P



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**DECISION N° 014 /2015/NIRP ON THE TENDER N° 011/W/2014-2015-NO/MNT/RTDA-  
RMF FOR URGENT WORKS FOR THE DEVIATION FROM GISWI TO NSHILI KIVU TEA  
FACTORY UNPAVED ROAD (17,912 KM) IN NYARUGURU DISTRICT, SOUTHERN  
PROVINCE: LOT 2.**

**COMPLAINANT : ENTREPRISE DE CONSTRUCTION MUBILIGI PAUL LTD (EMP)  
AGAINST : RWANDA TRANSPORT DEVELOPMENT AGENCY (RTDA)  
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 17/03/2015 analysed the appeal introduced by EMP contesting the decision on the above tender.

## 2. SUMMARY OF THE COMPLAINT

EMP is contesting the RTDA's decision to disqualify their bid on the Lot 2. Their bid was rejected for the following reasons:

- The bid did not provide the proof of ownership for the following equipment: D7G, Grader 120 G, 1 Tipper Truck BENZ 2835;
- The persons proposed for the respective posts of the Surveyor and the Quantity Surveyor do not meet the requirements as per the tender document requirements;
- The offered price is higher than the one proposed by the provisional successful bidder.

EMP argue that their offered price is low by considering their proposed discount of 10%, and the proposed staff fulfil all requested criteria.

## 3. SUMMARY OF FACTS

- On 28/11/2014, RTDA advertised the tender;
- On 10/01/2015, Bids were opened;

- On 05/02/2015, EMP received the provisional notification letter;
- On 11/02/2015, EMP introduced the initial appeal;
- On 18/02/2015, EMP received the response of the initial appeal;
- On 24/02/2015, NIRP received the appeal from EMP;
- On 26/02/2015, NIRP requested RTDA to suspend procurement process and submit all documents related to this tender;
- On 04 and 13/03/2015, RTDA submitted the requested documents.

#### 4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- Among equipment requested by the tender document and which the ownership of 100% must be proved are:
  - o Bulldozers (2): Model D7 or Higher;
  - o Grader (2);
  - o Tipper trucks totalizing at least 80 m<sup>3</sup>.
- The bid of EMP provides a Bulldozer D7G; a Grader CAT 120 G and a Tipper Trucks Mercedes Benz 2835, without proof of ownership;
- On the proof of possession of the provided equipment, EMP, in their complaint letter addressed to NIRP, state that: "...*nuko zimwe zidafite carte jaune nka bulldozer D7G kuko gutanga carte jaune ku mashini bitangiye vuba aha, niyo mpamvu mukwerekana appartenance dutanga tableau d'amortissement certifié yatanzwe muri RRA, kandi izo mashini zose ziri kuri tableau d'amortissement usibye ikosa riri kuri Bulldozer D7G...*";
- On the proof of possession of the Tipper Trucks Mercedes Benz 2835, EMP, through the same letter, state that: "...*camion 2835 Benz ni camion Porte Char kandi ni iyacu n'uko mu gukora photocopie twibagiwe gufotora verso ahandikwa mutation...*";
- Among key personnel required by the tender document are:
  - o A Quantity Surveyor: Civil Engineer or certified Quantity Surveyor Bachelor Degree or above with ten (10) years of experience with proven record in road works site management;
  - o Two Surveyor (Topographer) with diploma A2 or above with five (5) years of experience in road geotechnical works.
- The Quantity Surveyor presented by EMP, namely MWAMBUTSA Felicien, does not have experience of 10 years on the roads;
- About the experience of the Quantity Surveyor, EMP, in the complaint letter addressed to NIRP, state that: "...*imirimo ya Digue nicyimwe n'imihanda kubijyana na Quantity Surveyor...*"
- The both Surveyors presented by EMP in the bid, namely, Mr MUGABO John and Mr TWAHIRWA Emmanuel do not have the required experience: the first does not indicate clearly the years of experience on the roads, while the second does not have experience on the roads.

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## J. COMMENTS BY THE PANEL MEMBERS

Concerning the equipment of Bulldozer D7G; a Grader CAT 120 G and a Tipper Trucks Mercedes Benz 2835:

- EMP recognizes itself having forgotten and/or omitted some documents proving the possession of those equipment;
- The "Tableau d'amortissement" certified by the Rwanda Revenue Authority is not a proof of possession of those equipment.

NIRP members do agree with the decision taken by RTDA on this issue.

Concerning the key personnel requested:

- EMP presents staff with lack of required experience;
- In addition the experience of the works of Dams are not similar to the experience of the works of roads.

NIRP members do also concur with the decision taken by RTDA on this issue.

Concerning the offered price, NIRP members find it irrelevant to examine this matter since the bid should be eliminated at the technical evaluation.

## 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 EMP because it is unfounded.



**BAGILIZINA Emmanuel**  
Vice Chairperson



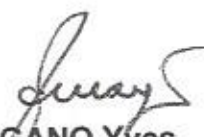
**KAYITESI Eugenia**  
Member



**BIRANGWA Amri**  
Member



**MUKANTABANA Crescence**  
Member



**SANGANO Yves**  
Member