

**DECISION N° 71/2011/NIRP ON TENDER N° 001/W/2011-2012/N/TCT FOR CONSTRUCTION WORKS OF STUDENTS' DORMITORY AND MULTI-PURPOSE HALL**

-----  
**COMPLAINANT: ENTREPRISE NEMEYABAHIZI JEAN BAPTISTE (ENJB)**

**AGAINST : TUMBA COLLEGE OF TECHNOLOGY (TCT)**

**COMPLAINT : APPEAL AGAINST TECHNICAL DISQUALIFICATION**

## **1. INTRODUCTION**

Pursuant to article 70 of the Law N°12/2007 of 27/03/2007 on Public Procurement, the members of the National Independent Review Panel, "NIRP", on October, 13<sup>th</sup> 2011, discussed the appeal introduced by **ENJB** complaining about the decision taken by TUMBA COLLEGE OF TECHNOLOGY (TCT) of disqualifying it on technical grounds.

## **2. SUMMARY OF THE COMPLAINT**

**ENJB** is contesting about the decision taken by TCT on the above tender of disqualifying it yet it met all the technical requirements of the bidding document.

## **3. SUMMARY OF FACTS**

- On 15/09/2011, ENJB received provisional notification of tender loss;
- On 16/09/2011, ENJB made initial appeal before TCT;
- On 26/09/2011, TCT responded to ENJB's concern;
- On 29/09/2011, ENJB lodged its appeal before NIRP;

- On 30/09/2011, NIRP requested for documents from TCT and received by the later on 03/10/2011;
- On 10/10/2011, TCT provided NIRP with the requested documents.

#### **4. OBSERVATIONS MADE BY THE PANEL MEMBERS**

ENJB was eliminated because it did not provide any final completion certificates for 2008 and its Project Manager has only two years of experience instead of three years as requested by the bidding document (see TCT's letter of 23/09/2011 transmitting the decision for the tender N° 002/W/2011-2012/N/TCT).

Based on the ENJB's offer, the evaluation report and the tender document, NIRP members observed that:

- Concerning technical references, ENJB executed construction works of similar nature and complex within a period of three years (2008-2010) as requested by IS 5.5 (b). ENJB presented three references accepted by the tender committee (see evaluation report on page 18);
- Concerning the experience of the project manager, NIRP observed that the TCT's tender committee considers experience in similar works as required in IS 5.5 (d) as experience in same position for Mr. HABİYAMBERE Jean Baptiste proposed by ENJB. NIRP considers experience in similar works as experience in building construction. Mr. HABİYAMBERE Jean Baptiste has a long experience in building construction since 1982, so he has more than requested experience of three years.

NIRP observed also that the provisional successful bidder did not provide financial audit report for the years 2008, 2009 and 2010.

#### **5. DECISION BY THE NIRP**

Given the article 70 of the Law N° 12/2007 of 27<sup>th</sup> March 2007 on Public Procurement;

Given article 39 para.3 of the law N° 12/2007 of 27/03/2007 on public procurement which states that “The successful bidder shall be the lowest responsive bidder”,

Pursuant to article 71 para.1 3° and 5° of the law N°12/2007 of 27/03/2007 on Public Procurement, NIRP decides to annul the decision taken by TCT and order it to re-evaluate ENJB on financial ground and award the tender to the financially lowest evaluated bidder.

**NSENGIYUMVA Silas**

Vice Chairman NIRP

**BATETA Jane**

Member

**KAZIMA Godfrey**

Member

**BUGINGO Emma-Marie**

Member