



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

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**DECISION N° 78/2011/NIRP ON TENDER N° 015/T/2010-2011/1/MINISANTE-PEACE
PLAN/DK FOR EXECUTION WORKS FOR CONSTRUCTION OF KIBUYE DISTRICT
HOSPITAL IN KARONGI DISTRICT**

COMPLAINANT : ENTREPRISE RUBARE JOSIAS (ERJ)

AGAINST : KARONGI DISTRICT

COMPLAINT : APPEAL AGAINST THE TENDER AWARD

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 24th, 2011, discussed the appeal introduced by **Enterprise Rubare Josias (ERJ)** requesting to be awarded the above tender since he is the responsive bidder.

2. SUMMARY OF THE COMPLAINT

EJR is complaining about the decision taken by Karongi District of disqualifying it basing on the grounds that ERJ charged very low prices compared to “*devis confidentiel*”. The company then appealed before the Karongi District Independent Review Panel, but up to now no decision thereof has been taken.

3. SUMMARY OF FACTS

- On 30/05/2011, Karongi District issued a provisional notification of tender loss;
- On 04/06/2011, ERJ wrote to Karongi's Executive Secretary introducing its initial appeal ;
- On 08/06/2011, the Executive Secretary of Karongi District responded to ERJ's complaint;
- On 09/06/2011, ERJ lodged its appeal before Karongi District Independent Review Panel;
- On 21/06/2011, ERJ received the response from the District's review panel;
- On 22/06/2011, ERJ lodged its appeal before NIRP;
- On 30/06/2011, NIRP took a decision recommending re-evaluation of ERJ;
- On 29/07/2011, Karongi District provided NIRP with the re-evaluation report;
- On 04/08/2011, NIRP advised Karongi District to award the tender to the most responsive bidder in accordance with Article 39 Para. 3 of the law N°12/2007 of 27/03/2007 on Public Procurement;
- On 01/09/2011, ERJ received a tender loss letter dated 05/08/2011 from Karongi District;
- On 06/09/2011, ERJ appealed before the District;
- On 08/10/2011, Karongi District responded to ERJ concern;
- On 09/09/2011, ERJ lodged its appeal before Karongi District Independent Review Panel;
- On 11/10/2011, ERJ wrote to Karongi District claiming his right to be awarded a tender;
- On 14/10/2011, Karongi District Independent Review Panel wrote to ERJ informing it of other extra 30 days it has taken to deeply analyse the appeal ;
- On 20/10/2011, ERJ appealed before NIRP.

4. OBSERVATIONS MADE BY THE PANEL MEMBERS

NIRP members observed that:

- Karongi District Independent Review Panel did not take a decision within thirty days provided for by article 70 Para. 4. From 09/09/2011 the day on which ERJ lodged its appeal before Karongi District Independent Review Panel to 11 /10/2011, the day on which ERJ wrote to Karongi District claiming its right to be awarded a tender, there is a period of 32 days;

- The letter informing the complainant (ERJ) of other extra 30 days, to take a decision was written after first 30 days had expired. ERJ appealed on 09/09/2011 before Karongi District Independent Review Panel and the later wrote an extension letter on 14/10/2011 after the complainant had claimed his rights over the tender.

5. DECISION BY THE NIRP

Pursuant to article 71 para.1 3^o of the law N°12/2007 of 27/03/2007 on Public Procurement, NIRP decides to annul the decision taken by Karongi District;

Pursuant to the provisions of article 70 Para. 4 of the above Law, the complainant's claim deems sound and trustworthy because of the District Panel's failure to take a decision within stipulated 30 days and its failure to inform both the procuring entity and the complaint of the extra 30 days within the same period;

NIRP therefore orders Karongi District to award the tender to ERJ.

NSENGIYUMVA Silas
Vice Chairman NIRP

BUGINGO Emma-Marie
Member

KAZIMA Godfrey
Member

BATETA Jane
Member