

REPUBLIC OF RWANDA



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

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DECISION N° 042 /2013/NIRP ON THE TENDER N° 055/T/2012-13/N/GF-SSF HIV, FOR EXECUTION OF CONSTRUCTION WORKS OF HEALTH PRODUCTS WAREHOUSE FOR RBC/MPDD, PHASE I

COMPLAINANT : E.M.M.R
AGAINST : SPIU/MoH
COMPLAINT : APPEAL AGAINST THE DECISION ON THE TENDER AWARD

1. INTRODUCTION

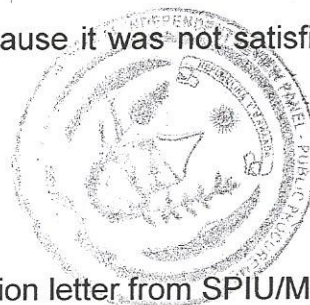
Pursuant to the article 70 of the Law N° 12/2007 of 27/03/2007 on Public Procurement as modified and completed to date, the members of the National Independent Review Panel (NIRP), on 20/05/2013 analyzed the appeal introduced by E.M.M.R contesting the decision on the tender mentioned above.

2. SUMMARY OF THE COMPLAINT

E.M.M.R is contesting the decision taken by SPIU/MoH because it was not satisfied with the decision for its disqualification.

3. SUMMARY OF FACTS

- On 27/02/2013, SPIU/MoH advertised the tender;
- On 05/04/2013, Bids were opened;
- On 08/05/2013, E.M.M.R received the provisional notification letter from SPIU/MoH;
- On 10/05/2013, E.M.M.R introduced the appeal before SPIU/MoH;
- On 16/05/2013, SPIU/MoH responded to E.M.M.R's initial appeal;
- On 16/05/2013, E.M.M.R lodged its appeal before NIRP;
- On 16/05/2013, NIRP requested SPIU/MoH to suspend procurement process and to submit all documents related to this tender;
- On 20/05/2015, SPIU/MoH submitted the requested documents.



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4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The provisional notification and the report of evaluation mention that EMMR is disqualified because the CERTIFICATE OF CREDIT WORTHINESS it provided is not conforming with the requirements of the tender document;
- The "Formulaire de promesse d'une ligne de crédit" mentions that "[...après avoir fait les contrôles nécessaires et étude du demandeur, la banque S'ENGAGE et remplit cette promesse de ligne de crédit type sur papier avec entête de la Banque et conformément aux indications en italique]";
- The "Formulaire de promesse d'une ligne de crédit" specify also: "Par conséquent, Nous, [Nom de la banque] nous engageons par la présente, sans reserve et irrévocablement, et certifions qu'au cas où l'entreprise précitée gagnerait le marché relative à [titre du marché] et à sa propre demande, une ligne de crédit de [montant en frw rwandais en chiffres et en lettres] lui sera automatiquement ouvert en nos livres, sous la seule reserve que tous les paiements relatives au contrat soient faits à travers son compte N° [numéro de compte] ouvert en nos livres;"
- The CERTIFICATE OF CREDIT WORTHINESS submitted by EMMR from FINA BANK RWANDA LTD, states: "This certificate does not constitute any guarantee or commitment from our part, and neither the bank nor the signatories hereunder can be held responsible for the opinion expressed above".

5. COMMENT BY THE PANEL MEMBERS

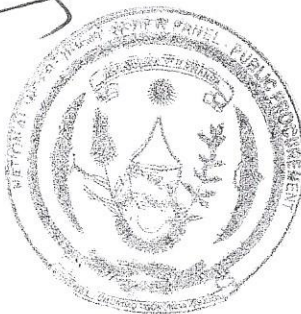
The "CERTIFICATE OF CREDIT WORTHINESS" submitted by the complainant does not comply with the form of the "Formulaire de promesse d'une ligne de crédit" of the tender document, because the Bank which provided that certificate is not committed as per the tender document requirement.


6. DECISION BY THE NIRP

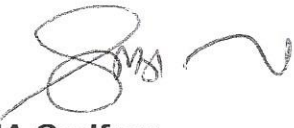
Basing on the above background and comment;

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


NSENGIYUMVA Silas
Vice Chairman of NIRP




BUGINGO Emma Marie
Member


KAZIMA Godfrey
Member


BATETA Jane
Member