

**DECISION N° 69/2011/NIRP ON TENDER N° 001/S/2011-IR/RTDA FOR IMPROVEMENTS TO THE EXISTING PASSENGER TERMINAL AT KIGALI INTERNATIONAL AIRPORT**

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**COMPLAINANT: THOMAS ET PIRON GRAND LACS**

**AGAINST : RWANDA TRANSPORT DEVELOPMENT AGENCY (RTDA)**  
**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, 03<sup>rd</sup> 2011, discussed the appeal introduced by **THOMAS ET PIRON GRAND LACS** complaining against the decision taken by RWANDA TRANSPORT DEVELOPMENT AGENCY (RTDA) of disqualifying it on technical grounds.

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

**THOMAS ET PIRON GRAND LACS** represented by its lawyer, is contesting against the decision taken by RTDA on the above tender disqualifying it yet it met all the technical requirements of the bidding document.

## **3. SUMMARY OF FACTS**

- On 02/09/2011, THOMAS ET PIRON GRAND LACS received provisional notification of tender loss;

- On 08/09/2011, THOMAS ET PIRON GRAND LACS made initial appeal before RTDA;
- On 13/09/2011, RTDA responded to THOMAS ET PIRON GRAND LACS' concern;
- On 20/09/2011, THOMAS ET PIRON GRAND LACS lodged its appeal before NIRP;
- On 21/09/2011, NIRP requested for documents from RTDA;
- On 27/09/2011, RTDA provided NIRP with the requested documents.

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

The general observation made by the panel based on the evaluation report and the content of the offers, all the bidders were not fully qualified according to the tender document. i.e. both the complainant and the provisional successful bidder are missing some of the requirements on technical ground. For example:

- THOMAS AND PIRON GRAND LACS:
  - i. Did not meet the required experience for the key personnel (project manager, site agent and material/pavement engineers) as provided for by the tender document on 6.1.5;
  - ii. Provided insufficient list of equipment, except some of the exonerated equipment. It did not provide compressor, roller vibrator, crawler loader, excavator wheel and water tank as provided for by the tender document on 6.1.5.
  
- PROVISIONAL SUCCESSFUL BIDDER:
  - i. Did not propose some of the key personnel; material/pavement, mechanical and electrical Engineers;
  - ii. On equipment, the company is missing compressor.

Members also observed that the method used is restricted tendering where pre-qualified bidders were invited to furnish the necessary labor, material, equipment and services necessary for the improvement to the existing passenger terminal at Kigali international airport in tender notice N°001/S/2011-IR/RTDA of 06<sup>th</sup> July 2011.

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

Given article 39 para.3 of the law N° law n° 12/2007 of 27/03/2007 on public procurement which states that “The successful bidder shall be the lowest responsive bidder”, but it is evident that both the complainant and the provisional successful bidder none of them was fully qualified;

Pursuant to article 71 para.1 section 3 of the law N°12/2007 of 27/03/2007 on Public Procurement, NIRP decides to annul the decision taken by RTDA and recommend to cancel the tender;

However, if RTDA deems it that the tender is very urgent and considering that the invited bidders have been pre-qualified, NIRP recommends to consider and evaluate financial offer of THOMAS AND PIRON GRAND LACS and to award the tender to the financially lowest evaluated bidder and during the contract negotiation, the complainant will be requested to provide the client with missing requirements (equipment and personnel).

**NSENGIYUMVA Silas**  
Vice Chairman NIRP

**BATETA Jane**  
Member

**KAZIMA Godfrey**  
Member

**BUGINGO Emma-Marie**  
Member