



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

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**DECISION N° 85/2011/NIRP ON THE TENDER N° 01 /AONO/F/2011-2012/FARG “RYO
GUTANGA MATELAS 22000 Z’ABANYESHURI BAFASHWA NA FARG”**

COMPLAINANT : RWANDA FOAM LTD
AGAINST : FARG
COMPLAINT : APPEAL AGAINST THE TENDER AWARD

1. INTRODUCTION

Pursuant to the 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 18th November 2011, discussed the appeal introduced by RWANDA FOAM LTD contesting the decision taken by FARG on the award of the above tender.

2. SUMMARY OF THE COMPLAINT

RWANDA FOAM LTD is requesting NIRP to review the decision taken by FARG of awarding the above tender to a distributor instead of a factory for mattresses as it was provided in the bidding document.

3. SUMMARY OF FACTS

- On 24/10/2011, FARG sent a provisional notification to RWANDA FOAM LTD;
- On 01/11/2011, RWANDA FOAM LTD introduced the initial appeal;
- On 02/11/2011, FARG responded to the RWANDA FOAM LTD’s appeal;
- On 09/11/2011, RWANDA FOAM LTD lodged its appeal to NIRP.

4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed that:

- The provisional successful bidder is a distributor but not a mattress factory as requested by point 24 of general clauses (company profile);
- The agreement act between the provisional successful bidder and the manufacturer (tuffoam) was entered into on 29th June 2011 before the tender was advertised on 22nd August 2011;
- The complainant submitted mattresses with:
 - Width of 88 cm instead of 90 cm required and;
 - Density of 15.7 (kg/m³) instead of 16 required.

5. COMMENTS

1. Considering article 24 of the general clauses, the provisional successful bidder is not eligible to because it's not a mattress factory;
2. The offer of the complainant did not meet particular specification for mattresses as requested by the bidding document on page 8.

6. DECISION BY THE NIRP

Pursuant to article 71 para.1, 3^o and 7^o of the law N°12/2007 of 27/03/2007 on Public Procurement;

NIRP decides to: i) cancel the decision taken by FARG and ii) ordering that the procurement proceedings be terminated.

NSENGIYUMVA Silas
Vice Chairman NIRP

BUGINGO Emma-Marie
Member

KAZIMA Godfrey
Member

BATETA Jane
Member