



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

KN 3 AV, 2 KIGALI/RWANDA
10th FLOOR, GRAND PENSION PLAZA
P. O. Box: 4276,
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Kigali, on

123 SEPT 2015

N° 010/2015-223/NIRP

**THE DIRECTOR GENERAL OF RWANDA
AGRICULTURE BOARD**

Dear Sir,

SUBJECT: TRANSMISSION OF THE DECISION

Pursuant to article 70 of the Law N° 12/2007 of 27/03/ 2007 on Public Procurement as modified and complemented to date, find herewith attached, the decision of the National Independent Review Panel "NIRP" related to the appeal introduced by **AGROTECH LTD** contesting the decision taken on the tender N° 1.11/1132/014//JJMM/HQ for **Supply of Laboratory Equipment, Materials and Consumables (Lot1)**.

Sincerely



BUGINGO Emma Marie
Chairperson

CC:

- Director General of RPPA
- Manager of AGROTECH LTD



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**DECISION N°033 /2015/NIRP ON THE TENDER N° 1.11/1132/014/JJMM/HQ FOR
SUPPLY OF LABORATORY EQUIPMENT, MATERIALS AND CONSUMABLES (LOT1)**

COMPLAINANT : AGROTECH LTD
AGAINST : RWANDA AGRICULTURE BOARD (RAB)
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 complemented to date, the National Independent Review Panel (NIRP), on 08/09/2015 analysed the appeal introduced by AGROTECH LTD contesting the decision for the above tender.

2. SUMMARY OF THE COMPLAINT

AGROTECH LTD is contesting the RAB's decision disqualifying them due to their highest offered price.

AGROTECH LTD is arguing that, on the item of "Freezer for Bovine Semen" there is a criterion related to the "Manufacturer's authorisation" fulfilled only by them. Therefore the provisional successful bidder could not be responsive on that criterion requested by the tender document.

On the arithmetic verification, AGROTECH LTD is wondering the truthfulness which would have allowed the RAB to make the correction of under 30% from their initial price so that the Provisional successful bidder (G.S VISION LTD) becomes the lowest.

3. SUMMARY OF FACTS

- On 09/06/2015, RAB advertised the tender;
- On 09/07/2015, Bids were opened;
- On 10/08/2015, AGROTECH LTD received the provisional notification letter



[Handwritten signatures and initials]


- On 11/08/2015, AGROTECH LTD introduced the initial appeal;
- On 18/08/2015, AGROTECH LTD received the response to the initial appeal;
- On 18/08/2015, NIRP received the appeal from AGROTECH LTD ;
- On 19/08/2015, NIRP requested RAB to suspend the procurement process and submit all documents related to this tender;
- On 24/08/2015, RAB submitted the requested documents;

4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The documents comprising the bid as requested by the tender document include the following criteria:
 - o "Manufacturer's authorisation" (ITB 11.1. g);
 - o "Catalogues and detailed description of the essential technical and performance characteristics of the goods to be supplied establishing conformity to required specifications provided" (ITB 11.1. f);
 - o "References of similar tenders executed in other reputable institution (at least 3 similar references – similar in terms of size nature and complexity justified by original or certified copies of good completion certificate or contracts)" (ITB 11.1. j);
- The complainant provided a "manufacturers' authorisation" related to the Turbo Freezer with accessories and consumables from MINITUBE; and RAB evaluated it conforming to the requirements;
- However the Provisional successful bidder provided as well five (05) "manufacturers' authorisation" of the requested items that RAB evaluated them conforming to the requirements, contrary to AGROTECH's allegations;
- The bid of the Provisional successful bidder does not include the requested catalogues;
- The bid of the Provisional successful bidder presents a "Good Completion Certificate" from IPRC/Kigali mentioning ongoing execution of various equipment supply;
- The Evaluation report judged "conform to requirements" the "Catalogues" and "Good Completion Certificate" from IPRC/Kigali presented by the Provisional successful bidder;
- The article 25, para 2 of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement stipulates that: "*A bid shall be responsive if it substantially conforms to the requirements specified in the bidding document*";
- The Provisional successful bidder initially offered 134,876,313 Frw, and was provisionally awarded the tender for 96,032,243 Frw after the arithmetic verification;
- The article 42 para 1 of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date stipulated that: "*The procuring entity shall correct any arithmetic error once it occurs in a bid*";

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5. COMMENTS BY THE PANEL MEMBERS

Concerning the "manufacturers' authorisation", NIRP members do concur with the decision taken by RAB as they are complying with the tender document requirements.

On the issue of arithmetic verification of less than 30% of the initially offered price, NIRP members found out no irregularity carried out in this operation, but deplore the absence by the law in public procurement of limited proportion above or below of the initial amount.

The Panel members found out that the discrepancies yet the evaluation report judged them responsive, thus breaching the article 25, para 2 of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement.

NIRP members recommend the re evaluation for the Lot1 of this tender for all bids as per the provisions of laws and regulations in the public procurement as the evaluation made was unfair.


6. DECISION BY THE PANEL MEMBERS

Basing on the above background and comments;

Pursuant to the article 41, para 2, 5^o of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement, NIRP members order a re-evaluation of all bids and award the tender to the responsive and lowest evaluated bidder.



BAGILIZINA Emmanuel
Vice Chairperson




BIRANGWA Amri
Member


KAYITESI Eugenia
Member


SANGANO Yves
Member


MUNYURA Pierre
Member