



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

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Kigali, on 19 AOUT 2015

N° 010/2015-098/NIRP

**THE DIRECTOR GENERAL OF RWANDA  
TRANSPORT DEVELOPMENT AGENCY (RTDA)**

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 CHINA HENAN INTERNATIONAL COOPERATION GROUP CO LTD (CHICO) contesting the decision taken on the tender N° 018/2014-2015-IO/SPIU/RTDA-AfDB for Rehabilitation and widening works of Karongi-Rubengera road.

Sincerely,



**BUGINGO Emma Marie**  
Chairperson



CC:

- Director General of RPPA
- Manager of CHINA HENAN INTERNATIONAL COOPERATION GROUP CO LTD (CHICO)



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**DECISION N° 028/2015/NIRP ON THE TENDER N° 018/2014-2015-IO/SPIU/RTDA-AFDB FOR  
REHABILITATION AND WIDENING WORKS OF KARONGI-RUBENGERA ROAD**

**COMPLAINANT** : CHINA HENAN INTERNATIONAL COOPERATION GROUP CO  
LTD (CHICO)  
**AGAINST** : RWANDA TRANSPORT DEVELOPMENT AGENCY (RTDA)  
**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, members of the National Independent Review Panel (NIRP), on 11 and 18/08/2015 analysed the appeal introduced by CHICO contesting the decision on the above tender.

**2. SUMMARY OF THE COMPLAINT**

CHICO is contesting the RTDA's decision to disqualify their bid. Their bid was rejected for the following reasons:

- The Bid submission letter was signed by someone who has no power of attorney;
- The Bid security provided prescribes that the "Bidder" will request the Bank to repay the amount of Guarantee instead of "Employer" as requested by the tender document.

CHICO argues that the delegated authority provided in the bid does not breach any rules and regulation in matter in Rwanda, while for the Bid Security, it was an error committed by the Bank which recognized and corrected that error made.

In conclusion, CHICO request NIRP to re-consider the RTDA decision and to be awarded the tender since the Government shall save 500,000 USD.

**3. SUMMARY OF FACTS**

- On 16/01/2015, RTDA advertised the tender;
- On 10/03/2015, Bids were opened;



- On 09/06/2015, CHICO received the provisional notification letter;
- On 15/06/2015, CHICO introduced the initial appeal;
- On 19/06/2015, CHICO received the response of the initial appeal;
- On 25/06/2015, NIRP received the appeal from CHICO;
- On 26/06/2015, NIRP requested RTDA to suspend procurement process and submit all documents related to this tender;
- On 08/07/2015, NIRP received a CHICO's letter withdrawing their action as per the article 26 of the Law N°21/2012 of 14 relating to the commercial, labour administrative procedure;
- On 22/07/2015, NIRP reminded RTDA to submit the requested document for consultation and informed both CHICO and RTDA that an additional time not exceeding 30 days will be required for an appropriate decision to be taken;
- On 04/08/2015, RTDA submitted the requested documents, more than forty (40) days after NIRP had requested for those documents;
- On 11 & 18/08/2015, NIRP took decision on the appeal.

#### 4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The tender document requests a Bid security of an amount of 300,000 USD;
- The tender document provides a "Form" of the Bid security which states that

*"At the request of Employer, we \_\_\_\_\_ [name of the Bank] hereby irrevocably undertake to pay you any sums not exceeding in total an amount \_\_\_\_\_ [amount in figures] ( \_\_\_\_\_ ) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder."*

- CHICO presents a Bid security from ECOBANK which states that:

*"At the request of the Bidder, we ECOBANK RWANDA LTD [name of the Bank] hereby irrevocably undertake to pay you any sums not exceeding in total an amount of USD 300,000 (Three hundred thousand US Dollar only) upon receipt by us of your first demand in writing accompanied by a written statement stating the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder."*

- In the letter withdrawing the appeal, the complainant states that: "...it fit to look ahead on societal interests and deprive its own right to continue with the action.....regardless of how convincing it looks".

#### 5. COMMENTS BY THE PANEL MEMBERS

RTDA delays in submission of the requested documents by NIRP breaches the article 55, para 3 of the of the Ministerial order N°001/14/10/TC of 19/02/2014 establishing regulations on public procurement, standard bidding documents and standard contracts.



*AV*

*11*

*22*

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Considering that disrespect of the prescribed time (3 days) for transmission of document delayed the process of taking appropriate decision by NIRP;

NIRP members regret the unnecessary delays of the procurement process because of the above said irregularity.

NIRP decided to examine the appeal regardless the withdrawal letter from CHICO because the latter did not provide convincing reason to withdraw the appeal while the tender process was already suspended by the panel.

Basing on 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 where it is stipulated that "A bid shall be responsive if it substantially conforms to the requirements specified in the bidding document";

The bid of CHICO was legally disqualified as the provided Bid security is no responsive as per the tender document requirements. Thus, NIRP members do concur with the decision taken by RTDA on this issue.

## 6. DECISION BY THE PANEL MEMBERS

Basing on the above background and comments;

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



**BUGINGO Emma Marie**  
Chairperson

  
**BAGILZINA Emmanuel**  
Vice Chairperson

  
**MUKANTABANA Crescence**  
Member

  
**SANGANO Yves**  
Member

  
**BIRANGWA Amri**  
Member

  
**MUNYURA Pierre**  
Member