

REPUBLIC OF RWANDA



**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 12 3 SEPT 2015
N° 010/2015-222/NIRP

**THE CHIEF FINANCIAL OFFICER OF RWANDA
DEVELOPMENT 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 **Doppelmayr Seilbahnen GmbH & NPD-COTRACO** contesting the decision taken on the tender N° 1948/G/NCB/ICT/RDB/GOR/14 for construction of Cable Car System at mount Karisimbi on turnkey contract.

Sincerely,



BUGINGO Emma Marie

Chairperson

CC:

- Director General of RPPA
- Manager of Doppelmayr Seilbahnen GmbH & NPD-COTRACO



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**DECISION N° 034/2015/NIRP ON THE TENDER N°1948/G/NCB/ICT/RDB/GOR/14 FOR
CONSTRUCTION OF CABLE CAR SYSTEM AT MOUNT KARISIMBI ON TURNKEY
CONTRACT**

COMPLAINANT : DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO
AGAINST : RWANDA DEVELOPMENT BOARD
COMPLAINT : APPEAL AGAINST THE DISQUALIFICATION OF THE TENDER

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 01; 08 and 22/09/2015 analysed the appeal introduced by DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO contesting the decision for the above tender.

2. SUMMARY OF THE COMPLAINT

DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO is contesting the RDB's decision to disqualify them to the tender on the argument that they offered the high price in comparison to the one proposed by the provisional successful bidder.

DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO is arguing that the basis of evaluation was not fair as per the RDB clarifications and request the review of the bids evaluation.

3. SUMMARY OF FACTS

On 23/05/2014, RDB advertised the tender;
On 18/09/2014, Bids were opened;



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On 07/07/2015, RDB wrote a provisional notification letter to DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO;
On 10/07/2015, DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO wrote a letter introducing the initial appeal;
On 20/07/2015, RDB wrote a letter responding the DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO's initial appeal;
On 31/07/2015, NIRP received the appeal from DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO;
On 03/08/2015, NIRP requested RDB to suspend procurement process and submit all documents related to this tender;
On 28/08/2015, RDB submitted the requested documents;
On 29/08/2015, NIRP informed both DOPPELMAYR SEILBAHNEN GMBH & NPD-COTRACO and RDB that an additional time not exceeding 30 days will be required for an appropriate decision to be taken;
On 10/09/2015, NIRP invited RDB representatives to attend the panel meeting;
On 22/09/2015, NIRP met RDB representatives.

4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- On the requested Technical Specification of equipment of Cable Car, the tender document point out that: *"This is not an exhaustive list of the components of the Cable Car equipment. The supplier may find and must include components which are necessary and standard features of the manufacturer"*;
- Among instructions of the Supplying Requirements-Civil Works are:
 - o *Carry out a Topographical survey of land as well as alignment route, the bidders needs to be satisfied with the suitability and adequacy of the recommended site. Bidders can suggest alternative site if necessary giving adequate reasons for the same;*
 - o *Note: Conceptual drawings of the proposed Cable Car Stations are attached. But the contractor is free to make his own proposal;*
- During the initial appeal the complainant questioned RDB if the provisional successful bidder included, among items they integrated in the offer, the "Special lightning protection";
- In response, RDB states *"...Please note that there may be THUNDERSTORM throughtout the year but one needs to consider the time and duration. Karisimbi does not have THUNDERSTORM, rain 24 hrs and 290 days a year"*.
- During clarifications, RDB representatives state that due to the Turnkey Contract and the complexity of the tender, it was difficult to evaluate the bids technically in fair manner;
- During the same clarifications, they continue to say that as both the provisional successful bidder and the complainant have skills to construct the project they considered the lowest price proposed;



- During the RDB's assessment of the "Equipment compliance" the report mentioned that clarifications from bidders will be done during presentation on the following particulars:
 - (i) Total rise; (ii) No of drive stations; (iii) Safety Requirement; (iv) No of cabins; (v) Parking of Cabins; (vi) No of towers with foundation; (vii) Air conditioning; (viii) Rescue equipment; (xi) Tools and maintenance equipment; (x) signs; (xi) Operator room; (xii) Cable trench for u/g cable; (xiii) Haul rope shortening; (xiv) Supply cable from transformers to Power centre; (xv) Power cable to drive motor; (xvi) 6,400 m u/g line cable;
- According to the submitted documents and clarifications from RDB, no presentation meeting was carried out;
- On the financial bids, the evaluation report states that:
 - o "Applicable taxes will be discussed with the winner of the tender to determine his tax obligations as far as this tender is concerned";
 - o "Local applicable taxes will be discussed during contract negotiation before contract signing".

COMMENTS BY THE PANEL MEMBERS

Given that besides the proposed technical specifications, the tender document requested potential bidders to provide additional proposals,

Considering that the Public Procurement of this tender was on turnkey contract where bidders could propose their own design;

Basing on the RDB clarification confessing that they took into consideration the provided cheapest price without scrutinizing deeply the proposed technical aspects of each offer;

There is no fairness to select the cheapest price without assessing the offered technical features as per the tender documents requirements;

On the financial evaluation, NIRP found out that it is not possible to point out the lowest price since the report mention that taxes will be subject to further negotiation with the provisional successful bidder.

Considering that the RDB evaluation team was quick to conclude the tender award while the presentation yet required by the same team during the equipment evaluation never occurred;

NIRP recommend RDB to undertake the session for demonstration where each bidder shall present its project that RDB will appreciate the strengths and weaknesses.

DECISION BY THE PANEL MEMBERS


Basing on the above background and comments;




Pursuant to the article 41, para 2, 3^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 decide to cancel the RDB's decision.

Pursuant to the 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 recommend the session of demonstration. The most technically responsive project to the RDB's expectation will be selected and the price of the tender will be negotiated with the selected bidder.


BAGILIZINA Emmanuel
Vice Chairperson


MUNYURA Pierre
Member


KAYITESI Eugenia
Member


MUKANTABANA Crescence
Member


BIRANGWA Amri
Member

