

REPUBLIC OF RWANDA



RDRP
FOR RECEPTION
Date: 25/09/2015
Name: Beatrice
Signature:

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

KN 3 AV. 2 KIGALI/RWANDA
10th FLOOR, GRAND PENSION PLAZA
P. O. Box: 4276,
E-mail: rppa@rwanda1.rw



Kigali, on

N° 010/2015-117/NIRP

**THE COORDINATOR OF RWANDA DEMOBILISATION
AND REINTEGRATION PROGRAMME (RDRP)**

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 MAXWELL LTD contesting the decision taken on the tender **for Consultancy service for supervision of construction of integrated rehabilitation workshop and retaining walls.**

Sincerely,

BUGINGO Emma Marie

Chairperson

CC:

- Director General of RPPA
- Manager of MAXWELL LTD



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PUBLIC PROCUREMENT**

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**DECISION N° 032/2015/NIRP ON THE TENDER FOR CONSULTANCY SERVICE FOR
SUPERVISION OF CONSTRUCTION OF INTEGRATED REHABILITATION
WORKSHOP AND RETAINING WALLS**

COMPLAINANT : MAXWELL LTD
**AGAINST : RWANDA DEMOBILISATION AND REINTEGRATION
PROGRAMME (RDRP)**
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 01/09/2015 analysed the appeal introduced by MAXWELL LTD contesting the decision for the above tender.

2. SUMMARY OF THE COMPLAINT

MAXWELL LTD is contesting the RDRP's decision to disqualify them to the tender award while the procurement process was at the negotiation of the contract. RDRP eliminated them for illegal repossession of the technical proposal.

3. SUMMARY OF FACTS

On 06/03/2015, RDRP advertised the tender through Imvaho Nshya N° 3329;
On 08/04/2015, Bids were opened;
On 18/06/2015, Upon the RDRP's request, MAXWELL LTD wrote a letter to the President of Internal Tender Committee about the unrolling of the meeting for negotiation held on 12/06/2015;
On 30/06/2015, RDRP wrote a letter dated 30/06/2015 informing MAXWELL LTD their disqualification of the tender proceedings;
On 08/07/2015, MAXWELL LTD introduced the initial appeal;

On 23/07/2015, NIRP received the appeal from MAXWELL LTD;

On 24/07/2015, NIRP requested RDRP to suspend procurement process and submit all documents related to this tender;

On 03/08/2015, RDRP submitted the requested documents;

On 21/08/2015, NIRP informed both MAXWELL LTD and RDRP that an additional time not exceeding 30 days will be required for an appropriate decision to be taken.

4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- RDRP provided a provisional notification letter related to the technical outcome where MAXWELL LTD obtained the highest score of 86%;
- On May 2015, RDRP carried out the evaluation on combined technical and financial score where MAXWELL LTD obtained the highest score (90.6%);
- RDRP invited MAXWELL LTD for contract negotiation scheduled to take place on 12th June 2015;
- The both RDRP letters for provisional notification of technical evaluation result and for invitation of contract negotiation neither indicate the date nor the RDRP's reference;
- RDRP and MAXWELL LTD confirmed that the meeting for contract negotiation has been held on 12/06/2015;
- In the complaint letter, MAXWELL LTD states that the *"After pleading with the committee about the possible reduction therefore, there was need for the technical proposal as a basis of negotiation and the tender committee gave me a copy and that of financial proposal to refer to and make adjustments when I reach my office"*;
- During the clarification, RDRP representatives indicate not have the truth on the document brought and returned back as the Internal Tender Committee do not admit to give the proposal to MAXWELL LTD and the latter assert that this Committee give to them those documents during the meeting of contract negotiation
- According the RDRP statement during the same clarification, the Internal Tender Committee asked MAXWELL LTD to reduce their financial cost as some activities, like Nyagatare site, were removed;
- There is no a written minutes during the meeting of contract negotiation held on 12th June 2015 between MAXWELL LTD and RDRP representatives;
- According the "DOCUMENT ROUTING SLIP" attached on the Internal Tender Committee report of RDRP, the proposal brought by MAXWELL LTD during negotiation and returned back to RDRP is *"...intact in its original form with all ITC genuine signatures"*;

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5. COMMENTS BY THE PANEL MEMBERS

Considering that both MAXWELL LTD and RDRP agreed the meeting of contract negotiation held on 12th June 2015 and had concluded on reducing the cost of the MAXWELL LTD's Financial Proposal;

Given the absence of the minutes of contract negotiation between MAXWELL LTD and the Internal Tender Committee of RDRP;

Basing on the "DOCUMENT ROUTING SLIP" stating that there is no risk as the returned Proposal is intact in its original form with all ITC¹ genuine signatures;

NIRP members do not found evidence that the document was fraudulently taken by MAXWELL LTD.

6. 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 decision of disqualification and recommend RDRP to invite MAXWELL LTD in the meeting of contract negotiation, and a minutes shall be immediately written at the end of that negotiation.


BUGINGO Emma Marie
Chairperson


BAGILIZINA Emmanuel
Vice Chairperson


KAYITESI Eugenia
Member


SANGANO Yves
Member


BIRANGWA Amri
Member

¹ Internal Tender Committee