



**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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**DECISION N° 034 /2014/NIRP ON THE TENDER N° 210/F/013/LWH FOR SUPPLY AND
INSTALLATION OF WOODEN SHELVES AND METALLIC LADDER FOR STORING IRISH
POTATOES SEEDS IN KARONGI LWH SITE.**

**COMPLAINANT : KAYIHURA Ferdinand (ECOMEKAF)
AGAINST : MINAGRI
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, NIRP members, on 14/04/2014, analysed the appeal introduced by KAYIHURA Ferdinand (ECOMEKAF) contesting the decision on the above tender.

2. SUMMARY OF THE COMPLAINT

KAYIHURA Ferdinand (ECOMEKAF) is contesting the MINAGRI's decision. MINAGRI disqualified the bid because he is not registered as a Company in accordance to the applicable law in Rwanda

KAYIHURA Ferdinand (ECOMEKAF) is arguing that there were no limitations for companies, enterprise or individual to bid to this tender as per the tender document requirements.

3. SUMMARY OF FACTS

- On 06/01/2014, MINAGRI advertised the tender;
- On 04/02/2014, Bids were opened;
- On 18/02/2014, KAYIHURA Ferdinand (ECOMEKAF) received the provisional notification letter;
- On 19/02/2014, KAYIHURA Ferdinand (ECOMEKAF) introduced the initial appeal before MINAGRI;
- On 25/02/2014, KAYIHURA Ferdinand (ECOMEKAF) received the response of its initial appeal from MINAGRI;
- On 27/02/2014, NIRP received the appeal from KAYIHURA Ferdinand (ECOMEKAF);
- On 03/03/2014, NIRP requested MINAGRI to suspend the procurement process and submit all documents related to this tender;
- On 25/03/2014, NIRP reminded MINAGRI for the submission of the requested documents and at the same time informed both the KAYIHURA Ferdinand (ECOMEKAF) and MINAGRI that an additional time not exceeding 30 days will be needed in order to take an appropriate decision;
- On 01/04/2014, MINAGRI submitted the documents requested.

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4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The article 1 of the Ministerial order n° 02/09/MINICOM of 08th May, 2009 relating to business of low income, stipulates that: *"This Order determines modalities of registration, the nature and organisation of business whose income is less than ten thousand Rwandan francs (10.000 Rwf) per day"*;
- The bid of KAYIHURA Ferdinand (ECOMEKAF) presents a Certificate of enterprise registration with KAYIHURA Ferdinand as Enterprise Name and ECOMEKAF as Business name;
- The article 19 of the Ministerial order n° 02/09/MINICOM of 08th May, 2009 relating to business of low income, stipulates that *"Any person concerned by this Order who will start earning above ten thousand Rwandan francs (10,000 Rwf) per day shall have to immediately get registered according to the law relating to companies your business is registered as small business whose income is less than ten thousand Rwandan Francs (10,000 Rwf) per day in Rwanda"*;
- KAYIHURA Ferdinand (ECOMEKAF) presented an offer equal to 27,000,000 Rwf within 30 days after signature of contract. This offer is not in the financial capacity of an enterprise in accordance with the aforementioned Ministerial Order.
- KAYIHURA Ferdinand (ECOMEKAF) didn't comply with the article 19 of the ministerial order no 02/09/MINICOM of 08th May 2009 after realizing that he started earning above 10,000 Rwf per day.

5. COMMENT BY THE PANEL MEMBERS

Since the complainant presented an offer equal 27,000,000 Rwf within 30 days after signature of contract while being an individual enterprise, NIRP members do agree with the decision taken by MINAGRI.

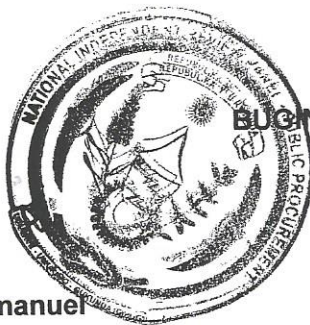
6. DECISION BY THE NIRP

Basing on the above background and comments;

Pursuant to articles 70 of the Law 12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date, NIRP members dismiss the appeal introduced by KAYIHURA Ferdinand (ECOMEKAF) because it is unfounded.



BAGILIZINA Emmanuel
Vice Chairperson



EUGÈNE Emma Marie
Chairperson



MUKANTABANA Crescence
Member



BIRANGWA Amri
Member



SANGANO Yves
Member