



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

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10th FLOOR, GRAND PENSION PLAZA
P. O .Box: 4276,
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DECISION N° 026/2014/NIRP ON THE TENDER N° 11.07.053/4003/G/015/ICB/13-14/PROC-DWSU-DIR/NK/up and N° 11.07.053/4003/G/016/ICB/13-14/PROC-DWSU-DIR/NK/up FOR SUPPLY OF PVC PIPES FOR 2 YEARS AND SUPPLY OF GALVANIZED STEEL PIPES FOR 2 YEARS, RESPECTIVELY

**COMPLAINANT : TEC INTERNATIONAL
AGAINST : EWSA
COMPLAINT : APPEAL AGAINST THE DECISION 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, on 17th March 2014, members of the National Independent Review Panel (NIRP) analysed the appeal introduced by TEC INTERNATIONAL against the decision for the tender award.

2. SUMMARY OF THE COMPLAINT

TEC INTERNATIONAL is contesting the EWSA's decision to disqualify its bid on the argument that technical characteristics of the goods in which tender's designation and supplier's designation were different for all items, and that the company did not provide the thickness of the pipes.

3. SUMMARY OF FACTS

- On 16/10/2013, EWSA advertised the tender;
- On 29/11/2013, Bids were opened;
- On 12/02/2014, The law N°97/2013 of 30/01/2014 repealing law N°43/2010 of 07/12/2010 establishing Rwanda Energy, Water and Sanitation Authority (EWSA) and determining its responsibilities, organisation and functioning, came into force;
- On 14/02/2014, TEC INTERNATIONAL received a provisional notification letter from EWSA;
- On 18/02/2014, EWSA received an initial appeal letter from TEC INTERNATIONAL;
- On 24/02/2014, EWSA responded to TEC INTERNATIONAL's initial appeal;
- On 26/02/2014, EWSA received an email from TEC International informing them of the disagreement about the EWSA's response to its initial appeal;
- On 27/02/2014, TEC INTERNATIONAL introduced the appeal to NIRP.



Website: www.rppa.gov.rw

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4. OBSERVATIONS BY THE PANEL MEMBERS

- The article 2, para 1, of the law N°97/2013 of 30/01/2014 repealing law N°43/2010 of 07/12/2010 establishing Rwanda Energy, Water and Sanitation Authority (EWSA) and determining its responsibilities, organisation and functioning stipulates that: "Responsibilities, movable and immovable property as well as claims and debts of Rwanda Energy, Water and Sanitation Authority (EWSA) shall, within a period not exceeding six (6) months, be transferred to the following commercial companies:
 - o 1° Energy Company;
 - o 2° Water and Sanitation Company";
- The article 2, para 3, of the same law stipulates that: "Before the commercial companies provided under Paragraph One of this Article meet relevant requirements, responsibilities, movable and immovable property, claims, debts and staff of Rwanda Energy, Water and Sanitation Authority (EWSA) shall be within the competence of the Energy, Water and Sanitation Company (EWSA Ltd) governed by the Law relating to companies";
- The article 5 of the same law specifies that: "This Law shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda;
- The above law was published in the Official Gazette of the Republic of Rwanda on 12/02/2014;
- The appeal was introduced to NIRP on 27/02/2014.

5. COMMENT BY THE PANEL MEMBERS

Based to article 2 of the law N°12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date, EWSA Ltd is no longer governed by the Public Procurement law.

6. OBSERVATION BY THE PANEL MEMBERS

Basing on the above background and comment;

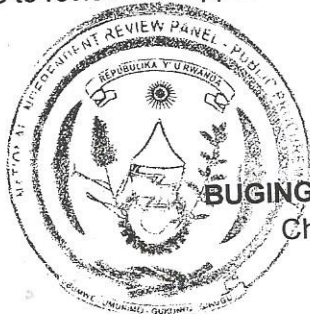
Referring to article 1, 25^o of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement where it defines a Procuring Entity; the EWSA Ltd is not therefore classified as a Procuring Entity. The National Independent Review Panel does not have the mandate to review this appeal.



BAGILIZINA Emmanuel
Vice Chairperson



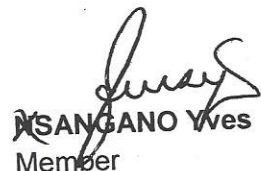
BIRANGWA Amri
Member




BUGINGO Emma Marie
Chairperson



KAYITESI Eugenia
Member


NSANGANO Yves
Member