



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

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**DECISION N° 49 /2013/NIRP ON THE TENDER N°38-S/NCB/MIDIMAR/2012-2013
REGARDING THE TRAINING AND SENSITIZATION ON THE PREVENTION OF
DISEASES RESULTING FROM THE LACK OF HYGIENE (Lot 2)**

**COMPLAINANT : ENTREPRISE DU GENIE DES INFRASTRUCTURES
AGAINST : MIDIMAR
COMPLAINT : APPEAL AGAINST THE DECISION ON THE TENDER AWARD**

1. INTRODUCTION

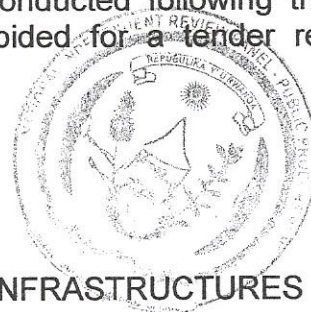
Pursuant to the article 70 of the Law N° 12/2007 of 27/03/2007 on Public Procurement as modified and completed to date, the members of the National Independent Review Panel (NIRP), on 02/07/2013 analyzed the appeal introduced by ENTREPRISE DU GENIE DES INFRASTRUCTURES contesting the decision on the tender mentioned above.

2. SUMMARY OF THE COMPLAINT

ENTREPRISE DU GENIE DES INFRASTRUCTURES is contesting the decision taken by MIDIMAR because the evaluation of his offer was conducted following the method of selection related to the tender of supply while he bided for a tender related to the consultancy service.

3. SUMMARY OF FACTS

- On 02/03/2013, MIDIMAR advertised the tender;
- On 02/04/2013, Bids were opened;
- On 24/05/2013, ENTREPRISE DU GENIE DES INFRASTRUCTURES received the provisional notification from MIDIMAR;
- On 29/05/2013, ENTREPRISE DU GENIE DES INFRASTRUCTURES introduced the appeal before MIDIMAR;
- On 03/06/2013, MIDIMAR responded to ENTREPRISE DU GENIE DES INFRASTRUCTURES's initial appeal;
- On 04/06/2013, ENTREPRISE DU GENIE DES INFRASTRUCTURES lodged its appeal before NIRP;
- On 08/06/2013, NIRP requested MIDIMAR to suspend procurement process and to submit all documents related to this tender;



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- On 18/06/2015, MIDIMAR submitted the requested documents;
- On 28/06/2013, NIRP informed both parties the additional time not exceeding 30 days to issue an appropriate decision on the appeal.

4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The tender document used for this tender is the standard for goods and related services;
- The tender document does neither indicate one of the selection method for consultant services nor marks and scores to be used in evaluation;
- "ENTREPRISE DU GENIE DES INFRASTRUCTURES" submitted in one document its technical and financial offers;
- MIDIMAR disqualified "ENTREPRISE DU GENIE DES INFRASTRUCTURES" in the administrative level because it did not provide the certificate proving experience in similar services.

5. COMMENTS BY THE PANEL MEMBERS

Since "ENTREPRISE DU GENIE DES INFRASTRUCTURES" never complained about the content of the tender document before the submission of bids and did not separate its financial offer and technical offer; that means he accepted to compete following the provision of the tender document.

Regarding the method of selection used for lot 2 related to the training and sensitization on the prevention of diseases resulting from the lack of hygiene, NIRP members noted that MIDIMAR should have applied one of the methods for selecting consultants. MIDIMAR has to comply with procedures for the next time.


6. DECISION BY THE NIRP

Basing on the above background and comments;

Given that the complainant did not raise his complaint on the content of the tender document;

Given the article 39, para 2 of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and completed to date, the evaluation and comparison shall be based only on the procedures and criteria set out in the bidding document;

Pursuant to article and 70 of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and completed to date, NIRP members decide to dismiss the appeal introduced by ENTREPRISE DU GENIE DES INFRASTRUCTURES because it is baseless.



NSENGIYUMVA Silas
Vice Chairman of NIRP



KAZIMA Godfrey
Member




BATETA Jane
Member