



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

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**DECISION N° 74/2011/NIRP ON TENDER N° 11.07.053/2115/11/PROC-DIR/YM/em
TO SUPPLY DIFFERENT HYDRAULIC MATERIALS TO EWSA (LOT 1)**

COMPLAINANT: QUINQUALLERIE INEZA
AGAINST : ENERGY WATER AND SANITATION AUTHORITY (EWSA)
**COMPLAINT : APPEAL AGAINST THE DECISION OF NOT AWARDING IT A
TENDER**

1. INTRODUCTION

Pursuant to article 70 of the Law N°12/2007 of 27/03/2007 on Public Procurement, the members of the National Independent Review Panel, “NIRP”, on October, 20th 2011, discussed the appeal introduced by **QUINQUALLERIE INEZA** complaining about the decision taken by EWSA of NOT awarding it a tender.

2. SUMMARY OF THE COMPLAINT

QUINQUALLERIE INEZA is contesting about the decision taken by EWSA because it did not put into consideration the BDS, ITB 33 which states that “the principle of the most advantageous offer will be applied after calculation of all required and necessary taxes in Rwanda” and thus awarded the tender (lot 1) to non qualifying company.

3. SUMMARY OF FACTS

- On 14/09/2011, QUINQUALLERIE INEZA received provisional notification of tender loss;
- On 19/09/2011, QUINQUALLERIE INEZA made initial appeal before EWSA;

- On 30/09/2011, EWSA responded to QUINQUALLERIE INEZA's concern;
- On 03/10/2011, QUINQUALLERIE INEZA lodged its appeal before NIRP;
- On 10/10/2011, NIRP requested for documents from EWSA;
- On 17/10/2011, EWSA provided NIRP with the requested documents.

4. OBSERVATIONS MADE BY THE PANEL MEMBERS

NIRP members observed that EWSA tender committee did not consider the provision of ITB 33 which provides that *"the principle of the most advantageous offer will be applied after calculation of all required and necessary taxes in Rwanda"*.

The CIP price for QUINQUALLERIE INEZA for lot 1 is 516,171,058 Rwf VAT inclusive and the provisional successful bidder's CIP price is 363,727,968Rwf withholding tax inclusive.

By applying relevant taxes on the CIP prices

Bidders name	CIP price	Duty entry 25%	VAT 18%	RBS fees 0.2%	Withholdin g tax (15% for non registered bidders) and 3% for RRA registered bidders	total
QUINQUALLE RIE INEZA	437,433,100	-	78,737,95 8	874,866	13,122,99 3	530,168,917
provisional successful bidder	363,727,968x100/1 15 =316,433,100	79,071,29 7	79,817,73 0	632,570	47,442,77 8	500,363,168

Withholding tax is not levied on QUINQUALLERIE INEZA because it is exempted from paying it due to the fact that it is benefiting from QUITUS FISCAL and duty entry is also not levied because its products are originating from East Africa (Uganda).

DECISION BY THE NIRP

Given the article 70 of the Law N° 12/2007 of 27th March 2007 on Public Procurement;

Given article 39 para.3 of the law N° 12/2007 of 27/03/2007 on public procurement which states that “The successful bidder shall be the lowest responsive bidder”,

NIRP decides to reject the appeal introduced by QUINQUALLERIE INEZA because it is unfounded.

NSENGIYUMVA Silas
Vice Chairman NIRP

BATETA Jane
Member

KAZIMA Godfrey
Member

BUGINGO Emma-Marie
Member