

REPUBLIC OF RWANDA



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

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Kigali, on 12 1 JUL 2015

N° 010/2015-081/NIRP

**THE DIRECTOR GENERAL OF THE RWANDA  
HOUSING AUTHORITY**

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 GEMT COMPANY LTD contesting the decision taken on the tender N° 051/W/RHA-BO/14-15 for construction works of office building and staff accommodation for Bweyeye Border Post.

Sincerely,



**BUGINGO Emma Marie**

Chairperson

CC:

- Director General of RPPA
- Manager of GEMT COMPANY LTD



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**DECISION N° 16/2015/NIRP ON THE TENDER N° 051/W/RHA-BO/14-15 FOR CONSTRUCTION  
WORKS OF OFFICE BUILDING AND STAFF ACCOMMODATION FOR BWEYEYE BORDER  
POST**

**COMPLAINANT : GEMT COMPANY LTD**  
**AGAINST : RWANDA HOUSING AUTHORITY (RHA)**  
**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, members of the National Independent Review Panel (NIRP), on 14/07/2015 analysed the appeal introduced by GEMT COMPANY LTD contesting the decision for the above tender.

**2. SUMMARY OF THE COMPLAINT**

GEMT COMPANY LTD is contesting the RHA's decision to disqualify their bid on the argument that they provided only one certificate of good completion instead of two as per the tender document requirements.

GEMT COMPANY LTD is arguing that the criterion of *"Two (02) reference of executed tenders of the same nature and complexity with a total cost of at least five hundreds (500) millions Rwandans Francs (You must join certified copies of certificates of good Completion or certified copies of minutes of provisional handover as well as the respective contracts"*, has not been well evaluated, because, RHA don't take into consideration an additional contract which cannot be separated to the initial contract, and both tenders costed more than 500,000,000 Frw.

**3. SUMMARY OF FACTS**

On 03/03/2015, RHA advertised the tender;  
On 06/04/2015, Bids were opened;  
On 03/06/2015, GEMT COMPANY LTD received the first provisional notification letter;  
On 08/06/2015, GEMT COMPANY LTD introduced the initial appeal to RHA;  
On 18/06/2015, GEMT COMPANY LTD received the response of the initial appeal;  
On 23/06/2015, NIRP received the appeal from GEMT COMPANY LTD;



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On 24/06/2015, NIRP requested RHA to suspend procurement process and submit all documents related to this tender;

On 26/06/2015, RHA submitted the requested documents.

#### 4. OBSERVATIONS BY THE PANEL MEMBERS

NIRP members observed the following:

- The tender document requires "Two (02) reference of executed tenders of the same nature and complexity with a total cost of at least five hundreds (500) millions Rwandans Francs (You must join certified copies of a certificates of good Completion or certified copies of minutes of provisional handover as well as the respective contracts" (ITB 13.1; 9.)
- The complaint letter addressed to NIRP is accompanied by a table including references. Among them are:
  - (i) Réhabilitation des maisons d'Habitation de la cité des cadres pour SINELAC/CEPGL; 2013; 678,929.92\$ + 95,000.000\$ (Avenant)= 77,929,95\$ = 557,229,542 Frw.
  - (ii) (ii) Rehabilitation and Administrative in North Kivu/DRC; 2012-2013; 618,480,000 Frw.
- The bid of GEMT COMPANY LTD provided references entitled:
  - o "Rehabilitation and Extension of 3 Offices Administrative in North Kivu/DRC, for the year of 2013 having an amount of 578,107,000 Frw;
  - o "Travaux de réhabilitation des maisons d'habitations de la Cité des cadres pour SINELAC/CEPGL, for the year of 2013(contract signed in December) having an amount of 678,929.92 USD (448,625,202 Frw)<sup>1</sup>;
- The complaint letter is attached by an "Avenant N° 1 au Contrat N° SINELAC/003/T/2013 relatif aux travaux de réhabilitation de deux maisons d'habitations omises dans le contrat de base et aux travaux de pose du pavement teinté dans toutes les maisons à la place du supersol" (Signed in May 2014) of an amount of 95,000.000 USD (63,977,054.125 Frw)<sup>2</sup>;
- The bid of GEMT COMPANY LTD does not present the above "Avenant";
- The letter of the initial appeal addressed to RHA does not mention the above "Avenant",
- The RHA's letter responding to the GEMT COMPANY LTD's initial appeal states: "Your appeal letter has an attachment of an additional contract that was never part of the initial contract and it cannot be considered pursuant to the provisions of article 33 of the procurement law especially in its paragraph 2 which states that: after the deadline for submitting a bid, the bidder shall not change it or make any addendum thereon".
- After the RHA response to the initial appeal, GEMT COMPANY LTD never contested that the "Avenant au Contrat" was part of the initial contract.

<sup>1</sup> BNR's Rate Exchange (660.782784) of December 2013

<sup>2</sup> BNR's Rate Exchange (673.442675) of May 2014



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## 5. COMMENTS BY THE PANEL MEMBERS

Since the said "Avenant au Contrat" was not included in the bid and provided after the provisional notification, GEMT COMPANY LTD sought to change their bid, contrary to the article 33, para 2 of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and completed to date.

NIRP members do agree with the decision taken by RHA on this issue, in accordance to the article 25, para 2 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, because, GEMT COMPANY LTD presented one responsive reference instead of two as requested.

## 6. DECISIONS BY THE PANEL MEMBERS

Basing on the above background and comments;

Pursuant to article 70 of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date, NIRP members decide to dismiss the appeal introduced by GEMT COMPANY LTD because it is unfounded.



**BAGILIZINA Emmanuel**  
Vice Chairperson



**KAYITESI Eugenia**  
Vice Chairperson



**SANGANO Yves**  
Member



**MUKANTABANA Crescence**  
Member



**BIRANGWA Amri**  
Member