CSC AND EC PROPRIETARY v NET ENVIRONMENT CONSULT LTD (NEC LTD) N'UNDI

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00019/2022/CA (Rukundakuvuga, PJ, Nyirandabaruta na Ngagi, J.) 17 Kamena 2022]

Amategeko agenga ububasha bw'inkiko – Inzitizi y'iburabubasha – Gustindwa mu nkiko zombi hashingiwe ku mpamvu zimwe – Ubujurire bwa kabiri nti bwakirwa mu Rukiko rw'Ubujurire iyo uwajuriye yatsiznwe mu nkiko zombi hashingiwe ku mpamvu zimwe – Mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa

Incamake y'Ikibazo: NEC Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi ivuga ko yagiranye amasezerano na NET ENVIRONMENT CONSULT Ltd (NEC Ltd), aho NEC Ltd yagombaga gukora imirimo yo gutegura ibitabo, amasezerano, kumvikana ku biciro n'ibindi bikenewe byose kugira ngo CSC & EC PROPRIETARY ibashe kubona isoko ryakoreshwaga na RTDA-AFDB. Kubera ko yari imenyereye imirimo ijyanye no gupiganirwa amasoko kandi isoko ripiganirwa rikaba ryari rinini, yagiriye inama CSC & EC PROPRIETARY Ltd nka sosiyete yo mu mahanga, ko yagira amahirwe menshi yihuje na sosiyete yo mu Rwanda kuko byongera amanota mu gihe cyo gusuzuma amapiganwa, bituma ihuza CSC & EC PROPRIETARY na FAIR CONSTRUCTION Ltd zishyira hamwe zibyara *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSRTUCTION. Nyuma yuko NEC Ltd yishyuje CSC & EC PROPRIETARY ikanga kuyishyura yaregeye Urukiko rw'Ubucuruzi ivuga ko yubahirije inshingano zayo ariko ntiyishyurwe, isaba Urukiko gutegeka CSC & EC PROPRIETARY na *Joint Venture* CSC & EC PROPRIETARY AND FAIR CONSRTUCTION gufatanya kuyishyura umwenda wa 796.012.073 Frw n'inyungu ziwukomokaho zibariwe kuri 18%.

Urukiko rwemeje ko ikirego cyatanzwe na NEC Ltd gifite ishingiro, ko CSC & EC PROPRIETARY ari yo igomba kuyishyura uwo mwenda n'inyungu ziwukomokaho hamwe n'indishyi zitandukanye. Rwemeje kandi ko NEC Ltd iha

CSC & EC PROPRIETARY yajuririye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rwabanje rwemeje ko NEC Ltd yubahirije inshingano zayo kandi atari byo. NEC Ltd yuririye kuri ubwo bujurire ivuga ko ingano y'umwenda Urukiko rwemeje itagombaga kuba 787.162.082 Frw, ko ahubwo yari kuba 796.012.073 Frw kuko ariyo ahwanye na 5 % y'agaciro k'isoko ryatanzwe nyuma y'ubwumvikane (*negotiation*). Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bwa CSC & EC PROPRIETARY nta shingiro bufite, ko ubujurire bwuririye ku bundi bwa NEC Ltd nta shingiro bufite.

CSC & EC PROPRIETARY yajuririye na none mu Rukiko rw'Ubujurire habanza gusuzumwa inzitizi yatanzwe na NEC Ltd ivuga ko ubujurire bwa CSC & EC PROPRIETARY butagomba kwakirwa kuko butari mu bubasha bw'Urukiko rw'Ubujurire kubera ko yatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe. CSC & EC PROPRIETARY ivuga ko inzitizi yatanzwe na NEC Ltd nta shingiro yahabwa kuko itatsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe. *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd nayo ibishimangira ivuga ko CSC & EC PROPRIETARY itatsinzwe mu nkiko zombi hashingiwe ku

mpamvu zimwe kubera ko ibabazo byasuzumwe muri izo nkiko zombi atari bimwe kuko Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibibazo byinshi ku byo Urukiko rw'Ubucuruzi rwasuzumye.

Incamake y'icyemezo: Mu gusuzuma ko impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa.

Inzitizi y'iburabubasha ifite ishingiro.
Amagarama ahwanye n'ibyakozwe.

Amategeko yashingiweho:
Itegeko Nº 007/2021 ryo ku wa 05/02/2021 rigenga amasosiyete y'ubucuruzi, ingingo ya 28.
Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 52 n'iya 111.
Itegeko Nº 17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi, ingingo ya 28.
Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano, ingingo ya 64.
Itegeko Nº 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 3.

Imanza zifashishijwe:
Banque Populaire du Rwanda Atlas Mara Plc (BPR Atlas Mara Plc) na Nkusi Evariste, RS/INJUST/RCOM 00005/2020/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 27/11/2020.
Road Solutions Pavement Products na MAILCO Ltd, RS/INJUST/RCOM 00002/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/09/2020.
Twagirayezu Albertine na bagenzi be barega Twagirayezu Albert, RS/INJUST/RC00007/2020/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 25/06/2020.
Bank of Kigali Ltd na Mulisa Kana Martin, RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 01/05/2018, CSC & EC PROPRIETARY Ltd yagiranye amasezerano na NET ENVIRONMENT CONSULT Ltd (NEC Ltd), aho NEC Ltd yagombaga gukora imirimo yo gutegura ibitabo, amasezerano, kumvikana ku biciro n'ibindi bikenewe byose kugira ngo CSC & EC PROPRIETARY ibashe kubona isoko ryiswe "*Multinational Road Project Rwanda/Burundi, Lot 7: Additional Works Under Rubavu-Gisiza Road Project, Tender number 006/W/2017-2018-ICB/SPIU/RTDA-AFDB*" ryakoreshwaga na RTDA-AFDB, no gutanga ubujyanama mu bijyanye no gupiganirwa isoko ndetse no kuba hafi ya CSC & EC PROPRIETARY Ltd kugeza ikiciro cyo gusesengura inyandiko z'abapiganiwe isoko kirangiye. Iryo soko ryari rifite agaciro ka 15.920.241.466 Frw. Impande zombi zumvikanye ko igihembo ari 5% by'agaciro k'isoko ryose.

[2] NEC Ltd ivuga ko kubera ko yari imenyereye imirimo ijyanye no gupiganirwa amasoko kandi isoko ripiganirwa rikaba ryari rinini, ngo yagiriye inama CSC & EC PROPRIETARY Ltd

nka sosiyete yo mu mahanga, ko yagira amahirwe menshi yihuje na sosiyete yo mu Rwanda kuko byongera amanota mu gihe cyo gusuzuma amapiganwa. Ibyo ngo byatumye NEC Ltd ihuza CSC & EC PROPRIETARY na FAIR CONSTRUCTION Ltd zishyira hamwe zibyara *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSRTUCTION, inakora ibyo yagombaga gukora byose maze zitsindira iryo soko muri RTDA. Naho CSC & EC PROPRIETARY ikavuga ko amasezerano yagiranye na NEC Ltd, iyi itigeze iyashyira mu bikorwa, ko ahubwo CSC & EC PROPRIETARY yisunganye na FAIR CONSTRUCTION Ltd bashinga *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd, maze akazi kose kajyanye no kwegukana isoko muri RTDA aba ari iyo *Joint venture* igakora. Avuga kandi ko *Joint venture* ntacyo ikwiye kuryozwa mu gihe itashyize umukono kuri ayo masezerano akomokaho impaka ziburanwa.

[3] Nyuma yuko NEC Ltd yishyuje CSC & EC PROPRIETARY ikanga kuyishyura yaregeye Urukiko rw'Ubucuruzi ivuga ko yubahirije inshingano zayo ikora ibyo yagombaga gukora byose irabirangiza, ariko yajya kwishyuza CSC & EC PROPRIETARY ikanga kuyishyura, isaba urwo Rukiko gutegeka CSC & EC PROPRIETARY na *Joint Venture* CSC & EC PROPRIETARY AND FAIR CONSRTUCTION gufatanya kuyishyura umwenda wa 796.012.073 Frw n'inyungu ziwukomokaho zibariwe kuri 18%.

[4] Mu rubanza RCOM 00918/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 10/11/2020, urwo Rukiko rwemeje ko ikirego cyatanzwe na NEC Ltd gifite ishingiro, ko CSC & EC PROPRIETARY ari yo igomba kuyishyura umwenda ungana na 787.162.082 Frw, inyungu zingana na 50.259.759 Frw, no kuyiha 100.000 Frw y'ikurikiranarubanza na 700.000 Frw y'igihembo cya Avoka, na 20.000 Frw y'igarama yatanze irega. Rwemeza kandi ko NEC Ltd iha *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd 600.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka.

[5] CSC & EC PROPRIETARY ntiyishimiye imikirize y'urubanza, iyijuririra mu Rukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwemeje ko NEC Ltd yubahirije inshingano zayo nk'uko ziteganyijwe mu masezerano kandi atari byo, ko Urukiko rutagombaga kuyitegeka kwishyura NEC Ltd amafaranga akubiye mu masezerano n'inyungu n'indishyi ziyakomokaho, ko kandi Urukiko rutayigeneye indishyi zo gushorwa mu manza yasabye.

[6] NEC Ltd yuririye ku bujurire bwa CSC & EC PROPRIETARY ivuga ko ingano y'umwenda Urukiko rwemeje itagombaga kuba 787.162.082 Frw, ko ahubwo yari kuba 796.012.073 Frw kuko ari yo ahwanye na 5% y'agaciro k'isoko ryatanzwe nyuma y'ubwumvikane (*negotiation*), isaba ko inyungu z'umwenda wa 796.012.073 Frw zabarirwa kuri 18% guhera ku wa 28/01/2019 kugeza urubanza ruciwe. Ko kandi Urukiko rwagombaga gushingira ku ngingo ya 3 ya *pre-tender joint venture agreement* yo ku wa 21/05/2018, iya 1.2.6: ya Annex 1, maze rukaryoza *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSRTUCTION Ltd umwenda uburanwa, ko kandi Urukiko rw'Ubucuruzi rutategetse aho ubwishyu buzava, ko rero Urukiko rujuririrwa rukwiye gutegeka ko amafaranga izatsindira yakurwa mu mafaranga yafatiriwe ari muri RTDA yatanze isoko, arimo 60 % ya CSC & EC PROPRIETARY na 40% ya FAIR CONSTRUCTION Ltd, ngo kuko CSC & EC PROPRIETARY ari sosiyete y'inyamahanga ikaba idafite undi mutungo mu Rwanda wavamo ubwishyu.

[7] Ku wa 16/12/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00799/2020/HCC, rwemeza ko ubujurire bwa CSC & EC PROPRIETARY nta shingiro bufite, ko

ubujurire bwuririye ku bundi bwa NEC Ltd nta shingiro bufite, ko CSC & EC PROPRIETARY igomba guha NEC Ltd 500.000 Frw y'igihembo cya Avoka na 100.000 Frw y'ikurikiranarubanza, yose hamwe akaba 600.000 Frw. Rutegeka ko hagumyeho imikirize y'urubanza RCOM 00918/2020/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 10/11/2020, ko ingwate y'amagarama CSC & EC PROPRIETARY yatanzeho ijurira, ahwanye n'ibyakozwe mu rubanza.

[8] CSC & EC PROPRIETARY yajuririye na none uru Rukiko, isaba ko Urukiko rwasuzuma niba NEC Ltd yarubahirije inshingano zayo nk'uko ziteganyijwe mu masezerano yo ku wa 01/05/2018, no kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaragombaga kuyitegeka kwishyura NEC Ltd amafaranga akubiye mu masezerano bagiranye, inyungu n'amafaranga y'ibyagiye ku rubanza. NEC Ltd nayo yatanze ubujurire bwuririye ku bundi ivuga ko Urukiko Rukuru rw'Ubucuruzi rutagombaga gutegeka CSC& EC PROPRIETARY kwishyura NEC Ltd umwenda ungana na 5% y'isoko ryose azagaragara muri *contrat final*, ko kandi rutagombaga kubarira inyungu ku gipimo (*taux*) cya 7.9 BNR iheraho amabanki inguzanyo, n'inyungu zitari kubarirwa kuri 15.743.241.646,51 Frw ari mu masezerano ahubwo zari kubarirwa ku mafaranga yishyuwe angana na 15.920.241.466,51 Frw, n'igihe izo nyungu zatangira kubarwa.

[9] Urubanza rwahamagajwe ku wa 01/06/2022, ariko ntirwaburanishwa rwimurirwa ku wa 06/06/2022 kugira ngo *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd ishake Avoka wo kuyihagararira, kuko Me Munyaneza Remy wari uhagarariye CSC & EC PROPRIETARY (uwajuriye) atemerewe guhagararira *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd (uregwa).

[10] Urubanza rwaburanishijwe mu ruhame ku wa 06/06/2022, CSC & EC PROPRIETARY ihagarariwe na Me Munyaneza Remy, NET ENVIRONMENT CONSULT Ltd (NEC Ltd) ihagarariwe na Me Rusengo Tharcisse afatanyije na Me Rutagengwa François hamwe na Me Mukaruzagiriza Chantal, naho *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd ihagarariwe na Me Munyandamutsa Jean Pierre, hasuzumwa inzitizi yatanzwe na NEC Ltd ivuga ko ubujurire bwa CSC & EC PROPRIETARY butagomba kwakirwa kuko butari mu bubasha bw'Urukiko rw'Ubujurire kuko yatsinzwe hashingiwe ku mpamvu zimwe mu nkiko zombi.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba ubujurire bwa CSC AND EC PROPRIETARY butagomba kwakirwa kubera ko butari mu bubasha bw'Urukiko rw'Ubujurire

[11] Abahagarariye NEC Ltd, bashingiye ku ngingo ya 52, igika cya 3, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko ivuga ko ubujurire bwa kabiri budashobora kwakirwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe, asaba Urukiko rw'Ubujurire kutakira ubujurire bwa kabiri bwatanze na CSC & EC PROPRIETARY kubera ko yatsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe. Asobanura ko mu gika cya 10 cy'urubanza RCOM 00918/2020/TC rwaciwe ku wa 10/11/2020, Urukiko rw'Ubucuruzi rushingiye ku masezerano yo ku wa 01/05/2018, CSC & EC PROPRIETARY yagiranye na NEC Ltd, rukabihuza n'ingingo ya 3 y'Itegeko Nº 15/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, rwasanze NEC Ltd yarubahirije inshingano zayo zari ziyakubiyemo rushingiye ku butumwa bwa *WhatsApp* abayobozi b'impande zombi bagiye bandikirana, bityo

ikaba igomba kwishyurwa amafaranga akubiye mu masezerano nk'uko agaragara mu ngingo yayo ya 6.

[12] Bavuga ko ibyo byagarutsweho n'Urukiko Rukuru rw'Ubucuruzi mu gika cya 20 cy'urubanza RCOMA 00799/2020/HCC rwaciwe ku wa 16/12/2021, aho rwashingiye ku ngingo ya 64 y'Itegeko rigenga amasezerano, no ku ngingo ya 28, agace ka 3, y'Itegeko Nº 007/2021 ryo ku wa 05/02/2021 rigenga amasosiyete y'ubucuruzi nk'uko byari binakubiye mu ngingo ya 28, agace ka 3, y'Itegeko Nº 17/2018 ryo ku wa 13/04/2018 rigenga amasosiyete y'ubucuruzi ryakurikizwaga icyo gihe, maze mu gika cya 21 kugera ku cya 27 cy'urwo rubanza, Urukiko rushingiye ku butumwa bwa *WhatsApp*, no ku ngingo ya 2 y'amasezerano yo ku wa 01/05/2018, rusanga ibyo CSC & EC PROPRIETARY yavugaga ko NEC Ltd yagombaga gukomeza gukora na nyuma yuko isoko ritsindiwe atari ko byari biteganyijwe muri ayo masezerano, ruvuga ko ayo masezerano agomba kuba itegeko hagati y'abayagiranye, maze rwanzura ko ubujurire bwayo nta shingiro bufite, kandi ko hagumyeho imikirize y'urubanza RCOM 00918/2020/TC.

[13] Bavuga kandi ko mu gika cya 13 cy'urubanza RCOM 00918/2020/TC, Urukiko rwavuze ko kuba CSC & EC PROPRIETARY na *Joint venture* CSC and EC PROPRIETARY and FAIR CONSTRUCTION Ltd zivuga ko NEC Ltd itubahirije amasezerano kubera ko itagiye mu nama yo ku wa 28/01/2019 nta shingiro bifite, kuko iyo nama yabaye isoko ryaramaze gutangwa na RTDA, ko kandi NEC Ltd ntacyo yari gukora kandi itahawe iryo soko. Ko kandi kuba nta nyandiko n'imwe CSC & EC PROPRIETARY yigeze yandikira NEC Ltd iyimenyesha ko irimo kwica amasezerano zagiranye ari ikimenyetso gihamya ko NEC Ltd yubahirije inshingano zayo, ngo kuko iyo bitaba bityo yari kuba yarayihanangirije. Mu gika cya 20 cy'urwo rubanza, Urukiko rugaruka ku masezerano aho avuga ku mirimo NEC Ltd yagombaga n'igihembo yagombaga kwishyura n'uburyo cyagombaga kwishyurwa.

[14] Bakomeza bavuga ko ibyo byagarutsweho n'Urukiko Rukuru rw'Ubucuruzi kuva mu gika cya 29 kugeza ku cya 30 by'urubanza RCOMA 00799/2020/HCC, aho Urukiko Rukuru rw'Ubucuruzi rushingiye ku bimenyetso birimo amasezerano yo ku wa 01/05/2018, n'ubutumwa bwa *WhatsApp* rwasanze bigaragara ko NEC Ltd yagize uruhare ku bijyanye n'isoko rivugwa mu rubanza, ko kandi bihura n'inshingano yahawe mu masezerano impande zombi zagiranye. Rusanga kandi CSC & EC PROPRIETARY itagaragaza ibimenyetso by'uko NEC Ltd itubahirije amasezerano zagiranye. Basoza basaba ko ubujurire bwa CSC & EC PROPRIETARY butakirwa kuko bigaragara ko impamvu zashingiweho n'inkiko zombi mu gufata icyemezo ari zimwe.

[15] Uhagarariye CSC & EC PROPRIETARY avuga ko inzitizi yatanzwe na NEC Ltd nta shingiro yahabwa, kuko CSC & EC PROPRIETARY itatsinzwe mu nkiko zombi zabanje hashingiwe ku mpamvu zimwe**.** Avuga ko Urukiko rwazagereranya ibikubiye mu bika bya 13 na 14 by'urubanza rwaciwe n'Urukiko rw'Ubucuruzi hamwe n'ibika bya 24 na 29 by'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi, ruzasanga Urukiko rw'Ubucuruzi rwarashingiye ku kuba NEC Ltd itaragombaga kuba mu nama CSC & EC PROPRIETARY ivuga ko itayitabiriye bikaba bigaragaza ko NEC Ltd itubahirije ishingano zayo ko kandi CSC & EC PROPRIETARY itigeze iyimenyesha ko hari ibyo itubahirije; naho mu gika cya 24 cy'urubanza rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rwemeje ko hari intambwe NEC Ltd yateye.

[16] Akomeza avuga ko ku by'ubutumwa bwo kuri *WhatsApp*, mu gika cya 11 cy'urubanza rwaciwe n'Urukiko rw'Ubucuruzi, urwo Rukiko rwavuze ko *plate* rwashingiyeho zitandukanye

n'izashingiweho n'Urukiko Rukuru rw'Ubucuruzi mu gika cya 24 cy'urubanza; ikindi, ikibazo cya *subcontract* ntabwo cyigeze kivugwaho mu Rukiko rw'Ubucuruzi ariko Urukiko Rukuru rw'Ubucuruzi rwakivuzeho.

[17] Asoza avuga ko yagaragaje ko impamvu zashingiweho n'inkiko zombi atari zimwe, ariko Urukiko rusanze Urukiko Rukuru rw'Ubucuruzi rwarateruye ibyashingiweho n'Urukiko rw'Ubucuruzi ntabwo rwafata ko impamvu zashingiweho n'inkiko zombi ari zimwe nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza RS/INJUST/RC 00007/2020/SC rwaciwe ku wa 25/06/2020 haburana Twagirayezu Albertine na bagenzi be barega Twagirayezu Albert.

[18] Me Munyandamutsa Jean Pierre, uhagarariye Joint venture CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd avuga ko CSC & EC PROPRIETARY itatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe kubera ko ibabazo byasuzumwe n'inkiko zombi atari bimwe kuko Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibibazo byinshi ku byo Urukiko rw'Ubucuruzi rwasuzumye, kuko harimo n'ubujurire bwuririye ku bundi, kandi nta nubwo abahagarariye NEC Ltd babasha kugaragaza ko impamvu zashingiweho n'inkiko zombi ari zimwe.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 52, igika cya 3, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ibikurikira: icyakora kandi ubujurire bwa kabiri ntibushobora kwakirwa ku manza z'ababuranye bemera ibyo byaregwa, cyangwa ku muburanyi watsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

[20] Ikibazo cyo kumenya niba impamvu zashingiweho umuburanyi atsindwa ku rwego rwa mbere n'urwa kabiri ari zimwe, kigomba gusuzumwa hasesengurwa imikirize y'urubanza ku rwego rwa mbere n'urwa kabiri, ingingo z'ingenzi zasuzumwe, impamvu buri rukiko rwashingiyeho kugira ngo rugere ku cyemezo, byaramuka bigaragaye ko ari zimwe, ubujurire ntibube buri mu bubasha bw'Urukiko rw'Ubujurire.

[21] Ku bijyanye n'ibisobanuro by'impamvu zimwe, Urukiko rw'Ikirenga ndetse n'uru Rukiko zemeza ko impamvu zimwe zivugwa muri iyi ngingo zigomba kumvikana nk'ibisobanuro buri Rukiko rwashingiyeho mu gufata icyemezo cyarwo rugendeye ku byabaye no ku byo amategeko ateganya, ko impamvu ari zo zishingirwaho mu kugaragariza no gusobanurira ababuranyi icyatumye Urukiko rufata icyemezo, akaba ari nazo ziherwaho ababuranyi basuzuma niba imiburanire yabo yarasesenguwe n'Urukiko, bitewe n'uko buri cyemezo cy'Urukiko kigomba kuba cyasobanuriwe impamvu[1].

[22] Na none mu rubanza RCOMAA 0048/16/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 19/05/2017, haburana RRA na SODAR Ltd[2], urwo Rukiko rwasobanuye ko mu gusuzuma ko

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[1] Urubanza RCOMAA 0038/16/CS-RCOMAA 0033/2016/CS hagati ya Bank of Kigali Ltd na Mulisa Kana Martin rwaciwe n'Urukiko rw'Ikirenga ku wa 21/04/2017, igika cya 21. Reba kandi igika cya 12 cy'urubanza rubanziriza urundi mu rubanza RCOMAA 00010/2018/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/03/2019, haburana KOPERATIVE DUKUNDUMURIMO (KOADU) na KING CONSTRUCTION AND SERVICE COMPANY (KICOSECA).

[2] Reba igika cya 18 cy'urwo rubanza. Reba na none urubanza RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solution Pavement Products na MAILCO Ltd, rwaciwe ku wa 25/09/2020, igika cya 24.

impamvu zashingiweho umuburanyi atsindwa mu nkiko zombi ari zimwe, hatarebwa niba ibimenyetso ababuranyi batanze ku rwego rwa mbere ari byo byatanzwe no mu rwego rw'ubujurire, cyangwa ko zakoresheje amagambo amwe, ahubwo harebwa niba inkiko zombi zarashubije ku buryo bumwe ingingo zirebana n'ikiburanwa.

[23] Nk'uko bigaragara mu rubanza RCOM 00918/2019/TC rwaciwe n'Urukiko rw'Ubucuruzi ku wa 10/11/2020, NEC Ltd yaregeye urwo Rukiko irusaba gutegeka CSC & EC PROPRIETARY na *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd gufatanya kuyishyura umwenda wa 796.012.073 Frw n'inyungu zayo zibariwe kuri 18%. Urwo Rukiko rwasuzumye ibibazo bikurikira: kumenya niba NEC Ltd yarashyize mu bikorwa amasezerano yagiranye na CSC & EC PROPRIETARY, kumenya niba CSC & EC PROPRIETARY na *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd bategekwa kwishyura NEC Ltd umwenda wa 796.012.073 Frw no kumenya niba inyungu n'indishyi bisabwa bikwiye gutangwa.

[24] Mu rubanza RCOMA 00799/2020/HCC rwaciwe ku wa 16/12/2021, Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibibazo by'ingenzi bikurikira: kumenya niba NEC Ltd itarubahirije inshingano zayo, ko kandi itari ikwiye kwishyurwa ikiguzi cy'akazi ivuga yakoze, kumenya niba uwajuriye akwiye gutegekwa kwishyura umwenda uregerwa, inyungu zawo hamwe n'indishyi zitandukanye, kumenya niba ingano y'umwenda yemejwe igomba kwishyirwa NEC Ltd atari ukuri ndetse niba mu bawuryozwa harimo na Joint venture CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd, kandi niba hategekwa aho ubwishyu buzaturuka n'inyugu zikongera kubarwa.

[25] Ku byo kumenya niba NEC Ltd yarashyize mu bikorwa amasezerano yagiranye na CSC & EC PROPRIETARY, Urukiko rw'Ubucuruzi rwasanze CSC & EC PROPRIETARY ari yo itarubahirije amasezerano yagiranye na NEC Ltd ishingiye ko mu biganiro sosiyete zakoranye amasezerano zagiranye zikoresheje ubutumwa bwa *WhatsApp*, ubwo NEC Ltd yishyuzaga umwenda, nta na hamwe CSC & EC PROPRIETARY yigeze igaragaza ko nta kazi NEC Ltd yayikoreye. Rwasanze kandi hari uruhare NEC Ltd yagize mu kumvikanisha impande zombi kugira ngo isoko riboneke harimo n'ibijyanye n'ibiciro batumvikanagaho ndetse ko ari yo yateguye amasezerano y'imikoranire ya Joint venture CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd impande zombi zagiranye nk'uko ubutumwa bwa *WhatsApp* bubyerekana. Rwasanze ibyo CSC & EC PROPRIETARY na Joint venture CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd bavuga ko NEC Ltd itubahirije inshingano zayo kubera ko itagiye mu nama yo ku wa 28/01/2019 nta gaciro byahabwa, kuko iyo nama yabaye isoko ryaramaze gutangwa, NEC Ltd ikaba ntacyo yari kujya gukora muri iyo nama kuko atari yo yahawe isoko. Yasoje ivuga ko kuba nta nyandiko n'imwe CSC & EC PROPRIETARY yigeze yandikira NEC Ltd iyibwira ko iri kwica amasezerano, inayibwire ko amasezerano ashobora guseswa nacyo ari ikindi kimenyetso gihamya ko NEC Ltd yujuje inshingano zayo.

[26] Kuri iki kibazo, nubwo Urukiko Rukuru rw'Ubucuruzi, rwakoresheje ibisobanuro birambuye rukanagaragaza ibimenyetso bitandukanye, ariko rwasanze ibyo bimenyetso byerekana ko NEC Ltd yujuje inshingano zayo zirimo gutegura inyandiko z'ipiganwa no kugira uruhare mu bwumvikane kugira ngo izo sosiyete zitsindire isoko. Urukiko rwashingiye na none ku butumwa butandukanye bwa *WhatsApp* na e-mail NEC Ltd yagiye yandikirana n'izo sosiyete rwemeza ko nabwo ari ibimenyetso bigaragaza ko NEC Ltd yujuje inshingano zayo. Urukiko rwanashingiye

ku kuba ntaho CSC & EC PROPRIETARY yigeze imenyesha NEC Ltd ko itazishyurwa kubera ko itujuje inshingano zayo. Ku byo kuba NEC Ltd itaritabiriye inama yo ku wa 28/01/2019, nyuma yuko isoko ritanzwe, Urukiko Rukuru rw'Ubucuruzi rwasanze ibyo binyuranye n'ibyari biteganyijwe mu masezerano, kuko ntaho amasezerano yabiteganyaga, rwemeza ko ibyo abajuriye bavuga nta shingiro bifite.

[27] Kuri iki kibazo nubwo Urukiko Rukuru rw'Ubucuruzi rwatanze ibisobanuro birambuye, Urukiko rurasanga icy'ingenzi cyitabwaho ari ukureba icyaburanwaga n'imitekerereze ya buri rukiko mu kugaragaza impamvu zashingiweho mu kugira ngo rugere ku cyemezo rwafashe[3]. Urukiko rurasanga imitekerereze y'inkiko zombi ari imwe kuko zose zasuzumye ibimenyetso biri muri dosiye bikubiyemo ubutumwa bwa *WhatsApp* sosiyete zandikiranye hagati yazo, zisanga nta na hamwe CSC & EC PROPRIETARY yigeze igaragariza NEC Ltd ko itubahiriza inshingano zayo, zisanga kandi NEC Ltd yaragize uruhare kugira ngo CSC & EC PROPRIETARY ihabwe isoko, ko kandi NEC Ltd itari itegetswe kwitabira inama yo ku wa 28/01/2019, kuko iyo nama yabaye isoko ryaramaze gutangwa kandi amasezerano ateganya ko yagombaga kwitabira inama kugeza isoko ritanzwe.

[28] Urukiko rurasanga rero kuri iki bibazo kijyanye no kumenya niba NEC Ltd itarubahirije amasezerano, CSC & EC PROPRIETARY yaratsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe.

[29] Ku kibazo cyo kumenya niba CSC & EC PROPRIETARY igomba gufatanya na *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd kuyishyura umwenda wa 796.012.073 Frw, Urukiko rw'Ubucuruzi, nyuma yo gusuzuma amasezerano yo ku wa 01/05/2018 yabaye hagati ya CSC & EC PROPRIETARY na NEC Ltd rwasanze bigaragara ko ayo masezerano areba abayagiranye, akaba CSC & EC PROPRIETARY ari yo igomba kwishyura, ko *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd itigeze igirana amasezerano na NEC Ltd ko ahubwo amasezerano yabaye hagati ya NEC Ltd na CSC & EC PROPRIETARY, rwemeza ko *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd itaryozwa inshingano zikomoka ku masezerano itasinye hashingiwe ku ngingo ya 113 y'Itegeko rigenga amasezerano.

[30] Mu Rukiko Rukuru rw'Ubucuruzi, iki kibazo cyagarutsweho, urwo Rukiko rusanga kuba amasezerano yarabaye hagati ya CSC & EC PROPRIETARY na NEC Ltd, nta buryo yabyara inshingano zo kwishyura ikiguzi kiyarimo kuri *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd itarayagizemo uruhare, kuko amasezerano agira inkurikizi ku bayagiranye gusa. Urukiko rurasanga kuri iki kibazo inkiko zombi zaremeje ko *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd itaryozwa ubwishyu bukomoka ku masezerano itagizemo uruhare, kuko amasezerano agira inkurikizi ku bayagiranye, akaba CSC & EC PROPRIETARY ariyo igomba kwishyura.

[31] Ku kibazo cyo kumenya niba inyungu zisabwa zikwiye gutangwa, Urukiko rw'Ubucuruzi, rushingiye ku ibaruwa yo ku wa 20/01/2020, NEC Ltd yandikiye CSC & EC PROPRIETARY na *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd izisaba gukemura

[3] Reba urubanza RS/INJUST/RCOM 00002/2020/SC hagati ya Road Solutions Pavement Products na MAILCO Ltd rwaciwe ku wa 25/09/2020, igika cya 24.

mu buryo bw'ubwumvikane mu minsi irindwi ikibazo cy'umwenda ziyibereyemo, bitakorwa hakitabazwa urukiko, rwasanze NEC Ltd ikwiye kugenerwa inyungu hashingiwe ku minsi ishize itishyuwe kuva ku wa 20/01/2020 kugeza 10/11/2020.

[32] Kuri iki kibazo, Urukiko Rukuru rw'Ubucuruzi rwasanze kuba CSC & EC PROPRIETARY itarubahirije amasezezerano ngo ibe yarishyuye mu gihe cyari giteganyijwe**,** ayo mafaranga yagombaga kuba yishyuwe, inyugu zigombwa kubarwa uhereye igihe igisabwa cyagombaga gukorwa.

[33] Urukiko rurasanga, nubwo inkiko zombi zitakoresheje amagambo amwe, ariko impamvu zashingiyeho n'imwe yuko CSC & EC PROPRIETARY itishyuye mu gihe cyari giteganyijwe mu masezerano, bityo umwenda ibereyemo NEC Ltd ukaba ugomba kubarirwa inyungu.

[34] Urukiko rurasanga ibyo uhagarariye CSC & EC PROPRIETARY avuga ko Urukiko rusanze Urukiko Rukuru rw'Ubucuruzi rwarateruye ibyashingiweho n'Urukiko rw'Ubucuruzi rutafata ko impamvu zashingiweho n'inkiko zombi ari zimwe nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza RS/INJUST/RC 00007/2020/SC rwaciwe ku wa 25/06/2020 haburana Twagirayezu Albertine na bagenzi be barega Twagirayezu Albert ntacyo byamumarira kuko usibye ko atabigaragaje, nta n'ubwo Urukiko Rukuru rw'Ubucuruzi rwateruye ibyashingiweho n'Urukiko rw'Ubucuruzi ahubwo rwarabyemeje ariko rukoresheje amagambo yarwo.

[35] Urukiko rurasanga ibyo uhagarariye *Joint venture* CSC & EC PROPRIETARY AND FAIR CONSTRUCTION Ltd avuga ko CSC & EC PROPRIETARY itatsinzwe mu nkiko zombi hashingiwe ku mpamvu zimwe kubera ko ibibazo byasuzumwe n'inkiko zombi atari bimwe kuko Urukiko Rukuru rw'Ubucuruzi rwasuzumye ibibazo byinshi ku byo Urukiko rw'Ubucuruzi rwasuzumye, nawe ntacyo byamumarira, kuko hari ibibazo bibyutswa bwa mbere ku rwego rw'ubujurire, kandi bene ibyo bibazo nti bishingirwaho hasuzumwa niba umuburanyi yaratsinzwe hashingiwe ku mpamvu zimwe. Ni nako byemejwe mu manza zitandukanye zaciwe n'Urukiko rw'Ikirenga, harimo urubanza RS/INJUST/RCOM 00005/2020/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 27/11/2020, Urukiko rwasanze ibibazo byabyukijwe mu bujurire bwa mbere bidashobora gushingirwaho hasuzumwa niba umuburanyi yaratsinzwe ku mpamvu zimwe; rwemeza ko gutsindwa ku mpamvu zimwe, bigenzurwa hashingiwe ku ngingo zatumye umuburanyi ajurira, umwanzuro wazifashweho n'impamvu zashingiweho n'inkiko zombi[4].

[36] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ku bibazo inkiko zombi zahuriyeho, CSC & EC PROPRIETARY yaratsinzwe muri izo nkiko hashingiwe ku mpamvu zimwe, bityo ubujurire bwayo bukaba butakiriwe kuko butari mu bubasha bw'Urukiko rw'Ubujurire.

2. Kumenya niba amafaranga y'ikurikiranarubanza n'igihembo cya Avoka asabwa muri uru rubanza afite ishingiro

[37] NEC Ltd isaba Urukiko gutegeka CSC & EC (PROPRIETARY) Ltd kuyishyura 3.000.000 Frw y'ibihembo bya Avoka na 2.000.000 Frw y'ikurikiranarubanza. CSC & EC PROPRIETARY ntacyo ibivugaho, ahubwo isaba Urukiko rw'Ubujurire gutegeka NEC Ltd kwishyura CSC & EC

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[4] Reba urubanza RS/INJUST/RCOM 00005/2020/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 27/11/2020, haburana Banque Populaire du Rwanda Atlas Mara Plc (BPR Atlas Mara Plc) na Nkusi Evariste.

PROPRIETARY amafaranga y'ikurikiranarubanza n'igihembo cya Avoka ku nzego zose, angana na 10.000.000 Frw kubera kuyishora mu manza zidafite ishingiro.

UKO URUKIKO RUBIBONA

[38] Ingingo ya 111 y’Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi iteganya ibikurikira: ikirego cy’amafaranga y’ikurikiranarubanza ni ikirego gishamikira ku kirego cy’iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza. Ikirego cy’amafaranga y’ikurikiranarubanza kiburanishirizwa rimwe n’ikirego cy’iremezo. Gishobora kandi kwakirwa kikanaburanishwa n’iyo ikirego cy’iremezo cyaba kitakiriwe.

[39] Urukiko rurasanga amafaranga y’igihembo cya Avoka n’ay’ikurikiranarubanza NEC Ltd isaba ikwiye kuyahabwa, kuko byabaye ngombwa ko ishaka Abavoka bo kuyiburanira, ariko rukaba rusanga ayo isaba ari menshi harebwe ko urubanza rugarukiye ku nzitizi y’iburabubasha gusa; bityo mu bushishozi bwarwo rukaba ruyigeneye 500.000 Frw y’igihembo cya Avoka na 200.000 Frw y’ikurikiranarubanza, kuri uru rwego, agomba gutangwa n’Akarere ka Gicumbi.

III. ICYEMEZO CY’URUKIKO

[40] Rwemeje ko inzitizi y’iburabubasha bw’Urukiko rw’Ubujurire yatanzwe na NET ENVIRONMENT CONSULT Ltd (NEC Ltd) ifite ishingiro.

[41] Rwemeje ko ubujurire bwa CSC & EC PROPRIETARY butakiriwe kuko butari mu bubasha bw’Urukiko rw’Ubujurire.

[42] Rutegetse CSC & EC PROPRIETARY kwishyura NET ENVIRONMENT CONSULT Ltd (NEC Ltd) 500.000 Frw y’igihembo cya Avoka na 200.000 Frw y’ikurikiranarubanza, kuri uru rwego.

[43] Ruvuze ko amagarama yatanzwe ahwanye n’ibyakozwe mu rubanza.