IGIP MBH INGÉNIEURS-CONSEILS v LETA Y'U RWANDA (MININFRA)

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA 00012/2017/SC, (Kayitesi, Z., P.J., Cyanzayire, na Mutashya J.) 23 Mata 2019]

Amategeko agenga amasezerano – Kwishyuza ingwate yo kurangiza neza imirimo – Rwiyemezamirimo wahawe isoko ryo gukurikirana imirimo (Supervising works) ntiyakwitwaza ko igihe cyari kiri mu masezerano cyo gukora akazi cyarangiye ngo yake ingwate mu gihe atagaragaza imirimo yakozwe – Itegeko N 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 75, Itegeko No 12//2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta, ingingo ya 75 na 101.

Incamake y'Ikibazo: Uru rubanza rwatangiriye mu Rukiko rw'ubucuruzi rwa Nyarugenge aho IGIP mbH Ingénieurs-Conseils yareze Leta y'Urwanda mu izina rya MININFRA ko itubahirije amasezerano bagiranye yo kugenzura imirimo yakorwaga na Sosiyete yitwa ESPINA ngo kuko itayishyuye amafaranga agaragara ku nyemezabwishyu eshanu yayishyikirije.Ivuga andi ko itahawe amafaranga y'ingwate yo kurangiza imirimo neza Mu guca urubanza Urukiko rwavuze ko ikirego cyatanzwe na IGIP MBH Ingénieurs-Conseils nta shingiro gifite ko ndetse umwenda yishyuza n'indishyi zinyuranye isaba itazihabwa ngo kuko nta bimenyetso bifatika yabashije gushyikiriza Urukiko.

IGIP mbH Ingénieurs-Conseils ntiyishimiye imikirize bityo ijuririra Urukiko Rukuru rw'Ubucuruzi, mu bujurire bwayo yavuzeko Urukiko rubanza rutahaye agaciro ibimenyetso rwashyikirijwe ndetse runasobanura nabi Itegeko rigenga amasoko ya Leta rusobanura amasezerano yakoranye na MININFRA. Urikiko Rukuru rw'Ubucuruzi rwaciye urubanza rwemeza ko ubujurire bwa IGIP mbH Ingénieurs-Conseils nta shingiro bufite, ruvuga ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

IGIP mbH Ingénieurs-Conseils yajuririye Urukiko rw'Ikirenga, ivuga ko Urukiko Rukuru rw'Ubucuruzi rutategetse ko yishyurwa umwenda ku mirimo yakoze itarishyuwe, kandi yarawutangiye ibimenyetso bigizwe n'inyemezabuguzi z'umwimerere zakiriwe na MININFRA, ikaba itarigeze izihakana cyangwa ngo ivuge ko imirimo itarangiye. Avuga ko raporo y'akazi yakozwe igashyikirizwa MININFRA ndetse ko kopi yayo yashyikirijwe Urukiko.

Uhagarariye Leta muri uru rubanza avuga ko iyi ngingo y'ubujurire nta shingiro ifite ngo kuko nkuko byakunze gusobanurwa ikibazo cy'ingenzi ari ukugaragaza ibimenyetso, nk'inyemezabuguzi zashyizweho umukono na "fonctionnaire dirigeant", ariko ko kugeza ubu uwo baburana atabigaragaza nubwo agerageza kwerekana ko Inkiko zitabiha agaciro nyamara ntacyo baba barugaragarije. Ibyuko imirimo y'umushinga yarangiye byo asobanura ko abayikoraga basabye ko haba réception provisoire, ariko muri réception technique yagombaga kuyibanziriza basanga hari byinshi bitakozwe, bituma hataba réception provisoire na réception définitive. Bityo rero bikaba bisobanuye neza ko akazi katarangiye.

IGIP mbH Ingénieurs-Conseils ivuga kandi ko Urukiko rwitiranyije ingwate itangwa mbere yo gutangira isoko itangwa nuwatsindiye isoko ndetse n' ingwate yo kurangiza imirimo neza (garantie de bonne fin des travaux). kuko iyi igenda ikatwa kuri buri fagitire ishyikirizwa urwego ruba

rwatanze isoko akaba rero ariyo bishyuza. Akomeza avuga ko kuba ESPINA itararangije imirimo yayo yose bitatuma idasubizwa 10% yagiye ikatwa ku nyemezabuguzi yagendaga ishyikiriza MININFRA.

Mu busobanuro bwe, uhagarariye Leta avuga ko ibyo IGIP mbH Ingénieurs-Conseils isaba nta shingiro bifite ngo kuko n'ubwo imirimo yakorwaga na ESPINA, IGIP mbH Ingénieurs-Conseils niyo yagombaga gukurikirana uko ikorwa kandi ikarangira neza, ibyaba bitagenda neza ikabigaragaza. Ni nayo mpamvu mu masezerano Leta yagiranye na IGIP mbH Ingénieurs-Conseils, hateganyijwemo ingwate yo kurangiza imirimo neza (garantie de bonne fin), isubizwa ari uko imirimo yakorwaga irangiye neza, ikakirwa. Kuba rero ESPINAyarataye imirimo itarangiye kandi IGIP mbH Ingénieurs-Conseils nta Raporo yigeze itangwa igaragaza imikorere idahwitse ya ESPINA kuburyo isoko ririnda riseswa imirimo itarangiye batahindukira ngo bavuge ko bo akazi bari bashinzwe bakarangije neza.

Incamake y'Icyemezo: Rwiyemezamirimo wahawe isoko ryo gukurikirana imirimo (Supervising works) ntiyakwitwaza ko igihe cyari kiri mu masezerano cyo gukora akazi cyarangiye ngo yake ingwate mu gihe atagaragaza imirimo yakozwe

Ubujurire nta shingiro bufite
Ingwate y'amagarama ihwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:
Itegeko N 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 75.
Itegeko N 12//2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta, ingingo ya 75 na 101.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rukomoka ku masezerano y'akazi (contrat de service) No 096/S/2006/IR/MINITERE/NTB yo ku wa 23/06/2006, Leta y'u Rwanda ihagarariwe na Minisiteri yari ifite amazi mu nshingano zayo (MINITERE) yagiranye na IGIP mbH Ingénieurs-Conseils, yiswe "Contrat de consultants pour prestations de services de validation des études d'exécution établies par l'Entreprise, contrôle et surveillance des travaux de renforcement d'AEP de la Ville de Kigali à partir de la nappe phréatique de la Nyabarongo". Ayo masezerano y'akazi yari afite agaciro ka 428.275 Euro na 31.700.000 Frw, kandi ako kazi kagomba gukorwa mu gihe cy'amezi 14, ariko icyo gihe kikaba cyaragiye cyongerwa. Incuro ya mbere, amasezerano yongerewe kuva ku wa 24/04/2008 kugeza ku wa 30/11/2008 (avenant Nº 1 au contrat Nº 096/S/2006/IR/MINITERE/NTB), yongera kongererwa igihe ku wa 24/12/2008 agomba kurangira ku wa 31/03/2009 (avenant Nº 2 au contrat Nº 096/S/2006/IR/MINITERE/NTB).

[2] IGIP mbH Ingénieurs-Conseils ivuga ko byageze ku wa 31/03/2009, ikomeza gukora kugeza ku wa 30/11/2009 ariko nta masezerano ahari. Ivuga ko nyuma y'aho Minisitiri w'Ubutabera akaba n'Intumwa Nkuru ya Leta agiriye inama MININFRA ko kugirango IGIP mbH Ingénieurs - Conseils izishyurwe imirimo yakoze hagati yo kuwa 31/03/2009 kugeza kuwa

30/11/2009, hagomba gukorwa amasezerano yanditse ajyanye n'imirimo yakozwe muri icyo gihe, ku wa 14/05/2010 IGIP mbH Ingénieurs - Conseils na MININFRA basinyanye amasezerano yiswe "contract of consultancy service for supervision of the works for the project to supply water to Kigali city from Nyabarongo ground water resources". Ayo masezerano akaba yari ay'igihe cy'amezi umunani (8) kuva ku wa 31/03/2009 kugeza ku wa 30/11/2009, akaba ari nayo aregerwa ko atubahirijwe.

[3] IGIP mbH Ingénieurs-Conseils yareze MININFRA mu Rukiko rw'ubucuruzi rwa Nyarugenge, ivuga ko yayikoreye inyemezabuguzi eshanu (5) zikurikira:

- N° 29A iriho 18.886,93 Euro, na N° 29B iriho 8.180.146 Frw, z'amafaranga atarishyuwe, zashyikirijwe MININFRA ku wa 17/04/2009;
- N° 30A iriho 83.889,20 Euro, na N° 30B iriho 5.276.600 Frw, zijyanye n'amafaranga yagiye akatwa ku nyemezabuguzi zishyuwe (garantie de bonne fin), zashyikirijwe MININFRA ku wa 22/01/2010;
- N° 31B yishyuza 2.874.458 Frw, yashyikirijwe MININFRA ku wa 20/01/2010. Inyemezabuguzi zose hamwe zihwanye na 102.786,13 Euro na 16.331.204 Frw. IGIP mbH Ingénieurs-Conseils ivuga ko MININFRA yanze kuzishyura kugeza ubu, ikaba isaba ko yazishyurwa hiyongereyeho inyungu z'uwo mwenda zibariwe kuri 18% ku mwaka kuva mu mwaka wa 2009 na 2010 kugeza igihe umwenda wose uzishyuririrwa, ndetse ikanishyurwa amafaranga y'ikurikiranarubanza angana na 2.000.000 Frw n'igihembo cy'avoka gihwanye na 7% y'umwenda wose wishyuzwa.

[4] Urwo Rukiko rwaciye urubanza RCOM 00307/2016/TC/NYGE, ku wa 29/07/2016, rwemeza ko ikirego cyatanzwe na IGIP mbH Ingénieurs-Conseils nta shingiro gifite, rwemeza ko umwenda wose n'indishyi zinyuranye isaba itazihabwa. Rwasobanuye ko urega nta bimenyetso bifatika yarugaragarije byerekana ko izo nyemezabuguzi zishyuzwa zaba zarakiriwe muri MININFRA ikirengagiza kuzishyura, bityo Urukiko rukaba ntaho rwahera ruyitegeka kwishyura amafaranga n'ama Euro yaregeye. Urwo Rukiko rwasobanuye ko IGIP MbH Ingénieurs-Conseils itigeze ishyikiriza Urukiko amasezerano yo ku wa 14/04/2009 yagiranye na MININFRA, ahubwo ko ayo yashyikirije Urukiko ari ayo ku wa 14/05/2010, kandi ikaba itarashoboye kugaragaza isano iri hagati y'ayo masezerano yombi, n'akwiye gushingirwaho ayo ariyo.

[5] IGIP mbH Ingénieurs-Conseils ntiyishimiye icyo cyemezo, ijuririra Urukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rubanza rwayirenganyije ku mpamvu ebyiri, aho rwemeje ko kongera amasezerano (avenant) byakozwe mu buryo budakurikije ingingo ya 74 y'Itegeko N° 12/2007 rigenga amasoko ya Leta, n'aho rwemeje ko nta bimenyetso bigaragaza ko umwimerere w'inyemezabuguzi yishyuza zashyikirijwe MININFRA. Isobanura ko Urukiko rutahuje ibikubiye mu masezerano y'inyongera n'ibyo Itegeko riteganya, kuko rivuga impinduka ibaye mu masezerano kandi akaba nta mpinduka yabaye ahubwo ko habayeho kongerera igihe amasezerano bikozwe n'Umunyamabanga Uhoraho wa MININFRA, ku busabe bwa IGIP mbH Ingénieurs-Conseils. Ivuga kandi ko ikindi kiregerwa ari ingwate yo kurangiza imirimo neza (garantie de bonne fin) ihwanye na 10%.

[6] MININFRA yireguye ivuga ko impamvu z'ubujurire nta shingiro zifite, kuko kuba IGIP mbH Ingénieurs-Conseils yemera ko amasezerano yongerewe igihe, ariko igahakana ko nta mpinduka zabayeho, yirengagiza ko guhindura igihe amasezerano azarangirira ari impinduka

zivugwa n'ingingo ya 74 yavuzwe haruguru. Naho ku birebana n'ingwate yo kurangiza imirimo neza (garantie de bonne fin) uwajuriye asaba, MININFRA ivuga ko atayihabwa kuko atagaragaza niba imirimo yararangiye.

[7] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00494/2016/CHC/HCC, ku wa 06/01/2017, rwemeza ko ubujurire bwa IGIP mbH Ingénieurs-Conseils nta shingiro bufite, rutegeka ko nta gihindutse ku mikirize y'urubanza rwajuririwe. Ku bijyanye no kumenya niba haragombaga kubaho amasezerano yihariye yo kongera igihe cy'amasezerano y'ibanze, Urukiko Rukuru rwakosoye ibyari byasobanuwe n'Urukiko rubanza, rugaragaza ko kuba icyahinduwe ari amatariki yo kurangirizaho imirimo biturutse ku busabe bwa rwiyemezamirimo, kandi urwego rwatanze isoko rukaba rwaramwandikiye rumwemerera ko yongerewe igihe asaba, bitagombaga andi masezerano yihariye kuko nta mpinduka yabaye, bityo ibyakozwe bikaba bitanyuranye n'ibiteganywa n'amategeko. Ku birebana n'ingwate yo kurangiza imirimo neza (garantie de bonne fin) ingana n'ama Euro 102.786,13 isabwa n'uwajuriye, Urukiko rwasanze nta shingiro byahabwa kuko usibye no kuba atabasha kurugaragariza ko iyo ngwate yatanzwe koko, atanagaragaje ibimenyetso by'uko imirimo yarangiye, ndetse ikanakirwa burundu nk'uko amategeko abiteganya.

[8] IGIP mbH Ingénieurs-Conseils yajuririye Urukiko rw'Ikirenga, inenga Urukiko Rukuru rw'Ubucuruzi kuba rwaremeje ko inyemezabuguzi zashyikirijwe MININFRA zidahagije kugirango zihamye umwenda iberewemo, ko hagomba ibimenyetso bigaragaza ko yatanze ingwate mbere yo gutangira isoko, kandi icyaregewe atari ingwate yo gutangira isoko ahubwo ari ukwishyurwa umwenda ujyanye n'imirimo yakozwe ntiyishyurwe, no gusubizwa amafaranga yagiye akatwa ku nyemezabuguzi nk'ingwate yo kurangiza imirimo neza.

[9] Mu myanzuro yo kwiregura ku bujurire bwa IGIP mbH Ingénieurs-Conseils, uburanira Leta y'u Rwanda (MININFRA) yatanze inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga, avuga ko agaciro k'ikiburanwa katageze kuri 50.000.000 Frw cyangwa se ngo muri urwo rubanza habe haragenwemo indishyi zingana na 50.000.000 Frw, kandi ko IGIP mbH Ingénieurs-Conseils yatsinzwe ku rwego rwa mbere n'urwa kabiri ku mpamvu imwe yo kubura ibimenyetso.

[10] Urukiko rwaburanishije kuri iyo nzitizi ku wa 13/06/2012, rufata icyemezo ku wa 20/04/2018, rwemeza ko nta shingiro ifite, rutegeka ko iburanisha rizasubukurwa ku wa 19/06/2018. Uwo munsi urubanza ntirwaburanishijwe bitewe n'impinduka z'amategeko, rwimurirwa ku wa 02/10/2018, ruburanishwa mu ruhame Me Ndagijimana Emmanuel ahagarariye IGIP mbH Ingénieurs-Conseils, naho Me Umwali Munyentwari Claire ahagarariye Leta y'u Rwanda (MININFRA), Urukiko rwemeza ko urubanza ruzasomwa ku wa 09/11/2018. Mu gihe Urukiko rwari mu mwiherero, Me Ndagijimana Emmanuel yohereje ibimenyetso bitagiweho impaka, bigizwe na « dispositions générales » na « conditions particulières du contrat », ndetse n'ibaruwa yitiriwe Umunyamabanga Uhoraho muri MININFRA yo ku wa 06/12/2009.

[11] Urukiko, rushingiye ku ngingo ya 75 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsi no ku ruhare ibimenyetso byatanzwe na Me Ndagijimana Emmanuel bishobora kugira ku mikirize y'urubanza, rwasanze ari ngombwa ko iburanisha ryongera gufungurwa kugirango ababuranyi bagire icyo babivugaho, rishyirwa ku wa 15/01/2019.

[12] Kuri iyo tariki, ababuranyi bose baritabye bajya impaka ku bimenyetso byatanzwe nyuma yo gupfundikira iburanisha. Nyuma yo kumva icyo buri ruhande ruvuga kuri ibyo bimenyetso, Urukiko rwafatiye icyemezo mu ntebe cy'uko mbere yo guca urubanza, ari ngombwa kubanza kubaza MININFRA ibijyanye n'ibaruwa yasinywe na Marie Claire Mukasani ku wa 06/12/2009 nk'Umunyamabanga Uhoraho, mu gihe Umunyamabanga Uhoraho yitwaga Mukasine Marie Claire, igasobanura niba ibaruwa ari iyayo hakaba harabaye kwibeshya. Urubanza rwimuriwe ku wa 19/03/2019, kuri uwo munsi iburanisha ribera mu ruhame, hasuzumwa igisubizo MININFRA yahaye Urukiko ivuga ko ibaruwa yo ku wa 06/12/2009 itanditwe n'uwari Umunyamabanga Uhoraho Mukasine Marie Claire, ko ahubwo ifite nimero y'indi baruwa yo ku wa 07/05/2009; hasuzumwa kandi n'ibindi bimenyetso Me Ndagijimana Emmanuel yari yatanze nyuma yo gupfundikira iburanisha. Iburanisha ntiryashojwe uwo munsi kubera ko Urukiko rwasanze ari ngombwa ko mbere y'uko urubanza rucibwa, hari ibigomba kubanza gusobanuka, rusaba Me Umwali Munyentwari Claire kujya gushaka amakuru yuzuye ku mushinga harimo n'impapuro zijyanye nawo.

[13] Urukiko rwasabye kandi Ubwanditsi gutumiza umukozi wo muri MININFRA warusobanurira ibi bikurikira:

- Imirimo yakozwe n'itarakozwe kuri uyu mushinga;
- Uburyo inyemezabuguzi zakirwaga n'uwazakiraga;
- Uburyo ingingo ya 6.4, iii ya conditions particulières yubahirijwe, niba ibivugwamo byarakozwe cyangwa bitarakozwe;
- Imirimo IGIP mbH Ingénieurs-Conseils ivuga ko yakoreye Surveillance ikarangiza mu gihe uhagarariye Leta avuga ko ESPINA yagenzurwaga itarangije imirimo;
- Kumenya niba réception provisoire na definitive byarakozwe, n'ibindi bisobanuro byaba ngombwa ku bijyanye n'umushinga.

Iburanisha ryimuriwe ku wa 09/04/2019, kuri uwo munsi ababuranyi bose baritaba, hitaba kandi Niwenshuti Emmanuel ushinzwe ubwubatsi muri MININFRA, YARAMBA Albert ushinzwe gukurikirana inyigo zo gukwirakwiza amazi muri WASAC, na Mwesigye Sam Umujyanama mu by'amategeko muri MININFRA.

[14] Niwenshuti Emmanuel yabwiye Urukiko ko imirimo y'umushinga itigeze irangira, ko abayikoraga basabye ko haba réception provisoire, ariko muri réception technique yagombaga kuyibanziriza basanga hari byinshi bitakozwe, bituma hataba réception provisoire na réception définitive. Yasobanuye ko uruhare rwa IGIP mbH Ingénieurs-Conseils rwari ukugenzura imigendekere myiza y'umushinga, harimo no kureba ibitarakozwe neza. Yavuze kandi ko, iyo IGIP mbH Ingénieurs-Conseils iza gukora rapport provisoire igaragaza uko imirimo ihagaze, ibyagenze neza n'ibyagenze nabi, yashoboraga gusubizwa 5% y'ingwate yo kurangiza neza imirimo, ariko ko bitakozwe.

[15] Ku bijyanye n'uko inyemezabuguzi zakirwaga n'uwazakiraga, Niwenshuti Emmanuel yabwiye Urukiko ko IGIP mbH Ingénieurs-Conseils yohererezaga MININFRA inyemezabuguzi iherekejwe na raporo y'imirimo, yamara kwakirwa igahabwa ingénieur ukurikirana imirimo, akagenzura ko ihuje n'ibisabwa, agatanga approbation ikabona kujya muri Finance kugirango yishyurwe.

[16] Ku bijyanye no kumenya uburyo ingingo ya 6.4, iii ya conditions particulières yubahirijwe, Yaramba Albert yasobanuriye Urukiko ko ingwate yo kurangiza imirimo neza yagombaga gusubizwa yari 10%, 5% agomba gusubizwa ari uko habaye „réception provisoire des travaux, andi 5% agasubizwa nyuma ya réception définitive Avuga ko imirimo itarangiye, ntihaba kuyakira, ntihagira na raporo zitangwa, bituma hataba no gusubiza ingwate yo kurangiza imirimo neza. Yasobanuye ko raporo z'ibyakozwe zatangwaga na IGIP mbH Ingénieurs-Conseils, kandi ko guzubiza ingwate yo kurangiza imirimo neza bitakorwaga kuri buri nyemezabuguzi, ahubwo byagombaga gukorwa ari uko hamaze kubaho réception provisoire na réception definitive

[17] Ibibazo by'ingenzi byagiweho impaka bigomba gusuzumwa muri uru rubanza, ni umwenda IGIP mbH Ingénieurs-Conseils ivuga ko iberewemo na MININFRA ku mirimo yakozwe ntiyishyurwe, n' amafaranga y'ingwate yo kurangiza imirimo neza ivuga ko yagiye ikatwa kuri buri nyemezabuguzi ntiyasubizwe.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

A. Kumenya niba hari amafaranga Leta y'u Rwanda (MININFRA) igomba kwishyura IGIP mbH Ingénieurs-Conseils y'umwenda w'imirimo ivuga ko yakoze ntiyishyurwe

[18] Me Ndagijimana Emmanuel ahagarariye IGIP mbH Ingénieurs- Conseils avuga ko impamvu yamujurije ari uko Urukiko Rukuru rw'Ubucuruzi rutategetse ko yishyurwa umwenda ku mirimo yakoze itarishyuwe, kandi yarawutangiye ibimenyetso bigizwe n'inyemezabuguzi z'umwimerere zakiriwe na MININFRA, ikaba itarigeze izihakana cyangwa ngo ivuge ko imirimo itarangiye. Asobanura ko amasezerano yasinywe mu mwaka wa 2006 n'ayasinywe mu 2010 ari amwe kandi ko yuzuzanya, ndetse ko ayo mu 2010 yasinywe nyuma y'uko Minisitiri w'ubutabera agiriye inama MININFRA ko kugira ngo imirimo yakozwe nta masezerano ibashe kwishyurwa, ari uko hasinywa andi masezerano arebana n'iyo mirimo, ko rero atari "avenant" ahubwo ari amasezerano yakozwe hongerwa igihe cy'imirimo (prolongation de délais).

[19] Avuga ko IGIP mbH Ingénieurs yakoze akazi yahawe ikakarangiza ndetse ikanongerwa akandi, ko nta kuntu yari kuba itararangije akazi ka mbere ngo yongere ihabwe akandi. Avuga ko amasezerano yose IGIP mbH Ingénieurs-Conseils yahawe yayubahirije, ko kandi n'ibikorwa byakozwe bihari. Avuga ko raporo y'akazi yakozwe ndetse ikaba yaranashyikirijwe Urukiko, ko kandi Itegeko ryateganyaga ko iyo raporo itanzwe hagashira iminsi 60 ntacyo iravugwaho, bifatwa ko yemewe. Ku kibazo cyo kumenya niba hari raporo zakorwaga na IGIP mbH Ingénieurs-Conseils mbere yo kwishyuza, Me Ndagijimana Emmanuel avuga ko zakorwaga zikemezwa n'abakozi bakurikiranaga imirimo ba ELECTROGAZ cyangwa PNEAR (Programme National d'Alimentation en eau potable), ikimenyetso akaba ari nk'inyemezabuguzi ya mbere n'iya kabiri zishyuwe hamaze koherezwa raporo.

[20] Me Ndagijimana Emmanuel avuga ko ubuhamya bwatanzwe n'Abakozi ba MININFRA na WASAC budakwiye guhabwa agaciro kubera ko nabo bari mu bagize uruhare kugira ngo urubanza rube ruri mu Rukiko, ko iyo bakora ibyo bagombaga gukora, ikibazo kiba cyararangiye. Avuga ko Uwitwa Niwenshuti Emmanuel ariwe wasinye ku nyemezabuguzi nº 29B iri mu ziburanwa

[21] Me Umwali Munyantwari Claire avuga ko ikibazo cy'ingenzi kiri muri uru rubanza ari ukugaragaza ibimenyetso, nk'inyemezabuguzi yashyizweho umukono na "fonctionnaire

dirigeant", ariko ko kugeza ubu uwo baburana atabigaragaza. Akomeza avuga ko mu guca uru rubanza hagomba kurebwa ingingo ya 101 y'Itegeko Nº 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta, ko kandi inyemezabuguzi IGIP mbH Ingénieurs-Conseils yishyuza ziteye urujijo kuko uwazakiriye atagaragara, uretse kuba handitseho Ir Bosco, zikaba rero zidashobora gufatwa nk'ikimenyetso cy'umwenda Leta iyifitiye.

[22] Ku nyemezabuguzi 29A ya 18.886,93 Euro na 29B ya 8.180.146 Frw, Intumwa ya Leta ivuga ko zakozwe mu kwa 03/2009 zikakirwa na MININFRA ku wa 30/04/2009, zikaba zishingiye ku masezerano yarangiye ku wa 31/03/2009, kandi ikirego IGIP mbH Ingénieurs-Conseils yatanze igishingira ku masezerano yo ku wa 14/05/2010 yagombaga gutangira ku wa 01/04/2009. Bityo, ibyo IGIP mbH Ingénieurs-Conseils isaba, uretse no kuba nta bimenyetso ibigaragariza, biri hanze y'amasezerano yashingiyeho itanga ikirego.

[23] Me Umwali Munyentwari Claire avuga ko IGIP mbH Ingénieurs-Conseils itigeze itanga raporo igaragaza imirimo yakoze, ko kandi inyemezabuguzi bavuga yasinyweho na Niwenshuti Emmanuel atari ikimenyetso, kuko yanditseho mu magambo y'igifaransa pour vérification bivuze ko wenda nyuma yo kugenzura basanze itujuje ibyangombwa harimo no kuba itari iherekejwe na raporo.

UKO URUKIKO RUBIBONA

[24] Amafaranga IGIP mbH Ingénieurs-Conseils yishyuza ku mirimo ivuga ko yakozwe ntiyishyurwe, ni 18.886,93 Euro ari mu nyemezabuguzi 29A, na 8.180.146 Frw ari mu nyemezabuguzi 29B. Izo nyemezabuguzi bigaragara ko zakozwe ku wa 17/04/2009, hishyuzwa imirimo yakozwe mu kwezi kwa 3/2009. Hari kandi 2.874.458 Frw, ari mu nyemezabuguzi 31B, bigaragara ko yakozwe ku wa 25/11/2010, ijyanye n'imirimo ivugwa ko yakozwe kuva mu kwezi kwa 4 kugeza mu kwa 11/ 2009. Bigaragara ko imirimo ivugwa ko yakozwe mu kwezi kwa 3/2009, ishingiye kuri « avenant » No 2 yongeraga amasezerano No 096/S/2006/IR/MINITERE/NTB kuva ku wa 24/12/2008 kugeza ku wa 31/03/2009; naho imirimo ivugwa ko yakozwe kuva mu kwezi kwa 4 kugeza mu kwa 11/ 2009, ikaba ishingiye ku masezerano No 334/UPPR/010 yasinywe ku wa 14/05/2010 agomba gukurikizwa kuva ku wa 01/04/2009 kugeza ku wa 30/11/2009.

[25] Amasezerano No 096/S/2006/IR/MINITERE/NTB yo ku wa 23/11/2006, afite inyandiko ziyaherekeje nazo zigize amasezerano, arizo les conditions générales du contrat, les conditions particulières du contrat, n'imigereka ». Ibikubiye muri izi nyandiko byagombaga gukurikizwa no ku bijyanye n'amasezerano yo ku wa 14/05/2010, hashingiwe ku ngingo yayo ya 2 iteganya ko uhawe imirimo azayikora hakurikijwe ibiteganyijwe mu masezerano abanza arebana n'umushinga wo gutanga amazi mu Mujyi wa Kigali aturutse mu mugezi wa Nyabarongo .

[26] Ingingo ya 6.4 ya conditions générales du contrat, iteganya ko kwishyura bizajya bikorwa ari uko ibiteganyijwe muri « conditions particulières » birebana n'ubwo bwishyu byubahirijwe, kandi uwahawe imirimo (consultant) yatanze inyemezabuguzi igaragaza amafaranga yishyurwa . Ingingo ya 6.4, iii ya conditions particulières niyo igaragaza ibigomba kubahirizwa kugirango imirimo yishyurwe, ikaba iteganya ko hazajya hishyurwa buri kwezi 7% y'igiciro cyose mu byiciro 13, hamaze gutangwa raporo ya buri kwezi, kandi yamaze kwemezwa, hakishyurwa n'inyemezabuguzi imwe (1) ya nyuma hamaze gutangwa raporo ya nyuma y'imirimo .

[27] Ingingo ya 101 y'Itegeko No 12//2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta iteganya ko kwishyura bikorwa iyo uwegukanye isoko yatanze inyemezabuguzi yerekana umubare w'amafaranga yishyuza; iyo nyemezabuguzi ikaba yemezwa kandi igashyirwaho umukono n'umukozi ushinzwe igenzura ry'ishyirwa mu bikorwa ry'amasezerano (fonctionnaire dirigeant).

[28] Ibiteganywa n'ingingo ya 101 y'Itegeko rigenga amasoko ya leta rimaze kuvugwa, bihujwe n'ibiteganywa n'ingingo ya 6.4 ya conditions générales na 6.4, iii ya conditions particulières byumvikanisha ko kugirango uwahawe isoko yishyurwe imirimo yakoze, hagomba kuba hari raporo igaragaza ibyakozwe kandi yemejwe, n'inyemezabuguzi yemejwe kandi igashyirwaho umukono n'umukozi ubishinzwe ariwe fonctionnaire dirigeant.

[29] Ku bijyanye n'inyemezabuguzi 29A, 29B na 31B IGIP mbH Ingénieurs-Conseils ivuga ko zitishyuwe, nta raporo y'imirimo yakozwe ijyanye nazo kandi yemejwe (approuvé), nta n'inyemezabuguzi yemejwe kandi igashyirwaho umukono n'umukozi ushinzwe igenzura ry'ishyirwa mu bikorwa ry'amasezerano (fonctionnaire dirigeant), byigeze bigaragarizwa Urukiko. Ku nyemezabuguzi 29A na 29B hagaragaraho ko zohererejwe Ir J. Bosco /ELECTROGAZ « pour vérification », naho ku nyemezabuguzi 31B hakagaragaraho kashe « pour réception MININFRA », ibi bikaba ntaho bihuriye n'ibisabwa kugirango inyemezabuguzi yishyurwe nk'uko byasobanuwe haruguru, ni ukuvuga raporo yemejwe (approuvé) y'imirimo yakozwe, n'inyemezabuguzi yemejwe kandi yashyizweho umukono n'umukozi ubishinzwe. Ibyo uhagarariye IGIP mbH Ingénieurs-Conseils avuga ko raporo zisabwa zakorwaga, ntibihagije mu gihe atazigaragariza Urukiko, kandi niwe ugomba kugaragaza ibimenyetso by'ibyo aregera hashingiwe ku biteganywa mu gika cya mbere cy'ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[30] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ibisabwa n'Itegeko rigenga amasoko ya Leta kimwe n'inyandiko zigize amasezerano impande zombi zashyizeho umukono, kugirango uwahawe imirimo yishyurwe, atarabyubahirije rukaba rero ntaho rwahera rwemeza ko hari amafaranga Leta y'u Rwanda (MININFRA) igomba kwishyura IGIP mbH Ingénieurs-Conseils y'umwenda w'imirimo ivuga ko yakoze ntiyishyurwe.

B. Kumenya niba hari amafaranga Leta y'u Rwanda (MININFRA) igomba gusubiza IGIP mbH Ingénieurs-Conseils ajyanye n'ingwate yo kurangiza imirimo neza

[31] Me Ndagijimana Emmanuel ahagarariye IGIP mbH Ingénieurs-Conseils avuga ko Urukiko Rukuru rw'Ubucuruzi rwitiranyije ingwate yo kurangiza isoko neza iteganywa n'ingingo ya 75 n'izikurikira z'Itegeko Nº 12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta, n' ingwate yo kurangiza imirimo neza (garantie de bonne fin des travaux) ingana na 10% yagiye ikatwa kuri buri nyemezabuguzi yishyuwe, yagombaga gusubizwa ari uko imirimo irangiye. Avuga ko ingwate yo kurangiza isoko neza iteganyijwe mu ngingo ya 75 yavuzwe haruguru, itangwa n'uwegukanye isoko mbere yo gusinya amasezerano, ikaba itandukanye n'ingwate IGIP mbH Ingénieurs-Conseils yaregeye gusubizwa, kandi ko bene iyo ngwate idatangwa ku birebana n'amasoko ya serivisi y'impuguke nk'iryo IGIP mbH Ingénieurs-Conseils yatsindiye.

[32] Akomeza avuga ko ingwate yo kurangiza imirimo neza iteganyijwe mu masezerano bagiranye mu gice cya "conditions particulières", ingingo ya 6.4, iii; na raporo zivugwamo zikaba zarakorwaga zikemezwa n'abakozi ba Electrogaz cyangwa ba PNAER (Programme National d'Alimentation en Eau Potable umushinga wari muri MINITERE) bakurikiranaga imirimo. Avuga ko imirimo yose yarangiye nk'uko bigaragazwa n'icyemezo cyatanzwe na MININFRA ku wa 06/12/2009 kikakirwa ku wa 17/01/2010, kigaragaza akazi kakozwe n'igihe kamaze, kuba kitaratanzwe mu nkiko zibanza bikaba byaratewe n'uko kitigeze kibazwa kandi kikaba kitari cyakabonetse. Avuga kandi ko n'inyemezabuguzi zose zishyuwe (kuva ku ya 1 kugeza ku ya 28) nk'uko bigaragazwa na "transferts" zakozwe kuri konti ya IGIP mbH Ingénieurs-Conseils mu Budage no muri BK Ltd, hakaba harasigaye 10% ya "retenue de garantie de bonne fin" ariyo yishyuzwa mu nyemezabuguzi ya 30A na 30B.

[33] Urukiko rwabajije Me Ndagijimana Emmanuel niba uwo aburanira afite raporo y'agateganyo (rapport provisoire) na raporo ya nyuma (rapport définitif) z'imirimo zemejwe na „fonctionnaire dirigeant, avuga ko nta raporo y'agateganyo ihari kuko ntayari iteganyijwe mu masezerano, ko hari raporo y'isozwa ry'imirimo ariko idasinye, hakaba hari n'inyemezabuguzi 30B yakiriwe na MININFRA igaragaza ibyagiye bikorwa byose. Avuga ko raporo idasinye ayifata nk'intangiriro y'ikimenyetso kuko yunganirwa no kuba imirimo yarakozwe kandi ikaba yaranishyuwe hagasigara gusa 10% y'ingwate yo kurangiza imirimo neza yagiye ikatwa. Ku bijyanye n'ibaruwa yo ku wa 06/12/2009 MININFRA yagaragaje ko itanditswe n'uwari Umunyamabanga uhoraho wayo, yavuze ko uwo yunganira aretse kuyikoresha nk'ikimenyetso, ko ahubwo byatumye bamenya ibaruwa yo ku wa 07/05/2009 igaragaza ko imirimo yakozwe.

[34] Me Ndagijimana Emmanuel avuga ko kuba ESPINA itararangije imirimo yayo yose bitatuma idasubizwa 10% yagiye ikatwa ku nyemezabuguzi zakiriwe na MININFRA, zikagenzurwa, IGIP mbH Ingénieurs-Conseils ikishyurwa. Avuga ko imirimo yagendaga ikorwa mu bice binyuranye, kandi uko buri gice kirangiye IGIP mbH Ingénieurs-Conseils igatanga inyemezabuguzi ikishyurwa, hagasigara 10% y'ingwate yo kurangiza imirimo neza, akaba ariyo yishyuza kuko imirimo yarangiye kandi ikanagenzurwa na MININFRA. Avuga ko amafaranga yagiye akatwa yagombye gusubizwa ku mirimo yakozwe neza ikemerwa.

[35] Me Umwali Munyentwari Claire Uhagarariye Leta y'u Rwanda avuga ko IGIP mbH Ingénieurs-Conseils itabasha kugaragaza ibimenyetso by'ibyo iregera, kuko kugirango isubizwe amafaranga iregera, yagombye kugaragaza inyemezabuguzi yakiriwe kandi ikemezwa (réception et approbation) na fonctionnaire dirigeant, hakagaragazwa na raporo z'uko imirimo yakiriwe, ni ukuvuga raporo y'agateganyo (rapport provisoire) na raporo ya nyuma (rapport définitif), nk'uko biteganyijwe mu masezerano, bikanateganywa n'ingingo ya 101 y'Itegeko rigenga amasoko ryo mu 2007. Intumwa ya Leta ivuga ko amasezerano ateganya ko IGIP mbH Ingénieurs-Conseils izasubizwa 5% kuri réception provisoire na 5% kuri réception définitive, ariko ikaba itagaragaza ko habayeho n'imwe muri izo.

[36] Ku bivugwa na IGIP mbH Ingénieurs-Conseils ko nta raporo y'agateganyo yo kwakira imirimo yari iteganyijwe, Me Umwali Munyentwari Claire avuga ko nta mwihariko uwo mushinga wari ufite, iyo raporo ikaba yaragombaga gukorwa. Avuga kandi ko, kuba MININFRA yaramenyesheje Urukiko ko ibaruwa yo ku wa 06/12/2009 itanditswe na Mukasine Marie Claire wari umunyamabanga Uhoraho muri iyo Minisiteri, ko ahubwo ifite nimero y'indi baruwa yo ku wa 07/05/2009, byagombye kuba ikimenyetso cy'uko IGIP mbH Ingénieurs-Conseils ifite

„intention yo kubeshya Urukiko kandi ko ikoresha uburiganya. Avuga ko ibaruwa yo ku wa 07/05/2009 idakwiye gufatwa nk'ikimenyetso kubera ko yandikiwe ESPINA igifite amasezerano, ikaba rero ntaho ihuriye na IGIP mbH Ingénieurs-Conseils.

UKO URUKIKO RUBIBONA

[37] Amafaranga IGIP mbH Ingénieurs-Conseils yishyuza ni 83.889,20 Euro na 5.276.600 Frw, agaragara ku nyemezabuguzi No 30A na 30 B, ajyanye n'ingwate yo kurangiza imirimo neza (garantie de bonne fin) yaba yarakaswe ku nyemezabuguzi kuva kuri No 01 kugeza kuri No 28. Iyi ngwate yari iteganyijwe mu nyandiko ya « conditions particulières », nayo ikaba ari kimwe mu bigize amazezerano impande zombi zagiranye nk'uko byasobanuwe haruguru, ikaba itandukanye n'ingwate yo kurangiza isoko neza byitiranyijwe n'Urukiko Rukuru rw'Ubucuruzi.

[38] Ingingo ya 6.4, iii ya « conditions particulières » iteganya ko kuri buri nyemezabuguzi hazajya hakurwaho 10% y'ingwate yo kurangiza imirimo neza, 5% agasubizwa habayeho kwakira imirimo by'agateganyo, andi 5% agasubizwa nyuma yo kwakira imirimo burundu. Nta nyandiko n'imwe iri muri dosiye cyangwa yashyikirijwe Urukiko, igaragaza ko habaye kwakira imirimo by'agateganyo, cyangwa ko habaye kwakira imirimo burundu. Urukiko rwashyikirijwe ahubwo n'Intumwa ya Leta, amabaruwa yo ku wa 04/09/2009 no ku wa 12/10/2009 yanditswe na MININFRA, agaragaza ko amasezerano y'uwakoraga imirimo yasheshwe itakiriwe. IGIP mbH Ingénieurs-Conseils nk'urwego rwari rushinzwe gukurikirana imirimo, nta raporo ivuga yaba yarakoze isobanura impamvu kwakira imirimo bitabayeho.

[39] Urukiko rurasanga raporo isoza imirimo IGIP mbH Ingénieurs-Conseils iburanisha ivuga ko yarangije akazi yagombaga gukora kandi neza, nayo ubwayo yemera ko idasinye, ikaba rero itashingirwaho hemezwa ko habaye kwakira imirimo nk'uko bisabwa mu ngingo ya 6.4, iii yavuzwe haruguru. Ibaruwa yo ku wa 06/12/2009 yari yatanzwe na IGIP mbH Ingénieurs Conseils nk'ikimenyetso ko yarangije imirimo neza, n'ubwo itashoboraga gusimbura raporo z'iyakira ry'imirimo, byagaragaye ko ari impimbano, IGIP mbH Ingénieurs-Conseils ivuga ko itakiyikoresheje nk'ikimenyetso. Urukiko rurasanga kandi, ibyo IGIP mbH Ingénieurs-Conseils yaburanishije ivuga ko kuba ESPINA yari ishinzwe gukora imirimo itarayirangije bitagomba kubangamira ko isubizwa ingwate yo kurangiza imirimo neza, nta shingiro byahabwa kuko n'ubwo imirimo yakorwaga na ESPINA, IGIP mbH Ingénieurs-Conseils niyo yagombaga gukurikirana ko ikorwa neza kandi ikarangira neza, ibyaba bitagenda neza ikabigaragaza. Ni nayo mpamvu mu masezerano Leta yagiranye na IGIP mbH Ingénieurs-Conseils, hateganyijwemo ingwate yo kurangiza imirimo neza (garantie de bonne fin), isubizwa ari uko imirimo yakorwaga irangiye neza, ikakirwa nk'uko ingingo ya 6.4, iii y'ayo masezerano ibiteganya.

[40] Urukiko rurasanga, nta kimenyetso na kimwe IGIP mbH Ingénieurs-Conseils itanga, kigaragaza ko ibisabwa n'ingingo ya 6.4, iii yavuzwe haruguru byubahirijwe, kugirango ishobore gusubizwa amafaranga y'ingwate yo kurangiza imirimo neza. Urukiko rukaba rusanga rero, ntacyo rwashingiraho rutegeka Leta y'u Rwanda (MININFRA) gusubiza IGIP mbH Ingénieurs-Conseils amafaranga ajyanye n'ingwate yo kurangiza imirimo neza yaba yaragiye ikatwa.

[41] Ku bijyanye n'inyungu zibariye kuri 18% by'umwenda wishyuzwaga, Urukiko rurasanga zitakwiririrwa zisuzumwa, mu gihe umwenda zari zishingiyeho utariho. Urukiko rurasanga kandi

n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka yasabwaga na IGIP mbH Ingénieurs-Conseils atatangwa kuko ntacyo itsindira mu rubanza.

III. ICYEMEZO CY'URUKIKO

[42] Rwemeje ko ubujurire bwa IGIP mbH Ingénieurs-Conseils nta shingiro bufite

[43] Rwemeje ko imikirize y'urubanza RCOMA 00494/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/01/2017, idahindutse;

[44] Rutegetse ko ingwate y'amagarama yatanzwe na IGIP mbH Ingénieurs-Conseils ihwanye n'ibyakozwe mu rubanza.