

## AKARERE KA GATSIBO v. V.CO LTD

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RCOM 00007/2022/SC (Mukamulisa, P.J., Muhumuza na Karimunda, J.) 26 Gicurasi 2023]

*Amasezerano – Amasezerano y'inyongera – Amasezerano y'inyongera afatwa nk' amasezerano mashya ajyanye n'igihe imirimo mishya igomba kumara – Imirimo yinyongera yakozwe nyuma y'amasezerano ya mbere igomba kwishyurwa kuko ifatwa nk amasezerano mashya atandukanye n' ayakozwe mbere – Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 65.*

*Amasezerano – Kwishyura igihembo ku masezerano y'inyongera ntibyafatwa nko guhindura igiciro cyemeranyijwe mu masezerano – Uwatanze isoko ntiyakwanga kuzuza inshingano zo kwishyura inyemezabwishyu zatanzwe na rwiyemezamirimo ku mirimo y'inyongera yakozwe avuga ko ibyo bifatwa nko kongera igiciro cyatanzwe muri financial submission.*

**Incamake y ikibazo:** Uru rubanza rukomoka ku masezerano Sosiyete yitwa V.CO Ltd yagiranye n'Akarere ka Gatsibo yo gukurikirana no kugenzura imirimo yo kubaka Agakiriro ka Kabarore yagombaga gukorwa na company yitwa ECOTRAP. V.CO Ltd.

ECOTRAP. V.CO Ltd ivuga yokoze indi mirimo yinyongera bisabwe n akarere, ariko kanga kuyishyura bituma itanga ikirego mu Rukiko rw'Ubucuruzi, isaba ko yishyurwa amafaranga 28.068.133 iyo Sosiyete ivuga ko yakoreye mu gihe cy'amezi 15 n'iminsi 26 kiyongere ku mezi 24 yari ateganyijwe mu masezerano, inasaba kwishyurwa izindi ndishyi zinyuranye.

Urukiko rw'Ubucuruzi rwasanze ingingo ya 9 y'amasezerano V.CO Ltd yakoranye n'Akarere yarateganyaga ko igiciro cy'ayo masezerano kizwi kandi kidashobora kongerwa n'ubwo igihe amasezerano yazamara cyaba kiyongereye, bityo ibyo isaba kwishyurwa igihe cy'inyongera ntaho biteganyijwe mu masezerano, maze ruyitegeka kwishyura Akarere ka Gatsibo indishyi z'ibyakozwe ku rubanza.

Sosiyete V.CO Ltd ntiyishimiye imikirize y'urubanza maze ijuririra mu Rukiko Rukuru rw'Ubucuruzi isaba gusuzuma niba kwishyura igihembo ku masezerano y'inyongera ari uguhindura igiciro cyemeranyijwe mu masezerano.

Urukiko Rukuru rw'Ubucuruzi rwasanze igiciro kivugwa mu masezerano kitarahinduwe ahubwo icyahinduwe ari igihe imirimo yakozwemo kuko yiyongereye, maze rutegeka Akarere ka Gatsibo kwishyura V.CO Ltd ikiguzi cy'imirimo yakoze mu gihe kiyongereye ku cyari giteganyijwe mu masezerano.

Akarere ka Gatsibo kasabye ko urwo rubanza rusubirwamo ku mpamvu z'akarengane kavuga ko akarengane gashingiye ku kuba Akarere karategetswe kwishyura 28.068.133 Frw yiyongera kuri 42.456.000 Frw yumvikanweho mu masezerano, kandi V.CO Ltd yaramaze kwishyurwa, bityo ko ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso rwashyikirijwe ndetse n'amategeko ajyanye n'ikiburanwa.

Sosiyete V.CO Ltd yiregura ivuga ko amasezerano yo gukurikirana imirimo yo kubaka agakiriro ka Kabarore yari kumara amezi 24, guhera ku wa 16/02/2015 kugeza ku wa 16/02/2017 ku giciro cya 42.456.000Frw, ko ntaho ateganya ko igiciro ari *forfaitaire/lumpsum*, avuga ko nyuma y'uko ECOTRAP inaniwe kubaka, isoko ryahawe *Reserve Force*, imirimo yagombaga gukorwa n'ibikoresho by'ubwubatsi birahinduka, n'igihe isoko ryari kumara kiriyongera, ibi bihita bigira ingaruka ku masezerano V.CO Ltd yakoranye n'Akarere ka Gatsibo.

**Incamate y icyemezo:** 1. Amasezerano y'inyongera afatwa nk' amasezerano mashya ajoyanye n'igihe imirimo mishya igomba kumara. Imirimo yinyongera yakozwe nyuma y'amasezerano ya mbere igomba kwishyurwa kuko ifatwa nk' amasezerano mashya atandukanye n'ayakozwe mbere.

2. Uwatanze isoko ntiyakwanga kuzuza inshingano zo kwishyura inyemezabwishyu zatanzwe na rwiyemezamirimo ku mirimo y'inyongera yakozwe avuga ko ibyo bifatwa nko kongera igiciro cyatanzwe muri *financial submission*.

**Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane urubanza nta shingiro gifite;  
Amagarama y' urubanza aherereye ku wa rezwe.**

**Amategeko yashingiweho:**

Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, ingingo ya 65.

**Nta manza zifashishijwe.**

## **Urubanza**

### **0. INCAMAKE Y'URUBANZA**

Uru rubanza rukomoka ku masezerano Sosiyete yitwa V.CO Ltd yagiranye n'Akarere ka Gatsibo yo gukurikirana no kugenzura imirimo yo kubaka Agakiriro ka Kabarore yagombaga gukorwa na company yitwa ECOTRAP. V.CO Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi, isaba ko Akarere ka Gatsibo kayishyura amafaranga 28.068.133 iyo Sosiyete ivuga ko yakoreye mu gihe cy'amezi 15 n'iminsi 26 kiyongere ku mezi 24 yari ateganyijwe mu masezerano, inasaba kwishyurwa izindi ndishyi zinyuranye.

Urukiko rw'Ubucuruzi rwasanze ingingo ya 9 y'amasezerano V.CO Ltd yakoranye n'Akarere yarateganyaga ko igiciro cy'ayo masezerano kizwi kandi kidashobora kongerwa n'ubwo igihe amasezerano yazamara cyaba kiyongereye, ko ibyo V.CO Ltd isaba byo kwishyurwa igihe cy'inyongera ntaho biteganyijwe mu masezerano, rutegeka V.CO Ltd kwishyura Akarere ka Gatsibo indishyi za 600.000 Frw z'ibyakoze ku rubanza. Ibi byatumye V.CO Ltd ijuririra Urukiko Rukuru rw'Ubucuruzi isaba gusuzuma niba kwishyura igihembo ku masezerano y'inyongera ari uguhindura igiciro cyemeranyijwe mu masezerano.

Urukiko Rukuru rw'Ubucuruzi rwasanze igiciro kivugwa mu masezerano kitarahinduwe ahubwo icyahinduwe ari igihe imirimo yakozwemo kuko yiyongereye, naho igiciro kikaba cyaragumye kuba icyatanzwe muri financial submission proposal kikanemerwa n'Akarere ka Gatsibo igihe kagishyiraga mu masezerano kagaragaza amafaranga azishyurwa ku mirimo ahuye n'ayatanzwe na rwiyezamirimo muri iyo financial submission proposal; rutegeka Akarere ka Gatsibo kwishyura V.CO Ltd ikiguzi cy'imirimo yakoze mu gihe kiyongereye ku cyari giteganyijwe mu masezerano. Akarere ka Gatsibo kasabye ko urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Uru Rukiko rwasanze kuvuga ko imirimo yose y'inyongera yakozwe na V.CO Ltd nyuma y'amezi 24 ikubiye mu biteganywa n'ingingo ya 9 y'amasezerano cyangwa muri Terms of Reference byaba binyuranyije n'ibyo impande zombi zumvikanye kubera ko:

i. Igihe cy'amasezerano nticyarenga amezi 24 ngo igiciro cy'amasezerano kigume ari cya kindi, keretse harabayeho ihagarikwa ry'imirimo ryatumye igihe kiyongera; bitabaye ibyo, byaba bivuze ko iyo ngingo yanditswe mu nyungu z'Akarere ka *Gatsibo gusa nyamara iri mu masezerano magirirane y'inyungu (contrat synallagmatique à titre onéreux)*;

ii. Igihe cy'amasezerano kiramutse kirenze, ikiguzi cyumvikanweho ntigihuzwe n'igihe cy'inyongera, byatera uruhande rwatanze isoko kwikungahaza nta mpamvu;

iii. Igihe cy'amasezerano kiramutse kirenze icyumvikanweho, igiciro kikaguma uko kiri byaba bivuze ko amasezerano yasinywe Akarere ka Gatsibo gateganya ko rwiyezamirimo wahawe isoko ry'ibanze atazarisoza mu gihe cyumvikanyweho, ibyo kandi byaba binyuranyije n'amategeko kuko iyo ngingo yaba irimo uburyarya (bad faith) nyamara abakoranye amasezerano bafite inshingano zo kuyashyira mu bikorwa nta buryarya (in good faith).

iv. Urukiko rwanzuye ko ku bijyanye n'ihame ry'uko V.CO Ltd igomba kwishyurwa imirimo y'inyongera yakoze, ntacyo Urukiko Rukuru rw'Ubucuruzi rwirengagije, rutegeka Akarere ka Gatsibo kwishyura V.CO Ltd amafaranga y'iyi mirimo.

## I. IMITERERE Y'URUBANZA

[1] Ku wa 16/02/2015, Sosiyete yitwa V.CO Ltd yakoranye amasezerano N° 012/GAT/INFRA/14-15 n'Akarere ka Gatsibo yo gukurikirana no kugenzura imirimo yo kubaka Agakiriro ka Kabarore yagombaga gukorwa na *company* yitwa ECOTRAP. Imirimo yari ikubiye mu masezerano N° 009/GAT/INFRA/14-15 yo ku wa 23/03/2015 Akarere kari gafitanye na ECOTRAP.

[2] V.CO Ltd yagombaga gukora iyo mirimo y'ubugenzuzi mu gihe kingana n'amezi 24 ku mafaranga 42.456.000, ikaba yaragombaga kuyirangiza ku wa 16/02/2017. ECOTRAP yatangiye kubaka na V.CO Ltd ikora ubugenzuzi, ariko ECOTRAP yaje kunanirwa imirimo biba ngombwa ko Akarere gahindura rwiyezamirimo, gakorana amasezerano mashya na *Reserve Force* iba ari yo ikomeza imirimo yo kubaka Agakiriro ka Kabarore.

[3] V.CO Ltd yatanze ikirego mu Rukiko rw'Ubucuruzi isaba ko Akarere ka Gatsibo kahatirwa kuyishyura amafaranga y'amezi 15 n'iminsi 26 yiyongereye ku gihe cyari giteganyijwe mu

masezerano. Isobanura ko mu masezerano Akarere kakoranye na *Reserve Force* habayemo impinduka ku birebana n'ibikoresho ndetse n'igihe imirimo yamaze, bityo bigira ingaruka ku masezerano V.CO Ltd nayo yari ifitanye n'Akarere ka Gatsibo kuko ibyagenzurwaga byari bihindutse, haba ku ngano ndetse no ku gihe bigomba gukorerwamo. Ivuga ko ubugenzuzi V.CO Ltd yagombaga gukora mu gihe cy'amezi 24 byabaye ngombwa ko ibukora mu gihe cy'amezi 39 n'iminsi 26 kubera ihinduka rya ba rwiyemezamirimo bagombaga gukorerwa ubugenzuzi, no ku birebana n'imirimo yagombaga gukorwa; ko amezi 24 y'ubugenzuzi arangiye Akarere kasabye V.CO Ltd gukomeza imirimo kakayimenyesha mu bihe bitatu bitandukanye, ko ku masezerano bagiranye hongereweho igihe.

[4] V.CO Ltd ivuga ko yishyuje imirimo y'inyongera (ni ukuvuga amafaranga y'amezi 15 n'iminsi 26 yiyongereye ku gihe cyari giteganyijwe mu masezerano bitayiturutseho) ariko Akarere kanga kuyishyura. V.CO Ltd yasabye Urukiko rw'Ubucuruzi guhatira Akarere ka Gatsibo kwishyura amafaranga angana na 28.068.133 yo mu gihe cy'amezi 15 n'iminsi 26 abariwe kuri 1.769.000 Frw buri kwezi no kwishyura izindi ndishyi zitandukanye zirimo igihombo byamuteye.

[5] Akarere ka Gatsibo kireguye kemera ko ku wa 16/02/2015, kagiranye amasezerano N° 012/GAT/INFRA/14-15 na V.CO Ltd yari yerekeranye no kugenzura ibikorwa by'ubwubatsi bw'Agakiriro mu Murenge wa Kabarore yagombaga kumara amezi makumyabiri n'ane (24) kuko yagombaga kurangira ku wa 16/02/2017, impande zombi zikaba zaremeranyijwe ku giciro cy'ayo masezerano kingana na 42.456.000 Frw. Kavuga ko kubera ko uwatsindiye isoko atubahirije ingengabihe yari mu masezerano, byabaye ngombwa ko V.CO Ltd yongererwa igihe kugira ngo irangize imirimo ijyanye n'isoko yatsindiye, ayo masezerano akaba yarongerewe mu bihe bitatu kandi V.CO Ltd ikaba yarabimenyeshejwe binyuze mu mabaruruwa atandukanye, Akarere kandi kayimenyesheje ko usibye igihe cyongerewe, izindi ngingo z'amasezerano zitahindutse. Akarere kavuga ko katunguwe no kumva V.CO Ltd yishyura andi mafaranga angana na 28.068.133 ivuga ko akomoka ku mirimo yakozwe mu gihe cy'inyongera nyamara mu masezerano impande zombi zari zarumvikanye ku mubare mbumbe w'amafaranga azishyurwa isoko ryose rirangiye.

[6] Ku wa 30/09/2020, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 00648/2020/TC, rwemeza ko ikirego cya V.CO Ltd nta shingiro gifite. Rwasanze ingingo ya 9 y'amasezerano V.CO Ltd yagiranye n'Akarere yarateganyaga ko igiciro cy'ayo masezerano kizwi kandi kidashobora kongerwa n'ubwo igihe amasezerano yazamara cyaba kiyongereye, ko ibyo V.CO Ltd isaba byo kwishyurwa igihe cy'inyongera ntaho biteganyijwe mu masezerano kuko impande zombi zumvikanye ko igiciro cy'isoko ryose kidahinduka, ryaba rirangiye mbere cyangwa nyuma y'igihe cyateganyijwe. Rwategetse V.CO Ltd kwishyura Akarere ka Gatsibo indishyi za 600.000 Frw z'ibyakoze ku rubanza.

[7] V.CO Ltd yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi isaba gusuzuma niba kwishyura igihembo ku masezerano y'inyongera ari uguhindura igiciro, ikirego cyayo gihabwa N° RCOMA 00670/2020/HCC.

[8] Mu bujurire, Akarere ka Gatsibo kavuze ko impamvu z'ubujurire za V.CO Ltd zitahabwa ishingiro kuko Urukiko rw'Ubucuruzi rwatanze ubutabera rushingiye ku kuri no ku bimenyetso rwari rwagaragarijwe.

[9] Ku wa 26/05/2021, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00670/2020/HCC, rutegeka Akarere ka Gatsibo kwishyura V.CO Ltd 28.068.133 Frw y'imirimo y'inyongera nk'uko biteganywa n'ingingo ya 64 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, na 1.500.000 Frw y'indishyi z'ikurikiranarubanza n'igihembo cya Avoka.

[10] Urukiko Rukuru rw'Ubucuruzi rwasanze igiciro kivugwa mu masezerano kitarahinduwe ahubwo ko icyahinduwe ari igihe imirimo yakozwemo kuko yiyongereye, naho igiciro kikaba cyaragumye kuba icyatanzwe muri *financial submission* kikanemerwa n'Akarere ka Gatsibo igihe kagishyiraga mu masezerano kagaragaza amafaranga azishyurwa ku mirimo ahuye n'ayatanzwe na rwiyezamirimo muri iyo *financial submission*.

[11] Urukiko Rukuru rw'Ubucuruzi rwasanze kandi byari gufatwa ko igiciro cyahinduwe mu gihe V.CO Ltd yari kuba yishyura imirimo y'inyongera itanga igiciro kiri hejuru y'amafaranga 1.769.000 yatanze muri *financial submission* yayo; bityo, ko ingingo ya 9 y'amasezerano impande zombi zagiranye idateganya ko amafaranga yavuzwe ariyo azishyurwa ku mirimo yose izakorwa, ahubwo ko icyo ibuza ari uko igiciro gihindurwa haba mw'ishyirwa mu bikorwa by'imirimo cyangwa se mu gihe habayeho amasezerano y'inyongera.

[12] Iyo mikirize ntiyanyuze Akarere ka Gatsibo, bituma ku wa 22/06/2021 kandikira Perezida w'Urukiko rw'Ubujurire gasaba ko urubanza N° RCOMA 00670/2020/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi rusubirwamo ku mpamvu z'akarengane. Perezida w'Urukiko rw'Ubujurire yandikiye Perezida w'Urukiko rw'Ikirenga asaba ko urubanza rwasubirwamo ku mpamvu z'akarengane.

[13] Perezida w'Urukiko rw'Ikirenga amaze gusuzuma ubwo busabe yafashe icyemezo 044/CJ/2022, ko urubanza RCOMA 00670/2020/HCC rwaciye n'Urukiko Rukuru rw'Ubucuruzi rusubirwamo ku mpamvu z'akarengane, ruhabwa RS/INJUST/RCOM 00007/2022/SC.

[14] Urubanza rwaburanishijwe mu ruhamwe ku wa 18/10/2022, Akarere gahagarariwe na Me Rugamba Théoneste hamwe na Me Uwamahoro Marie Grace, V.CO Ltd ihagarariwe na KALISA Théogène yunganiwe na Me Habineza Jean Paul. Muri iryo buranisha Urukiko rwasobanuriye ababuranyi akamaro k'ubuhuza, bemera kujya gukemura ikibazo cyabo mu bwumvikane, bahitamo ko Me Rwabigwi Augustin ababera umuhuza.

[15] Nyuma yo kubona raporo y'umuhuza igaragaza ko ubuhuza bwananiranye, iburanisha ry'uru rubanza ryashyizwe ku wa 21/02/2023, uwo munsu ariko urubanza ntirwaburishwa, rwimurirwa ku wa 18/04/2023 kubera ko Me Uwamahoro Marie Grace atashoboye kwitabira iburanisha kubera uburwayi.

[16] Ku wa 18/04/2023, urubanza rwaraburanishijwe, Akarere gahagarariwe na Me Uwamahoro Marie Grace hamwe na Me Bunani Bonaventure, V.CO Ltd ihagarariwe na Kalisa Théogène, yunganiwe na Me Habineza Jean Paul.

[17] Muri iryo buranisha, ababuranyi bagiye impaka ku kibazo cyo kumenya niba Akarere ka Gatsibo kagomba gutegekwa kwishyura V.CO Ltd imirimo yakoze mu gihe cy'inyongera y'amasezerano n'ibijyanye n'indishyi z'igihembo cya Avoka n'amafaranga y'ikurikiranarubanza asabwa kuri uru rwego.

## II. IBIBAZO BIGIZE URUBANZA N’ISESENGURWA RYABYO

### A. Kumenya niba Akarere ka Gatsibo kagomba gutegekwa kwishyura V.CO Ltd imirimo yakozwe mu gihe cy’inyongera y’amasezerano.

[18] Me Uwamahoro Marie Grace na Me Bunani Bonaventure baburanira Akarere ka Gatsibo, bavuga ko muri uru rubanza, akarengane gashingiye ku kuba Akarere karategetswe kwishyura 28.068.133 Frw yiyongera kuri 42.456.000 Frw yumvikanweho mu masezerano, kandi V.CO Ltd yamaze kwishyurwa, bikaba bigaragara ko Urukiko Rukuru rw’Ubucuruzi rwirengagije ibimenyetso rwashyikirijwe ndetse n’amategeko ajyanye n’ikiburanwa.

[19] Basobanura ko Urukiko Rukuru rw’Ubucuruzi rwageze kuri icyo cyemezo rwirengagije ibimenyetso bikurikira:

-Ingingo ya 2 (4), iya 9 n’iya 11<sup>1</sup> z’Amasezerano yo ku wa 16/02/2015 ziteganyaga ko imirimo izamara amezi 24 ku kiguzi ndahinduka cya 42.456.000 Frw kabone nubwo igihe amasezerano yari kuzamara cyahinduka kigabanuka cyangwa kikiyongera, bityo ko *contract extension letters* V.CO Ltd iburanisha zidakwiye gufatwa nk’amasezerano mashya ahubwo zikwiye kumvikana nk’izongereye igihe amasezerano impande zombi zari zifitanye;

-Ingingo ya 4, igika cya 2,<sup>2</sup> y’Amasezerano ishyira ku rutonde ubusumbane (*hierarchy*) bw’ibimenyetso nk’uko impande zombi zabigennye. Ibyo bimenyetso bikaba bisumbana mu buryo bukurikira: (a) Amasezerano, (b) *Terms of reference* (TOR), (c) *Minutes of negotiations*, (d) *Notification*, (e) *Request for proposal*, (f) *Financial proposal*.

-*Terms of Reference* iri ku rupapuro rwa 43 mu gitabo cy’ipiganwa igaragaza ko V.CO Ltd yari kujya ihembwa bitewe n’ijanisha ry’imirimo yakoze aho kuba umubare w’amezi iyo mirimo yakozwemo, ibyo bikaba binashimangirwa n’uko V.CO Ltd ntaho yigeze itanga inyemezabwishyu (*invoice*) ya buri kwezi.

[20] Bavuga na none ko mu gika cya 20 cy’urubanza rusubirishwamo ku mpamvu z’akarengane, Urukiko Rukuru rw’Ubucuruzi rwashingiye icyemezo cyarwo kuri *financial proposal* iri ku mwanya wa gatandatu ku rutonde rw’ibimenyetso, nyamara itari kurutishwa amasezerano, *Terms of Reference* n’ibindi bimenyetso biri muri dosiye biyirusha agaciro. Basobanura ko *financial proposal* yafashwe nk’imwe mu nyandiko zigize amasezerano kandi V.CO Ltd nayo yivugira ko ari *offer* ishobora guhinduka kuko nyuma yayo haganirwa ku biciro (*contract negotiation*), ibyumvikanweho bigakorerwa amasezerano.

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<sup>1</sup> Iyo ingingo ivuga ko: “this contract is concluded for a period of 24 months starting from the date of signing of this contract by both parties, unless terminated earlier or extended by agreement of the parties in an executed addendum to this contract.”

<sup>2</sup> Icyo gika kigira kiti: “should there be any conflict or ambiguity any of the above listed documents, priority shall be given in the order as listed above”

[21] Basoza bavuga ko indi mpamvu igaragaza akarengane ari uko Urukiko Rukuru rw'Ubucuruzi rwirengagije ingingo ya 63,<sup>3</sup> iya 64 n'ya 66 z'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano kuko nta handi rwari gukura icyumvikanweho n'icyari kigamijwe n'impande zombi kandi cyabaye itegeko kuri bo uretse mu masezerano no muri *Terms of Reference*. Basanga kuba Urukiko rutarahaye agaciro iby'uko igiciro cyari *forfaitaire* cyangwa *lumpsum* kandi kidashobora guhinduka binyuranye kandi n'ingingo ya 45, igika cya kabiri n'icya gatatu y'Iteka rya Minisitiri N° 001/14/10/TC ryo ku wa 19/02/2014 rishyiraho amabwiriza agenga ipiganwa n'amasezerano by'icyitegererezo iteganya ko nta hindura ry'igiciro rishoboka nyuma y'itariki yari iteganyijwe mu masezerano, keretse ku bw'umvikane bw'impande zombi, habanje guhindurwa amasezerano.

[22] Kalisa Théogène uhagarariye V.CO Ltd na Me Habineza Jean Paul, umwunganira, bavuga ko amasezerano yo gukurikirana imirimo yo kubaka agakiriro ka Kabarore yari kumara amezi 24, guhera ku wa 16/02/2015 kugeza ku wa 16/02/2017 ku giciro cya 42.456.000Frw, ko ntaho ateganya ko igiciro ari *forfaitaire/lumpsum*. Basobanura ko nyuma y'uko ECOTRAP inaniwe kubaka, isoko ryahawe *Reserve Force*, imirimo yagombaga gukorwa n'ibikoresho by'ubwubatsi birahinduka, n'igihe isoko ryari kumara kiriyongera, ibi bihita bigira ingaruka ku masezerano V.CO Ltd yakoranye n'Akarere ka Gatsibo kuko ibyagenzurwaga byari bihindutse haba ku ngano ndetse no ku gihe byagombaga gukorerwamo.

[23] Bavuga ko ECOTRAP yari yaratsindiye isoko rifite agaciro ka 650.578.520 Frw mu gihe rwiyezamirimo wa kabiri yagombaga gukomereza aho ECOTRAP yari igejeje, ariko ko yaje kongererwa imirimo ifite agaciro ka 990.354.430 Frw, ari nabyo byatumye ubugenzuzi V.CO Ltd yagombaga gukora mu gihe cy'amezi 24 yarabukoze mu gihe cy'amezi 39 n'iminsi 26.

[24] Bavuga na none ko nyuma y'amezi 24 y'ubugenzuzi yari mu masezerano ya mbere, Akarere ka Gatsibo kandikiye V.CO Ltd ku wa 16/02/2017, ari nawo munsu amasezerano ya mbere yari yarangiriyeho, kamusaba gukomeza imirimo kugeza ku wa 16/08/2017, iyo tariki igeze arongera yandikirwa indi baruwa imuha amasezerano y'inyongera kugeza ku wa 16/12/2017, naho ku ncuro ya gatatu, ahabwa ibaruwa imuha amasezerano guhera ku wa 19/03/2018 kugeza ku wa 15/07/2018. Basobanura ko kuba V.CO Ltd yishyuzwa igihe yakozwe nyuma y'amasezerano ya mbere atari uguhindurwa amasezerano, kuko igihe cy'akazi cyari cyumvikanweho cyiyongereye.

[25] Bavuga na none ko iby'uko igiciro cyari *forfaitaire/lumpsum* atari byo kuko amasezerano yari afite igihe kizwi, kibariye ku mezi 24 ku giciro cya 42.456.000 Frw, bivuze ko yari 1.769.000 Frw buri kwezi nk'uko bigaragara muri *financial submission* ndetse ko kugeza ubu Akarere ka Gatsibo ntaho kagaragaza ko iki giciro cyigeze gihinduka kuko amafaranga yishyujwe yari abariye ku giciro cya buri kwezi hashingiwe ku gihe cyari muri *Extension Contracts*. Basanga ibyo Akarere ka Gatsibo kavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibimenyetso, ingingo z'amategeko cyangwa amabwiriza bikagatera akarengane kagaragarira buri wese nta shingiro bifite, ahubwo ko kavugisha ibimenyetso n'ingingo z'amategeko ibyo bitavugaga kuko kwishyuzwa imirimo y'inyongera bidasobanuye guhindurwa ibiciro.

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<sup>3</sup> Iyo ngingo ivuga ko "Gusesengura amasezerano cyangwa imwe mu ngingo zayo ni ugusobanura icyo ayo masezerano agamije n'icyasezeranyijwe."

## UKO URUKIKO RUBIBONA

[26] Ingingo ya 65 y'Itegeko N° 45/2011 ryo kuwa 25/11/2011 rigenga amasezerano igira iti: “Amasezerano ntategeka gusa icyemejwe ahubwo yongeraho n'ingaruka ugushyira mu kuri, imigenzereze cyangwa amategeko byageneye inshingano bikurikije kamere yayo”. Naho ingingo ya 66 y'iryo Tegeko igateganya ko gusesengura amasezerano cyangwa imwe mu ngingo zayo ari ugusobanura icyo ayo masezerano agamije n'icyasezeranyijwe.

[27] Ingingo ya 9 y'amasezerano yo ku 16/02/2015 impande zombi zagiranye kandi zemera, ivuga ko imirimo izakorwa mu mezi 24 kandi ko ikiguzi cyayo ari 42.456.000 Frw, ndetse ko igiciro kitagomba guhinduka amasezerano yarangira mbere cyangwa nyuma cyangwa yakongerwa.<sup>4</sup>

[28] Impaka hagati y'ababuranyi zishingiye ku myumvire y'ingingo ya 9 y'amasezerano impande zombi zagiranye. Akarere kavuga ko rwiyemezamirimo adakwiye kwishyura imirimo y'inyongera kuko igiciro bumvikanye ari ndahinduka, amasezerano yaba arangiye mu gihe cyumvikanweho cyangwa icyo gihe cyaba cyahindutse kikagabanuka cyangwa kikiyongera. V.CO Ltd yo isanga igihe cy'amezi 24 cyari gihwanye n'agaciro ka 42.456.000 Frw cyararangiyeye, ariko kirangira imirimo yo itararangira, kuko rwiyemezamirimo mushya yahinduriwe inshingano ndetse n'ikiguzi kirahinduka, Akarere ka Gatsibo kayiha andi masezerano kugeza iyo mirimo irangiye, iyo mirimo yiyongereye nyuma y'amasezerano ya mbere akaba ariyo yishyura.

[29] Muri dosiye bigaragara kandi ko mu gika cya 20 cy'urubanza rusubirishwamo ku mpamvu z'akarengane, Urukiko Rukuru rw'Ubucuruzi rwasanze hashingiye ku ngingo ya 4 y'amasezerano iteganya ko inyandiko yitwa *financial submission proposal* ari imwe mu zigize amasezerano, nta guhindura ibiciro kwabayeho nk'uko Akarere ka Gatsibo kabivugaga kubera ko bigaragara ko iyo agaciro k'isoko ka 42.456.000 Frw kagabanyijwe ku mezi 24 yari mu masezerano, bibyara 1.769.000 Frw buri kwezi.

[30] Urukiko rurasanga Akarere ka Gatsibo kemera ibaruwa yo ku wa 31/01/2017, iyo ku wa 01/08/2017 n'iyiyo ku wa 18/04/2018 zose zifite impamvu yo kongera amasezerano (*contract extension*) mu buryo bukurikira:

- i. Ibaruwa ya mbere iyongera kuva ku wa 31/01/2017 kugeza ku wa 16/08/2017;
- ii. Ibaruwa ya kabiri iyongera kuva ku wa 16/08/2017 kugeza ku wa 16/12/2017;
- iii. Ibaruwa ya gatatu iyongera kuva ku wa 19/03/2018<sup>5</sup> kugeza ku wa 15/07/2018.

[31] Urukiko rurasanga ibivugwa mu ngingo ya 9, igika cya mbere n'icya kabiri, y'amasezerano yo ku wa 16/02/2015 hagati y'Akarere ka Gatsibo na V.CO Ltd by'uko igiciro cy'amasezerano ari 42.456.000 Frw ndahinduka mu gihe cy'amezi 24 y'ishyirwa mu bikorwa ry'amasezerano cyangwa mu gihe cy'inyongera bigomba kureberwa mu mbibi z'ayo masezerano n'icyo impande

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<sup>4</sup> The contract prices for the consultancy services is Forty-Two Millions, Four Hundred Fifty-Six Thousands Rwandan Francs Only/For all project (42,546,000 Frw) all taxes inclusive, in the period of Twenty-Four (24) months. The contract price is fixed and cannot be revised during the course of the contract, or during an extension of time thereof

<sup>5</sup> Bigaragara ko hagati y'ibaruwa ya 2 n'ya 3 V.CO Ltd yari imaze igihe cy'amezi 2 n'iminsi 3 itarongererwa amasezerano.



zombi zari zigamiye, kuko ayo masezerano yashoboraga kurangira mu mezi 24 nk'uko byateganyijwe, cyangwa akarangira mbere kuko rwiyezamirimo ufite isoko ry'ibanze (ECOTRAP) yihutishije imirimo cyangwa se agatinda kurangira kubera ko amasezerano y'ibanze yahagaritswe igihe runaka akongera gusubukurwa, kandi V.CO Ltd ikaba itari kwishyuzwa icyo gihe amasezerano y'ibanze yahagaritswe kuko nayo nta mirimo y'ubugenzuzi iba yarakoze.

[32] Urukiko rurasanga ingingo ya 45 y'Iteka rya Minisitiri N° 001/14/10/TC ryo ku wa 19/02/2014 ababuranira Akarere ka Gatsibo bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije, itakoresheye ku byabaye mu masezerano hagati ya V.CO Ltd n'Akarere ka Gatsibo kuko ayo masezerano atahinduwe, nta n'ibiciro byasubiwemo. Ahubwo icyabaye akaba ari igihe akazi kagombaga kurangirira cyiyongereye kandi ibyo bikaba byari byateganyijwe mu masezerano impande zombi zagiranye. Ikindi n'uko amafaranga uregwa muri uru rubanza yishyuzwa ari akubiye mu masezerano hashingiwe kuri *financial submission proposal* igize amasezerano, nkuko byasobanuye mu bindi bika bigize uru rubanza.

[33] Urukiko rurasanga kuvuga ko imirimo yose y'inyongera yakozwe na V.CO Ltd nyuma y'amezi 24 ikubiye mu biteganywa n'ingingo ya 9 y'amasezerano cyangwa muri *Terms of Reference* byaba binyuranyije n'ibyo impande zombi zumvikanye kubera ko:

i. Igihe cy'amasezerano nticyarenga amezi 24 ngo igiciro cy'amasezerano kigume ari cya kindi, keretse harabayeho ihagarikwa ry'imirimo ryatumye igihe kiyongera; bitabaye ibyo, byaba bivuze ko iyo ngingo yanditswe mu nyungu z'Akarere ka Gatsibo gusa nyamara iri mu masezerano magirirane y'inyungu (*contrat synallagmatique à titre onéreux*);

ii. Igihe cy'amasezerano kiramutse kirenze, ikiguzi cyumvikanweho ntigihuzwe n'igihe cy'inyongera, byatera uruhande rwatanze isoko kwikungahaza nta mpamvu;

iii. Igihe cy'amasezerano kiramutse kirenze icyumvikanweho, igiciro kikaguma uko kiri byaba bivuze ko amasezerano yasinywe Akarere ka Gatsibo gateganywa ko rwiyezamirimo wahawe isoko ry'ibanze atazarisozwa mu gihe cyumvikanyweho, ibyo kandi byaba binyuranyije n'amategeko kuko iyo ngingo yaba irimo uburyarya (*bad faith*) nyamara abakoranye amasezerano bafite inshingano zo kuyashyira mu bikorwa nta buryarya (*in good faith*).

[34] Urukiko rurasanga ibijyanye n'uburyo bwo gusesengura ingingo z'amasezerano biteganywa n'ingingo ya 71 y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano ivuga ko mu guhitamo igisobanuro cyumvikana kw'isezeranya, ku masezerano cyangwa imwe mu ngingo ziyagize, igisobanuro rusange kigenderwaho ni ikitagendera ku ruhande rwatanze amagambo yakoreshejwe cyangwa uruhande rwandikishije inyandiko. Ibi ni nabyo bishimangirwa n'umuhanga Philippe Le Tourneau nawe usobanura ko ugushidikanya ku ngingo zigize amasezerano kugomba gusesengurwa mu nyungu z'uwo yakorewe (*la convention s'interprète contre celui qui l'a stipulé et en faveur de celui qui a contracté l'obligation*).<sup>6</sup>

[35] Ikigaragarira Urukiko ni uko amasezerano yo ku wa 16/02/2015 yarangiye nyuma y'amezi 24, Akarere ka Gatsibo ntikakora *addendum* cyangwa amasezerano mashya nk'uko byari biteganyijwe mu ngingo ya 11 y'ayo masezerano. Ibi byumvikanisha ko Akarere ka Gatsibo

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<sup>6</sup> Reba Philippe Le Tourneau, *Droit de la responsabilité et des contrats, régime d'indemnisation*, Paris, Dalloz, 2014, p. 1156.

katavuga ko ayo masezerano ariyo yakomeje nyamara igihe kiyemerera ko yari kumara cyari cyarangiyeye.

[36] Urukiko rurasanga, uretse ku bijyanye n'igihe, Akarere ka Gatsibo karagiye gasaba V.CO Ltd mu bihe bitandukanye gukora imirimo y'inyongera hashingiwe ku ngingo zari zarumvikanweho mu masezerano yo ku wa 16/02/2015, bityo bikaba bikwiye gufatwa ko buri rwandiko rwa *contract extension* rwari amasezerano mashya ku bijyanye n'igihe iyo mirimo mishya yagombaga kumara.

[37] Urukiko rurasanga rero ibyo Akarere ka Gatsibo kaburanisha by'uko Urukiko Rukuru rw'Ubucuruzi rwirengagije ibiteganywa n'ingingo ya 64<sup>7</sup> y'Itegeko N° 45/2011 ryo ku wa 25/11/2011 rigenga amasezerano, cyangwa ibiteganywa n'ingingo ya 45 y'Iteka rya Minisitiri n° 001/14/10/TC ryo ku wa 19/02/2014 ngo kuko rutabonye ko ibyo V.CO Ltd yakoze ari uguhindura ibiciro byumvikanyweho mu masezerano, nta shingiro bifite, kuko icyabaye ari ukongera igihe akazi kagombaga kurangirira kandi byakozwe n'Akarere ka Gatsibo, naho iby'ibiciro n'ubundi byari byarateganyijwe mu masezerano nk'uko bigaragazwa na *financial submission proposal* nk'imwe mu nyandiko igize amasezerano.

[38] Urukiko rurasanga ubwo V.CO Ltd yishyuzaga imirimo y'inyongera, Akarere ka Gatsibo kari gakwiye gushyira mu kuri nkuko biteganywa mu ngingo ya 65 y'Itegeko n° 45/2011 ryo ku wa 25/11/2011 ryavuzwe haruguru, kakishyura katazuyaje inyemezabuguzi za rwiyemezamirimo, kuko nibwo kari kuba kujuje inshingano yo gushyira mu bikorwa ibyo kiyemeje mu masezerano<sup>8</sup>. Muri urwo rwego, dosiye igaragaza ko nyuma y'urubanza rwaciye n'Urukiko Rukuru rw'Ubucuruzi, Akarere kabanje kwerekana ubushake bwo kwishyura V.CO Ltd, ndetse kagaragaza n'igihe bizakorera habonetse amafaranga mu ngengo y'imari ya 2022-2023, gusa nyuma kaje kwisubiraho.

[39] Hashingiwe ku bimaze gusobanurwa, uru Rukiko rurasanga ku bijyanye n'ihame ry'uko V.CO Ltd igomba kwishyurwa imirimo y'inyongera yakoze, ntacyo Urukiko Rukuru rw'Ubucuruzi rwirengagije. Icyakora, bigaragarira Urukiko ko amezi V.CO Ltd yakoze ari 37 n'iminsi 26 (amezi 24 ari mu masezerano yo ku wa 16/02/2015, amezi 6 ari mu ibaruwa yo ku wa 31/01/2017, amezi 4 ari mu ibaruwa yo ku wa 16/08/2017 n'amezi atatu n'iminsi 26 biri mu ibaruwa yo ku wa 19/03/2018), bivuze ko amafaranga igomba kwishyurwa angana na 1.769.000 Frw x amezi 13 n'iminsi 26<sup>9</sup> bihwanye na 24.530.133 Frw.

## **B. Kumenya niba hari indishyi zigomba gutangwa muri uru rubanza.**

[40] Me Uwamahoro Marie Grace na Me Bunani Bonaventure bavuga ko mu gika cya 24 cy'urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, Urukiko Rukuru rw'Ubucuruzi rwategetse Akarere ka Gatsibo kwishyura V.CO Ltd indishyi zingana na 1.500.000 Frw ajoyanye n'ikurikiranarubanza n'igihembo cy'Avoka ndetse no gusubiza amagarama angana na 60.000 Frw ngo kuko Akarere ka Gatsibo kayishoye mu manza z'amaherere kanga kubahiriza inshingano bigatuma hari ibyo V.CO Ltd itakaza, ariko ko nabyo bitera akarengane kuko urwo Rukiko

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<sup>7</sup> Iyi ngingo iteganya ko amasezerano akozwe ku buryo bukurikije amategeko aba itegeko ku bayagiranye.

<sup>8</sup> Ingingo ya 7.2: The Client shall a.: Pay the invoices submitted by the Consultant within the time limit specified in this contract.

<sup>9</sup> Aho kuba amezi 39 n'iminsi 26 nk'uko V.CO Ltd ibivugaga.

rwirengagije amategeko n'amasezerano yabaye hagati y'impande zombi yerekana ko Akarere ka Gatsibo nta nshingano katubahirije, ko ahubwo ariko kashowe mu manza zidafite ishingiro.

[41] Bavuga kandi ko mu gika cya 25 cy'urwo rubanza, Urukiko Rukuru rw'Ubucuruzi rwategetse ko indishyi zasabwe n'Akarere ka Gatsibo zingana na 2.500.000 Frw zihwanye n'igihembo cy'Avoka cya 2.000.000 Frw hamwe na 500.000 Frw y'ikurikiranarubanza nta shingiro zifite hiregangijwe ibimenyetso, bityo ko basaba Urukiko rw'Ikirenga kwemeza ko izo ndishyi zifite ishingiro.

[42] Kalisa Théogène yunganiwe na Me Habineza Jean Paul bavuga ko nta ndishyi Akarere ka Gatsibo gakwiye guhabwa kuko ari ko katumye habaho imanza. Basaba ahubwo Urukiko rw'Ikirenga gusuzuma ibyo V.CO Ltd isaba no kubiha ishingiro kuko ikomeje gusiragizwa mu nkiko, cyane cyane ko Akarere kari katangiye *procedure* yo kwishyura nk'uko bigaragazwa n'inyandiko z'ubuyobozi bwako zerekanaga uburyo kateganyaga kwishyura V.CO Ltd mu ngengo y'imali ya 2022/2023. Basaba Urukiko rw'Ikirenga gutegeka Akarere ka Gatsibo kwishyura V.CO Ltd 3.500.000 Frw y'ikurikiranarubanza ikanasubizwa 1.000.000 Frw y'igihembo yishyuye Avoka uyiburanira mu Rukiko rw'Ikirenga.

### **UKO URUKIKO RUBIBONA**

[43] Urukiko rurasanga indishyi zinyuranye zisabwa n'Akarere ka Gatsibo muri uru rubanza katazihabwa kuko ntacyo gatsindiye.

[44] Urukiko rurasanga amafaranga y'ikurikiranarubanza asabwa na V.CO Ltd muri uru rubanza yayahabwa kuko byagaragaye ko yatsinze urubanza mu Rukiko Rukuru rw'Ubucuruzi ariko Akarere ka Gatsibo ntikanyurwa gakomeza urubanza, bituma nayo ikomeza kurukurikirana. Urukiko rurasanga ariko amafaranga y'ikurikiranarubanza V.CO Ltd isaba angana na 3.500.000 itayatangira ibimenyetso, bityo mu bushishozi bwarwo rukaba ruyigeneye angana na 300.000 Frw.

[45] Urukiko rurasanga kandi amafaranga y'igihembo cya Avoka asabwa na V.CO Ltd afite ishingiro kuko yagombye gushaka Avoka uyiburanira, bityo kuba Akarere ka Gatsibo gatsindwa muri uru rubanza kakaba kagomba kuyishyura 500.000 Frw kuri uru rwego, agenwe mu bushishozi bwarwo.

### **III. ICYEMEZO CY'URUKIKO**

[46] Rwemeje ko ikirego cyatanzwe n'Akarere ka Gatsibo cyo gusubirishamo ku mpamvu z'akarengane urubanza RCOMA 00670/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 26/05/2021, nta shingiro gifite;

[47] Rwemeje ko imikirize y'urubanza RCOMA 00670/2020/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 26/05/2021, ihindutse gusa ku bijyanye n'ingano y'amafaranga y'imirimo y'inyongera Akarere ka Gatsibo kagomba kwishyura V.CO Ltd;

[48] Rutegetse Akarere ka Gatsibo kwishyura V.CO Ltd 24.530.133 Frw;

[49] Rutegetse Akarere ka Gatsibo guha V.CO Ltd amafaranga y'ikurikiranarubanza angana na 300.000 hamwe n'ay'igihembo cya Avoka angana na 500.000 Frw, yose hamwe akaba 800.000 Frw.