

REPUBLIC OF RWANDA



**NATIONAL INDEPENDENT REVIEW PANEL
PUBLIC PROCUREMENT**

**ANNUAL REPORT
OF
DECISIONS IN 2008**

1.0 BACKGROUND

The National Independent Review Panel on Public Procurement was established on 30th July 2007 by Ministerial order N° 006 of 30/7/2007, following the enactment of Law N° 12/2007 of 27/03/2007 on Public Procurement.

The overall goal of the Independent Review Panel is to ensure that the general principles constituting the basis of the national legislation on public procurement are respected by all Public institutions.

The National Independent Review Panel receives and considers appeals against the decisions and/or processes on public procurement taken by central government, Public institutions, Kigali city and districts.

The Independent Review Panel is composed of five persons selected from the public sector, private sector and civil society. However representatives from the public sector cannot be more than two. In the present Panel we have two members from the public sector, two from the private sector and one representative from the civil society.

The Panel has one permanent staff in charge of receiving appeal letters and fulfilling all technical duties related to organizing its meetings.

1.1 APPEAL PROCEDURE

A Prospective bidder or actual bidder, has the right to submit to the National Independent Review Panel complaints regarding the actions of the contracting authority with respect to the legality of the procedures of open or restricted competition if the submitter considers that the contracting authority or the evaluation commission has not observed the requirements of regulatory enactments which regulate procurement and in so doing have violated the lawful rights and interests of the submitter of the complaint.

Complaints may be submitted up to the time of entering into a procurement contract. After a procurement contract has been entered into, the submitter of a complaint may appeal decisions of the contracting authority to competent courts of Law in accordance with procedures prescribed by the Public Procurement Law.

The Law provides for a legal suspension. It means that if a complaint has been submitted to the Panel prior the entering into a procurement contract, the Panel shall notify the contracting authority thereof and the contracting authority shall not enter into a procurement contract until the Panel issues its decision.

Decisions of the National Independent Review Panel regarding the activity of public Procurement undertakings may be appealed in court in accordance with the procedures specified by law.

1.2 METHODOLOGY

Once an appeal has been submitted to the Independent Review Panel, the full time officer of the panel checks if the appeal has respected the normal appeal procedure and whether the appellant has cleared the appeal fee.

The full time officer then forwards the appeal to the members of the Panel and the chairperson of the Panel who in turn informs the full time officer the date of convening panel members to examine the complaint.

The Panel bases its analysis and decision on the tender document, bid document and the evaluation report from the procuring entity. The Panel has 30-60 days to issue a decision.

In the course of its deliberations the Panel members strictly issue decisions on only the points of contest raised by the complainant.

1.3 ACTIVITIES OF THE PANEL IN THE YEAR 2008

During its first year of operation in 2007 the Panel received 29 cases over all. 12 cases were rejected due to non-respect of procedure by the appellants, 8 cases were decided in favor of the procuring entities while 9 cases were decided in favor of the appellant companies.

In 2008 the panel received most of its appeals in the first and second quarters of the year, but the number of appeals went down in the closing months of the year. The panel members have had to sit more times in month than earlier anticipated. On average the panel spends about four sessions on every appeal.

Overall, 28 complaints were submitted to the National Independent Review Panel in the year 2008. 11 cases were decided in favor of the appellants, 14 cases were decided in favor of the procuring entities, while 3 cases were rejected due to the non-respect of the appeal procedure.

It's worth mentioning that the bidders have continuously shown increasing knowledge on the procedure of appeal, because in the year 2008 few appeals were rejected due to breach of procedure as compared to the year 2007. In its early days in 2007 the panel received many appeals that did not respect the normal procedure of appeal. Such appeals were rejected, but the 2008 statistics indicate that few appeals breached the normal procedure of appeal.

The Institutions and Districts whose decisions were reviewed by the Panel in 2008 are listed below:

Ministry of Defence (MINADEF); Ministry of Infrastructure (MININFRA); National Public Authority responsible for the utilities of Urban Electricity and Water, (ELECTROGAZ); Public Service Commission (PSC); Muhanga District, Ngororero District; Gisagara District; Nyarugenge District; Umutara Community Resource and Infrastructure Development Project (UCRIDP), Common Development Fund for Infrastructure Development (CDF); Ministry of Health (MINISANTE); MAP Project of the MINISANTE, Global fund; National University of Rwanda (NUR); Rwanda Social Security Fund (CSR); World Bank Project for Infrastructure Development and Urban Management (PIGU); Fonds D'entretien Routier (FER).

1.4 PRESENTATION OF THE TOTAL APPEALS RECEIVED

A brief comparison of the appeals received by the panel in 2007 and 2008 indicate that people who participate in public tenders are consistently picking interest in the services offered by the panel.

APPEALS RECEIVED IN THE YEAR 2007

Total of Appeals received	29	%
Cases decided in favor of the appellant	9	31.03%
Cases decided in favor of the Procuring entities	8	27.58%
Appeals rejected	12	41.37%

APPEALS RECEIVED IN THE YEAR 2008

Total of Appeals received	28	%
Cases decided in favor of the appellant	11	39.3%
Cases decided in favor of the Procuring entities	14	50%
Appeals rejected	3	10.71%

1.5 CONCLUSION

The Independent Appeals Committee has not been able to follow on to implementation of decisions. However, we are pleased to report zero court appeals

against our decision which provides an appreciation of the quality of decisions made. This is a result of committed execution of panel responsibilities as prescribed by the governing laws. Deliberations of bidders' complaints are always conducted in a fair and timely manner, hence the firm belief that the Independent Review Panel has ensured a sufficient degree of transparency and promoted fair and equitable treatment of all the individuals involved in the Public procurement cycle. The Independent Review Panel commits to set up a monitoring framework for decisions made and how they are implemented; this will provide a better appreciation of the impact of the Independent Appeals Committee on public procurement.

ANNEXES

ANNEX 1: Summary of Decisions against appeals made

2.0 APPEALS HANDLED BY THE NATIONAL INDEPENDENT REVIEW PANEL IN THE YEAR 2008

N°	PROCURING ENTITY	APPELLANT	OBJECT OF APPEAL	DECISION OF THE NATIONAL INDEPENDENT REVIEW PANEL
1	MINADEF/RPPA	MUTARA ENTERPRISES	Appeal against the disqualification of Mutara Enterprises for submitting invalid (RRA) tax clearance certificate and the (CSR)social security certificate on tender N°062/2008-N/MINADEF/NTB for the supply of office equipments to the ministry of Defense	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the appeal was judged baseless, because the two documents submitted by Mutara Enterprises had expired. The Panel upheld the decision of the RPPA board of Directors to disqualify Mutara Enterprises
2	MININFRA	GREEN ENGINEERING	Appeal against the results from the Technical and Financial evaluations on the tender related to the Inspection and construction of Mulindi-Nyankora –Nasho Road	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the Panel re-evaluated all the bids and dismissed the claim as groundless. The Panel upheld the decision of the tender committee of MININFRA to award the tender to Construction Consultancy Company (CCC)
3	ELECTROGAZ/RPPA	MEREZ PETROLEUM	Appeal against the disqualification of MEREZ Petroleum from tender N°006/F/2008/I/ELECTROGAZ RPPA LOT1 related to the supply of heavy fuel oil to ELECTROGAZ	Pursuant to article 4 of Law N°12/2007 of 27/03/2007on Public Procurement, the Panel observed that the RPPA/ELECTROGAZ evaluation commissions did not treat all bidders equally The Panel further observed that the tender document did not meet the required standards as per the provisions of

				<p>Ministerial order N°001/08/10/MIN of 16/01/2008 establishing regulations on Public Procurement and standard bidding documents.</p> <p>All bids were considered not responsive and the Panel Ordered that the tender document should be standardized and the tender re-advertised.</p>
4	ELECTROGAZ/RPPA	ITEX S.A.R.L	<p>Appeal against the award of tender for the acquisition of sodium chloride to ELECTROGAZ, to a company called DIDADA SUPPLY which submitted a bid security valid for 90 days instead of the 120 days provided by the tender document</p>	<p>Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that DIDADA SUPPLY had rightly submitted a bid valid for 90 days and a bid security valid for 30days beyond the validity of the bid. The appeal was therefore dismissed as baseless.</p>
5	PUBLIC SERVICE COMMISSION	RUMA CERTIFIED ACCOUNTANTS	<p>Appeal against the decision to award tender N°02/19PSC/2008 for the recruitment of staff to various public institutions to Kigali Institute of Education, yet it did not fulfill all the administrative requirements. The appellant claimed that KIE did not submit the RRA tax clearance certificate as provided in the request for proposals</p>	<p>Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel nullified the decision of the evaluation committee because KIE had not submitted the tax clearance certificate. RUMA had also quoted a price beyond the budget allocated for this exercise. The panel ordered that the tender be re-advertised immediately.</p>
6	MUHANGA DISTRICT	PAPETERIE LA MEILLEURE	<p>Complaint against the disqualification of Papeterie la Meilleure from tender N°008/MUH/08 for the supply of office equipments to Muhanga</p>	<p>Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the Panel ruled that Papeterie la Meilleure failed to respect the provisions of the tender document. The decision to disqualify them</p>

			District and Gitarama prison. This company was disqualified for presenting a tender security from an insurance company, yet the tender document required bidders to strictly submit a tender security from a bank	was upheld.
7	PDRCIU PROJECT	GFR TECHNOLOGIES	The appellant was contesting the results of the technical evaluation and the membership of the Director of Administration and Finance to the tender committee. (Tender N°10/2008PDRCIU for the servicing and maintenance of ICT equipments)	The panel ruled that the award of marks was against the provisions of article 24 of the Ministerial order N°001/08/10/MIN of 16/01/2008 establishing regulations on Public Procurement and standard bid documents. The Panel also ordered for the immediate removal of the Director of Administration and Finance from the tender committee as provided in article 4 of the Ministerial order.
8	NGORORERO DISTRICT	GLISCO	Appeal against the award of tender N°16/10/07 related to the extension of AMizero college to HYCOMEP on the claim that this company did not fulfill all the required administrative and technical requirements	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the Panel conducted its own evaluation and dismissed the complaint as baseless. The Panel upheld the decision of the tender committee of Ngororero District to award the tender to HYCOMEP
9	MININFRA/RPPA	RSW INTERNATIONAL	The appellant was contesting the results from the re-evaluation of technical proposals on the aspect of specific experience of the consultant on a similar post and project. (Tender N°013/S/08-IR/MININFRA/NTB related to	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel conducted its own evaluation and modified all the scores in favor of the complainant RSW International

			the inspection and construction of Nyabarongo Hydro Power Plant (27.5MW)	
10	ELECTROGAZ	WOODPERFECT	Appeal against the elimination of WOOD PERFECT for administrative reasons and the cancellation of tender N° 191/F/2007- I/ELECTROGAZ/NTB for the acquisition of 8000 Electric poles	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that WOOD PERFECT fulfilled the necessary administrative requirements, but disqualified them because their technical offer did not conform to the technical specifications in the tender document
11	PROJECT MAP AND GLOBAL FUND	INTERTRADE F & C S.A.R.L	Appeal against the cancellation of tender N°204/F/2007- N/GLOBAL FUND/NTB Lot 1 related to the supply of laboratory equipments.	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel nullified the decision to cancel lot 1 of the tender and ordered it to be awarded to Inter trade F & C S.a.r.l
12	NATIONAL UNIVERSITY OF RWANDA	RUMA CERTIFIED ACCOUNTANTS	Appeal against the award of tender for the audit of SIDA/SAREC and PRODAD projects to DELOITTE	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel upheld the decision of UNR evaluation commission to award the tender to DELOITTE. RUMA had initially won the tender but it delayed to take up the offer and the tender was awarded to the company that ranked second.

13	CDF	RUMA CERTIFIED ACCOUNTANTS	Appeal against the decision to award the tender for the recruitment of CDF personnel to (RIAM) yet it did not fulfill all the administrative requirements	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that the award of tender to RIAM which did not fulfill all the administrative requirements was contrarily to the Public Procurement Law. The panel reversed the decision and the tender was awarded to RUMA
14	SECAF S.A.R.L	PIGU PROJECT	Appeal against the decision to cancel the tender related to “mission d'assistance comptable” of Gasabo, Kicukiro and Nyarugenge Districts	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review panel ruled that there was no basis for cancelling the tender. The panel ordered that the tender be awarded to SECAF S.A.R.L
15	CAISE SOCIALE DU RWANDA	E.D.G. & ATERIEL	The appellant requested the Panel to examine the irregularities in the award of tender N°151/S/2007-I/CSR/NTB related to the construction of CSR agencies.	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that there were no irregularities in the tendering process. The decision of the tender committee of CAISE SOCIALE DU RWANDA to award the tender to ADC COMPANY was upheld.
16	MINISANTE/ CNTS	BIAOVERSEAS/BIA MED	Appeal against the disqualification of BIAMED from the tender process for presenting a tender security that does not conform to the requirements of the tender document. (Tender N°15/2007 of refrigerators to the Ministry of Health)	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that BIAMED submitted a tender security that did not conform to the provisions of the tender document. The disqualification of BIAMED was upheld.

17	NYARUGENGE DISTRICT	KIPHARMA S.A.R.L	Appeal against the results from the evaluation of bids on the tender related to the supply of medical equipments to Muhima Hospital	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that the evaluation was conducted in a transparent manner and upheld the decision of the District tender committee.
18	GISAGARA DISTRICT	ENTREPRISE EMUCO	EMUCO was contesting the structure of the tender document claiming that it had errors in the section of bill of quantities. (Tender N°0019/T/07/MINEDUC/D.GIS for the extension of Centre Scolaire Mbogo –Gisagara District)	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that there were no substantial errors in the tender document and therefore upheld the decision of the tender committee of Gisagara District
19	ELECTROGAZ	BCM	BCM was contesting the decision to award the tender N°11.07.053/2560/07/DA-DIR/JM/cm for the rehabilitation of electrical cabinets to Entreprise ALPHA claiming that they did not visit the site	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that Entreprise ALPHA did actually visit the site and therefore upheld the decision of the tender committee of ELECTROGAZ to award the tender to Entreprise ALPHA
20	ELECTROGAZ	ERECO	Appeal against the decision taken by ELECTROGAZ to re-advertise the tender to the exclusion of ERECO from the shortlist because it did not successfully execute the previous contract it had with ELECTROGAZ (Tender N°11.07.053/2561/DA-DIR/JM/CM)	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that ELECTROGAZ had no basis to re-advertise the tender, and also that excluding ERECO was against the provisions of the Procurement Law. The panel ordered that the tender be awarded to ERECO as per the recommendations of the previous evaluation commission

21	FONDS D'ENTRETIEN ROUTIER (FER)	RUMA CERTIFIED ACCOUNTANTS	Appeal against irregularities in the tendering procedures. RUMA claimed that FER did not respect the provisions of the Public procurement Law because they opened financial and technical proposals at once. (Tender for the financial audit of FER)	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that the Procuring entity breached procurement procedures by opening both financial and technical proposals at ago. The Panel heard that FER had already signed a contract with the successful bidder (DELOITTE) so a decision was taken that RUMA be paid damages amounting to 369.200FRWS.
22	NYARUGENGE DISTRICT	ESETRA S.A.R.L	Appeal against the disqualification of ESETRA S.A.R.L because they underestimated the cost of the project on tender N°060MT/08NYG related to the construction of a wall fence for Mwendo health centre.	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that ESETRA S.A.R.L had underestimated the cost of the project, and therefore upheld the decision of the tender committee.
23	MINISANTE (CNTS)	CLEAN LINE S.A.R.L	Appeal against the decision taken by MINISANTE to cancel the tender related to office maintenance for the Ministry of Health	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that, MINISANTE acted within the confines of the Public Procurement Law.
24	ELECTROGAZ	SAPPEL	Appeal against the disqualification of SAPPEL for submitting a technical offer not in conformity with the provisions of the tender document on tender N°12/F/2008-I/ELECTROGAZ/NTB related to the Acquisition of 15000 domestic water meters.	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that, the technical offer submitted by SAPPEL did not conform to the technical specifications spelt out in the tender document. The panel dismissed the complaint as baseless

25	ELECTROGAZ	ACTARIS AN ITRON COMPANY	Appeal against the disqualification of ACTARIS Company for submitting a technical offer not in conformity with the provisions of the tender document on tender N°12/F/2008-I/ELECTROGAZ/NTB related to the Acquisition of 15000 domestic water meters.	Pursuant to article 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel ruled that, the technical proposal for ACTARIS an Itron Company did not conform to the technical provisions in the tender document.
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3.1 REJECTED APPEALS

N°	PROCURING ENTITY	APPELLANT	OBJECT OF APPEAL	DECISION OF THE PANEL
1	OCIR THE	BIG STAR RWANDA	Appeal against the award of tender N° 183/S/2007-N/OCIRTHE/NTB related to the transport of tea	Pursuant to articles 69 & 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel rejected the appeal because it breached the procedure of appeal
2	INSR	SECAM	Appeal against the irregularities in tender N°27/B.F/2008/MIS/NIS	Pursuant to articles 27 & 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel dismissed the appeal due to breach of procedure.
3	OCIR THE	SOFARU	Appeal against the award of tender by OCIR THE	Pursuant to articles 69 & 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, the National Independent Review Panel dismissed the appeal due to the appeal of procedure