

## I. LIST OF ABBREVIATIONS

AM	: Arrêté Ministériel
ANS	: Atelier Nshimiyimana Schadrack
ATC	: Auto Transport Company
CNTS	: Centre National de Transfusion Sanguine
CMT	: Centre Multi Technique
CSR	: Caisse Sociale du Rwanda
DAO	: Dossier d'Appel d'Offre
HCM	: High Council of Media
IPN	: Imprimerie Papeterie Nouvelle
IRP	: Independent Review Panel
IRST	: Institut de Recherche Scientifique et Technologique
ISAE	: Institut Supérieur d'Agriculture et d'Elevage
KFH	: King Faysal Hospital
KIE	: Kigali Institute of Education
KPC	: Kigali Professional Cleaning
MIJESPOC	: Ministère de la Jeunesse, des Sports et de la Culture
MINAFFET	: Ministère des Affaires Etrangères
MINERENA	: Ministère des Ressources Naturelles
MMI	: Military Medical Insurance
MOD	: Ministry Of Defense
MTC	: Multi Technical Center
NLC	: National Land Center
NWC	: National Women Council
OCIR-THE	: Office des Cultures Industrielles du Rwanda-THE
RARDA	: Rwanda Animals Resources Development Authority
RCAA	: Rwanda Civil Aviation Authority
RIAM	: Rwanda Institute of Administration and Management
RITA	: Rwanda Information Technology Authority
RFP	: Request For Proposal
RNP	: Rwanda National Police
RPPA	: Rwanda Public Procurement Authority
RRA	: Rwanda Revenue Authority
SARL	: Société par Action à Responsabilité Limité
SFB	: School of Finance and Banking
ZETRACO	: Zebra Transport Company

## **II. INTRODUCTION**

The National Independent Review Panel on Public Procurement has been provided for by the Law N ° 12/2007 of 27th March 2007 on Public Procurement. Appointed by the Minister having the Public Procurement in his functions, five (5) members compose the aforementioned Panel. Among the latter, two (2) members come from the public service; two (2) from the Private Sector, and one (1) of the Civil Society. Apart from these members, a fulltime officer assumes the function of the management of the secretariat of the Committee.

The realization report of the National Independent Review Panel for the exercise of 2009 is the 3rd of the series which began to appear since two thousand and seven (2007). As the previous reports, it allows to verify the respect of the fundamental principles governing public procurement by the procuring entities in particular and by bidders in general. In practice, these principles which are in priori transparency, competition, economy and equity, assure and protect the general interest pursued by any procedure of awarding public procurement.

Indeed, the request for review shall be acceptable if it explains a specific act of omissions or commissions contravening the Law on Public Procurement or other procurement regulations. The complainant shall show the injustice committed against him/her resulting from the contested decision and the appeal shall be done in writing. Thus, the National Independent Review Panel receives the appeals against any decisions taken at districts level, and procuring entities established in Kigali City.

## **III. PROCESS OF APPEAL**

Within 7 days following the time the complainant became aware of the circumstances giving rise to the complaint, an appeal has to introduce his/her request to the National Independent Review Panel. The said request for review shall include the following elements: the identifications of the complainant; the identification of the procuring entity; the decision against which the review is requested; date on which the decision was taken and when the complainant become aware of it; the organ to which the review is addressed; signature or thumb print of the applicant; the payment slip for the appeal fee; and a copy of trading license.

In fact, when an appeal is introduced, any procurement procedures must be suspended until a decision on the appeal is taken by the Committee. The procurement entity transmits the documentation related to the tender, subject of request, to permit the Committee to analyze the request.

After the transmission of the above-mentioned documents, members of the Committee meet with a minimum quorum of two thirds (2/3) of five (5). The decisions of the Committee are taken in an impartial way and based on

documents related to the concerned tender and according to the law and regulations governing the public procurement.

The said decisions are taken either in favor of the applicant, in favor of the procuring entity or else the Panel rejects the appeal for the procedure defect.

#### **IV. ACTIVITIES OF THE NATIONAL INDEPENDENT REVIEW PANEL DURING THE YEAR 2009**

In execution of its activities during the year 2009, the National Independent Review Panel held twenty two (22) sessions of meetings from which forty six (46) decisions were been taken.

Compared to the previous two years 2007 and 2008 during which the presented appeals were successively 28 and 29, the bidders showed a big interest to introduce many cases of appeal to the Committee.

Therefore, on a total of forty six (46), nineteen (19) cases were admissible, but, after the analysis based on facts, the Panel decided to reject them because it deemed them unfounded.

Secondly, seventeen (17) demands were admissible and judged by the Panel to be founded. Consequently, the Panel cancelled the decision taken by the procuring entities out of favor of the applicants.

Lastly, ten (10) requests for review were not inadmissible due to the fact that the Panel remarked a procedure defect. In view of that, they were rejected.

The table below contains the appeals presented during the year 2009 and shows the percentage of every type of appeal according to the decision taken by the Panel

#### **SYNTHESIS OF THE APPEALS INTRODUCED DURING 2009**

<b>DESIGNATION</b>	<b>NUMBER</b>	<b>PERCENTAGE</b>
Admissible and founded appeals	17	36,95%
Admissible and unfounded appeals	19	41,30%
Inadmissible appeals for procedure defect	10	21,73%
<b>TOTAL</b>	<b>46</b>	<b>100%</b>

## V.DETAILS ON TENDER APPEAL INTRODUCED DURING 2009

### A. ADMISSIBLE AND FOUNDED APPEALS

N°	DATE OF DECISION	CONCERNED		N° AND TITLE OF TENDER	SUBJECT OF DEMAND	DECISION OF THE INDEPENDENT REVIEW PANEL, "IRP".
		BIDDERS	PROCURING ENTITIES			
01	15/01	RAP-TECHNOLOGY	ELECTRO-GAZ	Tender N°11.07.053/2289/08/ /PROC.DIR/JM/cm for acquisition of software.	RAP Technologies contested the decision of the evaluation commission to disqualify them from the tender process for not fulfilling the necessary technical requirements.	<ul style="list-style-type: none"> <li>- Considering that RAP Technologies intended to supply a software and not to carry out a study as mentioned in the evaluation report;</li> <li>- Considering that the tender committee put up an evaluation criteria that was not specified in the tender document</li> <li>- Given the article 71 of the Law N°12/2007 of 27/03/2007 on Public Procurement;</li> <li>- IRP ordered that all bids be re-evaluated according to the criteria provided in the tender document.</li> </ul>
02	09/03	EMI-COM	GICUMBI-DISTRICT	Tender for « Travaux de distribution de l'énergie électrique	The appeal against the decision of disqualification from tendering process for	<ul style="list-style-type: none"> <li>- Considering that during the evaluation of bids, the District used a tender document</li> </ul>

				<p>produite par la micro centrale hydro électrique de Ngoma dans le secteur Rushaki, District de Gicumbi».</p>	<p>not presenting the documents that were not requested for in the tender document sold to bidders</p>	<p>different from the one sold to bidders;</p> <ul style="list-style-type: none"> <li>- Considering that the documents cited for the disqualification of EMI COM S.A.R.L are not anywhere mentioned in the tender document sold to bidders;</li> <li>- Considering that district breached the public procurement law by signing a tender contract fully aware while there was a pending complaint at the district appeals panel;</li> <li>- Given the article 71 of the Law N°12/2007 of 27/03/2007 on Public Procurement;</li> <li>- IRP denounced Gicumbi District for the use of a tender document different from the one sold to bidders;</li> <li>- IRP further denounced the decision of Gicumbi District to sign a tender contract fully aware that there was a complaint pending in the district appeals panel;</li> <li>- IRP ordered that Gicumbi District paid EMI COM S.A.R.L</li> </ul>
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						all costs incurred in the bidding process and appeal' fees.
03	09/03	SIMUGOM WA ANANIAS	RARDA	Tender N° 1092/AONR/08RARDA for Supply of cross breeds cows.	The appeal against the decision of disqualification from the tender process because despite the request submitted to RPPA by RARDA to debar Mr. Simugomwa Ananias , RPPA did not issue any decision suspending the accused from participating in Public tenders.	<ul style="list-style-type: none"> <li>- Considering that Mr. SIMUGOMWA Ananias was not appearing on the RPPA blacklist;</li> <li>- Considering that Mr. SIMUGOMWA was in a pole position to win the concerned tender;</li> <li>- Considering that a legally binding contract was already signed;</li> <li>- Given the article 71 of the Law N°12/2007 of 27/03/2007 on Public Procurement; IRP ordered that RARDA pays Mr. SIMUGOMWA all the costs he incurred in the bidding process.</li> </ul>
04	02/06	SHELTER- INTER	MMI	Tender N° 01/S/N/2009/MMI related to cleaning services.	Appeal against the decision of disqualification on technical ground due to the fact that SHELTER-INTER did not score the minimum required.	<ul style="list-style-type: none"> <li>- Considering that according to the technical evaluation done by IRP SHELTER-INTER scored the minimum required (70%);</li> <li>- Given the article 71 of the Law N° 12/2007 of 27/03/2007 ; IRP ordered that MMI proceeded to the financial</li> </ul>

						evaluation of the complainant's offer.
05	22/06	Murenzi Supply	RPPA/RNP	Tender N° 131/T/2008-N/POLICE/RPPA for construction works of Remera Police Station.	Appeal against the decision of awarding the tender to ERGECO while the latter was not technically qualified even not the lowest bidder. Murenzi Supply argued that it was technically qualified and the lowest bidder.	<ul style="list-style-type: none"> <li>- Considering that none of the bidders was technically qualified ;</li> <li>- Given the article 71 of the Law N° 12/2007 of 27/03/2007 on public procurement;</li> <li>- IRP canceled the decision awarding the concerned tender to ERGECO;</li> <li>- IRP further ordered the tender to be re - advertised.</li> </ul>
06	06/07	SHELTER-INTER	RIAM	Tender N°RIAM/PRO/G/OB/020/2009 related to cleaning services.	Appeal against the decision of disqualification during the technical evaluation. SHELTER-INTER argued that it was technically qualified and the lowest bidder.	<ul style="list-style-type: none"> <li>- Considering that the technical offer of SHELTER-INTER was in conformity to the Bidding Document' requirements and the lowest bidder;</li> <li>- Given the clause 11.1 of the Bidding Document;</li> <li>- Given the article 71 of the Law N° 12/2007 of 27/03/2007 on public procurement;</li> <li>IRP ordered that the concerned tender be awarded to the complainant.</li> </ul>
07	13/07	ROYAL ENTERPRISE	HCM	Tender N° 04/F/2009-N/MHC/BO for supply of equipments for the conference room and	Appeal against the decision of disqualification during the technical evaluation. ROYAL	<ul style="list-style-type: none"> <li>- Considering that the technical offer of was in conformity to the Bidding Document' requirements and the lowest</li> </ul>

				offices.	ENTERPRISE argued that it was technically qualified and the lowest bidder.	bidder; - Given the article 71 of the Law N° 12/2007 of 27/03/2007 on public procurement; IRP ordered that the concerned tender be awarded to the complainant.
08	06/07	ELECOM	C.S.R.	Tender N° 03/W/CSR/2009 for « Travaux de Réhabilitation des Routes Asphaltées et de Drainage des Eaux Pluviales de l'Etat 2020 Gacuriro ».	ELECOM contested the decision of its technical disqualification for not providing the references for similar works as required by the tender document.	- Considering that ELECOM provided the references of similar works required by the Bidding document ; - Considering that ELECOM was the lowest bidder; - Given the article 71 of the Law N° 12/2007 of 27/03/2007 on public procurement; IRP ordered that the concerned tender be awarded to the complainant.
09	07/08	KARAME RWANDA	KAYONZA DISTRICT	Tender N° 008/T/2009-/EU/DTB for execution of works and construction of 40 houses and annexes.	KARAME contested the decision of its disqualification due to the fact that it provided a copy of the bank guarantee instead of an original. KARAME argued that the Bidding document did not specify if the only original bank guarantee was supposed to be provided.	- Considering that KAYONZA District should have requested for an original bank guarantee from KARAME RWANDA; - Considering that KARAME RWANDA annexed to its appeal the original of the bank guarantee; - Given the article 38 and 71 of the Law N° 12/2007 of 27/03/2007 on public

						<p>procurement;</p> <ul style="list-style-type: none"> <li>- IRP decided to cancel the decision taken by KAYONZA District disqualifying KARAME RWANDA on administrative ground.</li> <li>- IRP ordered that the complainant be technically and financially evaluated.</li> </ul>
10	18/08	MVP	RPPA/ RITA	Tender N° 010/F/2009-I/RITA/RPPA regarding the Supply and Installation of Various IT Equipments to 18 Telecenters	<p>MVP RWANDA SARL contested its disqualification from the tendering process during the administrative evaluation for providing a scanned bid submission and missed a joint venture agreement with PLANSON INTERNATIONAL. MVP claims that its submission letter was not a scanned copy as all the rest of its documents.</p>	<ul style="list-style-type: none"> <li>- Considering that MVP RWANDA was a local partner for PLANSON INTERNATIONAL and represented legally the latter;</li> <li>- Considering that the financial offers of PLANSON INTERNATIONAL and MVP RWANDA SARL on LOT I and LOT II were interesting;</li> <li>- Considering the financials offers of the provisional successful bidders on the same lots which are highest comparatively to those for PLANSON INTERNATIONAL and MVP RWANDA SARL;</li> <li>- Given the article 4 of the Law N°12/2007 of 27<sup>th</sup>/03/2007 on Public Procurement which provides the principles guiding</li> </ul>

						<p>public procurement among which the principle of economy must be observed;</p> <ul style="list-style-type: none"> <li>- Given the article 71 of the same Law;</li> <li>- Given the Cabinet Decision of the 4<sup>th</sup> March 2009 approved that the Government shall not tolerate procuring at higher prices using Government resources .....</li> <li>- Given the RPPA Circular N° 010/09-018/RPPA of 09<sup>th</sup> January 2009 which requires for prior checking of all presented documents before award of tender;</li> <li>- IRP recommended that the offer of PLANSON INTERNATIONAL and MVP RWANDA SARL on LOT 1 and LOT II be technically evaluated and compared to other bidders;</li> <li>- IRP recommended that in case PLANSON INTERNATIONAL and MVP RWANDA SARL qualified technically, the evaluation committee should request the submission of the original</li> </ul>
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11	07/09	ITEX, SOFARU MUREKEZ I AND NDEKEZI	OCIR-THE	Tender N° 013/S/2009-N/OCIR THE for transport of dry tea the from factory to MOMBASA..	Recours contre la décision attribuant le marché en violation des clauses du DAO.	<p>- Considering the article 34 of M.O N° 001/08/10/MIN of 15th/01/ 2009, IRP judged inadmissible the demands of MUREKEZI and NDEKEZI, and rejected them for procedure defect.</p> <p>- Considering that the financial offers of SOFARU were highest comparatively to others, IRP judged unfounded the request of SOFARU and rejected it.</p> <p>- Considering that the financial offer of ITEX on LOT N° 1 was the lowest ; IRP judged founded the appeal of the said company. IRP ordered OCIR-THE to pay to ITEX all the expenses related to the bid preparation and appeal procedures.</p>
12	28/09	ENVIROC LEANING	PRIMATU RE	Tender N° 009/S/B.O/SPM-NO/2009 for cleaning services.	ENVIROCLEANING contested the decision taken by PRIMATURE disqualifying it from the evaluation process because the director of the company is married to the account of	<p>.- Considering that the principle of interest conflict was not applicable on the concerned case,</p> <p>- Given the articles 16-3° and 71 of the Law N° 12/2007 of</p>

					PRIMATURE. This was qualified by the latter as “conflict interest”. ENVIROCLEANING argued that the principle of conflict interest was not founded in this case.	27/03/2007, IRP cancelled the decision taken by PRIMATURE disqualifying ENVIROCLEANING from the evaluation process.
13	28/09	SHELTER INTER	RCAA	Tender N° 24/S/2009/CLN/N/RCA A for Cleaning service at Kigali International Airport.	SHELTER-INTER lodged a complaint claiming that although it was technically qualified and the lowest bidder, the tender was awarded to First Cleaning Company which the internal tender committee judged more innovative.  SHELTER argues that among the evaluation criteria, the Bidding Document did not mention “innovation” to be one of them.	<ul style="list-style-type: none"> <li>- Considering that among the evaluation criteria the Bidding Document did not mention innovation to be one of them;</li> <li>- Considering that First Cleaning Company did not provide the requirements related to its bank accounts;</li> <li>- Considering that First Cleaning Company was registered in June 2009 and provides references for cleaning works prior to its registration;</li> <li>- Considering that First Cleaning Company did not provide all the requirements related to the key persons;</li> <li>- Considering that SHELTER-INTERNATIONAL was technically qualified and the lowest financial bidder;</li> <li>- Given the article 39-3° and article 71 of the Law N°</li> </ul>

						<p>12/2007 of 27/03/2007;</p> <ul style="list-style-type: none"> <li>- IRP canceled the decision taken by the RCAA awarding the concerned tender to First Cleaning Company because this company was not technically qualified and not financially the lowest bidder.</li> <li>- The Panel ordered that the same procuring entity to award the mentioned tender to SHELTER-INTERNATIONAL because it is technically qualified and the lowest bidder.</li> </ul>
14	09/11	IPN	PRIMATURE	Tender N° 011/F/B.O/SPM-NO/2009-2010 for the office furniture.	IPN lodged an appeal against the decision taken by PRIMATURE refusing to award the tender to IPN because that one did not provide the execution guarantee for the tender it won for previously. IPN argued that there was no signed contract between them and PRIMATURE and also the company explained that it has not been blacklisted by the RPPA.	<ul style="list-style-type: none"> <li>- Considering that IPN was not on back list of the RPPA ;</li> <li>- Considering that IPN was technically qualified and the lowest bidder ;</li> <li>- Given the article 71 of the Law N° 12/2007 of 27/03/2007, IRP canceled the decision refusing to award the concerned tender to IPN.</li> </ul>
15	18/11	KPC	ISAE	Tender N° 010/S/ISAE/2009 for the cleaning services.	KPC lodged the appeal against the decision awarding the tender of	-Considering the correspondence N° 010/2009-1668/RPPA of the RPPA

					cleaning services inside and outside of ISAE to PRONET INTERNATIONAL. KPC claimed that the latter company did not have 3 years of experience in similar works which the Bidding Document requested for.	clarifying that the technical references acquired before the company registration can not be taken into consideration since that company had not legally the business qualification; - Considering the point B.2 of the Bidding Document for the concerned tender which requested for 3 years of experience; - Considering that PRONET INTERNATIONAL has been registered since 22 <sup>nd</sup> June 2009; - Given the article 71 of the Law N°12/2007 of 27/03/2007 on Public Procurement, - IRP ordered ISAE to proceed to the re-evaluation of the bids taking into account especially the clarification given by the RPPA.
16	22/12	ATC	RPPA/ MININFRA	Tender N° 124/F/2009-I/MININFRA/BO/RPPA for acquisition of 30 pick up double cabine 4 x 4 for districts	ATC contested the decision of its technical disqualification claiming that MININFRA could request for the clarification for “empattement” and “garde	- Considering that A.T.C.SA provided almost all required technical specifications, - Considering that the said company omitted to mention two details which could be

					au sol”, subject of its disqualification.	clarified during the bids' evaluation process; - Given the articles 38, 39-3°, 71 of the Law N°12/2007 of 27 <sup>th</sup> March 2007 on Public Procurement - The I.R.P. canceled the decision disqualifying A.T.C. and ordered that the RPPA requested from A.T.C.SA the catalogues pointing out the measures of “empattement” and “garde au sol” for the needed pick up double cabine 4 x 4.
17	28/12	ZETRACO	NWC	Tender N° 001/S/BO/CNF/2009-2010 for highiring vehicles for transporting personnel	ZETRACO lodged an appeal contesting the decision taken by NWC suspending the process of awarding the mentioned tender.	- Considering the Law N° 07/2009 of 27/04/2009 on Commercial Companies; - Given the article 71 of the Law N° 12/2007 of 27/03/2007, on Public Procurement IRP canceled the decision suspending the process of awarding the tender to ZETRACO.

## B. ADMISSIBLE AND UNFOUNDED APPEAL

01	02/01	IMANZI SARL	MININFRA	Tender N° 2460/UPPR/08 for "Rural Biomass energy and stove survey".	IMANZI S.A.R.L was contesting the decision of the evaluation commission to award the tender to a firm that included their employee in the list of its consultants.	<ul style="list-style-type: none"> <li>- Considering that article 1.10 of the tender document allowed the participation of same sub-consultants and individual experts in more than one proposal;</li> <li>- Considering that Dr. Rubagumya Alphonse was a consultant and not Permanent employee of IMANZI S.A.R.L;</li> <li>- Given the article 71 of the Law N°12/2007 of 27/03/2007 on Public Procurement; IRP dismissed the complaint submitted by IMANZI S.A.R.L as baseless, and upheld the decision of the evaluation committee to award the tender for rural biomass energy and stove survey to Green and Clean Solutions LTD.</li> </ul>
02	16/02	INTERTRA DE	CNTS	Tender N° 076/F/I2008/CDC/NCBT/ MIN/RPPA lot1 for « automate de paillasse pour les tests immuno-	INTERTRADE F&C S.A.R.L was contesting the decision that suspended the	<ul style="list-style-type: none"> <li>- Given the articles 18, 19, 44, and 71 of Law N°12/2007 of 27/03/2007 on Public Procurement</li> <li>- Given the articles 3-8° and 9-</li> </ul>

				hematologiques ».	tender award on the claim that their company was blacklisted by RPPA Board of Directors.	6° of the Law N° 63/2007 of 30/12/2007 establishing and determining the organization, functioning and responsibilities of Rwanda Public Procurement Authority; - Given the article 30 of Ministerial Order N°001/08/10/MIN of 16/012008 establishing regulations on Public Procurement and Standard Bid Documents; - The National Independent Review Panel ruled that INTERTRADE F&C S.A.R.L was blacklisted before signing the contract, and therefore could not be awarded a public tender until either the annulment of the debarment decision by a competent authority or the expiry of the debarment period.
03	04/05	RAI GROUP	MINERENA	Tender N° 010/MINERENA-NAFA/2008 for “licenses to harvest, plant and manage forest plantation in the buffer zone of Nyungwe National Park”.	RAI Group was contesting the decision taken by MINERENA to disqualify it from the evaluation process. RAI Group claimed	- Considering that failing to submit the minutes of the meeting held at MINERENA offices on 25 <sup>th</sup> February 2009 was not a condition from the Bidding Document; - Considering that, RAI Group

					<p>that:</p> <ul style="list-style-type: none"> <li>- MINERENA failed to submit the minutes of the meeting held at their offices on 25<sup>th</sup> February 2009;</li> <li>- Score of 80% as a condition to proceed to the next stage of evaluation was to remove and knock out parties that were speculating on this tender;</li> <li>- The decision of MINERENA was clearly taken in disregard of article 4 (1), (2) and article 5 of the Law N°12/2007 of 27/03/2007 on Public Procurement.</li> </ul>	<p>did not appeal for the criterion related to the score of 80% before submission;</p> <ul style="list-style-type: none"> <li>- Considering that after evaluation done by the IRP RAI Group scored 63.5 % and New Forest Company 84%;</li> <li>- IRP ordered that all bidders be notified immediately about the modification of the scores.</li> <li>- IRP rejected all the claims raised by RAI Group because they were baseless.</li> </ul>
04	04/05	SHELTER-INTER	MIJESPOC	Tender N° 146/BO/AO/2008 for	SHELTER-INTER lodged an appeal	- Considering the article 8-4° of MO N° 001/08/10/MIN of

				<p>« entretien de l'espace vert du Stade Amahoro, ses alentours et du cimetière des héros nationaux ».</p>	<p>claiming that its technical offer was not correctly evaluated concerning the points the enterprise experiences and the technical references. .</p>	<p>16/01/2008 which stated that the evaluation process should be done within 21 days from the opening ceremony ;</p> <ul style="list-style-type: none"> <li>- Considering that the evaluation was done a month after the opening process ;</li> <li>- Considering that the evaluation committee did not respect the article 26 of the said MO by proceeding to the financial opening before transmitting the provisional notification;</li> <li>- Considering that the bidders were invited to the financial opening on 03<sup>rd</sup> March 2009 while the evaluation report confirmed that the technical and financial opening ceremonies ended on 19<sup>th</sup> February 2009;</li> <li>- Given the article 71 of the Law n°12/2007 of 27/03/2007 on Public Procurement ;</li> </ul> <p>IRP ordered MIJESPOC to re-advertise the concerned tender due to the fact the latter one did not respect the procedures of evaluation.</p> <p>Further more, the IRP</p>
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						denounced the action of MIJESPOC concerning the invitations to bidders for the financial opening while that one was already happened.
05	02/06	SHELTER-INTER	MINAFFET	Tender N° 002/S/MINAFFET/MINICOM/MINEAC for provision of cleaning service.	SHELTER-INTER was contesting the decision taken by MINAFFET to award a tender to BEST COMPANY. SHELTER-INTER claimed that the tender was awarded to the bidder whose price was not known.	<ul style="list-style-type: none"> <li>- Considering SHELTER-INTER was not financially the lowest bidder;</li> <li>- Considering that BEST COMPANY was successful bidder;</li> <li>- Given the article 71 of the Law N°12/2007 of 27/03/2007 on Public Procurement;</li> </ul> <p>IRP dismissed the claim presented by SHELTER-INTERNATIONAL as baseless and upheld the conclusion reached by MINAFFET awarding the tender to BEST COMPANY.</p>
06	02/06	A.N.S.	Bugesera District	Tender for the Furniture of desks.	ANS lodged the appeal against its administrative disqualification	<ul style="list-style-type: none"> <li>- Considering the articles 3, 11.3, 15 of the Bidding Document ;</li> <li>- Given the article 71 of the</li> </ul>

					decided by the Independent Review Panel on district level.	Law N° 12/2007 of 27/03/2007 on Public Procurement ; IRP rejected the appeal lodged by ANS because it was baseless.
07	13/07	MEDIPHARM	RPPA/ GLOBAL FUND	Tender N° 040/F/2009-N/SCAL R6-U.G.P/RPPA for Supply, Installation, Training, and Test of Medical Equipments for Health Centers.	MEDIPHARM lodged the appeal against its administrative disqualification.	- Considering the articles 11.1.5, 11.1.12 of the Bidding Document ;  Given the article 71 of the Law N° 12/2007 of 27/03/2007,  IRP rejected the mentioned appeal because it was baseless.
08	07/08	VESTEERGARD FRANSSEN GROUP S.A	RPPA/ GLOBAL FUND	Tender 050/F/2009-I/GF/MALARIA ROUND 5 OHASE II/RPPA for supply of 816.939 for mosquito's nets.	VESTEERGARD lodged the appeal claiming that in spite of providing all the administrative requirements, GLOBAL FUND disqualified it.	- Considering that VESTEERGARD did not provide the following documents : * The manufacturer authorization, * The agreement certificate delivery by WHO, * It provided a status report made by Sydbank instead of bank credit line promise, * Its bid security did not comply with the format given in tender document - Given the articles 33 and 71 of the Law N° 12/2007 of

						27/03/2007, IRP rejected the appeal because it was not founded.
09	07/08	RUMA	PIGU	Tender N° 008/S/Mars-2009/UCP/PIGU for «Recrutement de consultant pour l'audit urbain, organisationnel et financier des centre urbains des districts de Huy et Musanze».	RUMA lodged the appeal against the decision made by PIGU disqualifying it from the evaluation process due to the fact that it did not technically get the first score.	- Considering that PIGU did not get the first score ; - Given the articles 68 and 71 of the Law N° 12/2007 of 27/03/2007 on Public Procurement; IRP rejected the appeal lodged by RUMA because it was baseless.
10	28/08	EXECUTIF CLEA- NING	KIE	Tender N° 01/DHR/NCOB/WORK/KIE/2009 for cleaning services.	EXECUTIF CLEANING lodged the appeal against the decision taken by KIE disqualifying it from the evaluation process on administrative ground.	- Considering that EXECUTIVE CLEANING did not provide the proof of its experience in cleaning work as requested by the Tender Document; - Considering that the aforesaid company did not mention if it will do fumigation activity or that it will sub-contract for the same activity; - Given the article 71 of the Law N° 12/2007 of 27/03/2007 on Public Procurement; - IRP rejected the appeal lodged by EXECUTIVE CLEANING because it did not provide all the administrative

						documents as required by the Bidding Document.
11	28/08	BOGECO	MINERENA	Tender N° 009/MINERENA/2009 for Rehabilitation of Campus for the China Aid Bamboo Project.	BOGECO was disqualified by MINERENA because it provided the Managing Director with an ordinary diploma instead of a higher diploma, and it also provided a technician who has 5 years of experience instead of 8 years.  BOGECO claimed that the diploma provided for the Managing Director was the equivalent of A1 which was acceptable by the Tender Document.	<ul style="list-style-type: none"> <li>- Considering that BOGECO provided an ordinary diploma, equivalent of A1 in Civil Engineering as requested by the Tender Document,</li> <li>- Considering that BOGECO provided a technician with 4-5 years of professional experience whereas the Tender Documents requested for 8 years,</li> <li>- Given the article 71 of the Law 12/2007 of 27/03/2007 on Public Procurement, IRP found out that the appeal lodged by BOGECO against the decision of MINIRENA on the issue of the experience and the Diploma of the Project Manager requested in the Bidding Document, has a substantial basis and justified. In this case, the Project Manager presented by BOGECO fulfilled the requirements in the Bidding document.</li> </ul> <p>However, IRP found the appeal</p>

						<p>regarding the professional experience in similar nature and volume of works for the technician provided by BOGECO baseless.</p> <p>IRP rejected the appeal on grounds that BOGECO presented a technician with five (5) years experience contrary to eight (8) years of professional experience required in the Bidding Document.</p>
12	07/09	ASSOCIATIO DUHARAN IRE UMURIMO	ISAE	Tender N° 006/S/ISAE/2009 for cleaning services at ISAE-RUBIRIZI site.	The appeal was lodged against the decision of disqualification during financial evaluation.	<ul style="list-style-type: none"> <li>- Considering that the financial offer of DUHARANIRE UMURIMO ASSOCIATION was highest comparatively to the one of the successful bidder, PRONET,</li> <li>- Given the article 71 of the Law N° 12/2007 of 27/03/2007, IRP rejected the appeal because it was baseless.</li> </ul>
13	14/09	MTC	RNP	Tender N° 022/F/2009-NO/RNP/MININTER/B.O for acquisition of spare parts.	MTC contested the decision disqualifying it from the tendering process for submitted references of	<ul style="list-style-type: none"> <li>- Considering the article 71 of Law N° 12/07 of 27/03/2007 on Public Procurement;</li> <li>- Considering the RPPA's instructions N° 010/09-018/RPPA, points 2, 6 &amp; 8;</li> <li>- Considering the visit report made by the representatives of</li> </ul>

					<p>similar tenders executed which were not of the same volume in comparison to the volume of this current tender. Also, the same company was found on the ground during the visit conducted by the evaluation committee, with no sufficient capacity to meet the needs of the tender.</p> <p>MTC claimed that the RNP did not respect the terms of the Bidding Document.</p>	<p>the Independent review Panel and the expert from ONATRACOM on MTC;</p> <ul style="list-style-type: none"> <li>- IRP rejected the appeal of MULTI TRADING COMPANY because it did not present sufficient capacity to meet the needs of the current tender.</li> </ul>
14	07/09	JARDINNA GE LA ROSE	MINISPOC	Tender N° 002/BO/AO/S/MINISPOC/ 2009 for cleaning services.	JARDINNAGE LA ROSE claimed that MINISPOC should take into consideration its "attestation de créance de RRA"	<ul style="list-style-type: none"> <li>- Considering that the Bidding Document required the « attestation de non créance de RRA » and that JARDINNAGE LA ROSE provided the « attestation de créance »,</li> <li>- Given the article 71 of the</li> </ul>

					while the Bidding Document required "attestation de non créance de RRA".	Law of 12/2007 of 27/03/2007, IRP rejected the appeal which was judged unfounded.
15	12/10	CROFT HOUSE	RPPA/ MOD	Tender N° 056/F/2009-IR/MOD/PU/RPPA for supply of combat dry ration.	CROFT HOUSE LTD lodged the appeal MOD disqualified it due to the fact that the foods it promised to deliver were conserved in plastic bags while it was required to be canned food. The appellant objected that its packing material is not plastic bag but a modern multi-layer material including a flexible metallic layer.	<ul style="list-style-type: none"> <li>- Considering that CROFT HOUSE LTD submitted the catalogues for the foods conserved in plastic material while the Tender Document required to be canned;</li> <li>- Given article 39 and 71 of the Law N° 12/2007 of 27 March 2007 on Public Procurement; IRP rejected the appeal lodged by CROFT HOUSE LTD because its bid did not comply with the technical criteria of the Bidding Document.</li> </ul>
16	12/10	CS INTER	RECO & RWASCO	Tender N° 11.07.053/1847/09/PROC U-DIR/YM/irn for construction works of	CS INTERNATIONAL contested the decision of its	- Considering that the CS INTERNATIONAL submission letter did not comply with the model given in the tender

				Bugesera station.	<p>qualification by RECO&amp;RWASCO which disqualified it on three grounds:</p> <p>1. The power of attorney was not considered due to the fact that it was incompatible and confusing.</p> <ul style="list-style-type: none"> <li>- The submission letter did not mention the tender identification number;</li> <li>- The same letter did not comply with the Bidding Document sample..</li> </ul>	<p>document;</p> <ul style="list-style-type: none"> <li>- Given the articles 39 and 71 of the Law N° 12/2007 of 27 March 2007 on Public Procurement;</li> <li>- IRP rejected the appeal lodged by CS INTERNATIONAL because its bid did not comply with the Tender Document.</li> </ul>
17	28/12	MANUMET AL	NBR	Tender N° 115/F/2009-I/BNR/RPPA for acquisition and installation of the offices and kitchen furniture.	NBR disqualified MANUMETAL due to the fact that its technical references were for FURNITURE PALACE and the credit line facility was not specific	<ul style="list-style-type: none"> <li>- Considering that the proof provided by MANUMETAL as an engagement of a joint venture with FURNITURE PALACE was not signed by the two parties in Joint Venture and could not be taken into account;</li> </ul>

					<p>particularly to the mentioned tender. MANUMETAL claimed that it was in joint venture with FURNITURE PALACE. Also the credit line it provided was valid.</p>	<ul style="list-style-type: none"> <li>- Considering that the technical references for FURNITURE PALACE could not be considered;</li> <li>- Given the article 71 of the Law 12/2007 of the 27/03/2007 on Public Procurement;</li> <li>IRP rejected the appeal presented by MANUMETAL.</li> </ul>
18	18/08	MEDIPHARM	RPPA/ GLOBAL FUND	Tender N° 038/F/2009-N/UGP HIV R7 PHASE I/ RPPA for Furniture, Installation, Test and Training of Medical Equipments.	<p>The bid presented by MEDIPHARM on the said tender was rejected for these administrative reasons:</p> <ul style="list-style-type: none"> <li>- Submitting a non valid copy of the Trade License that expired on 31<sup>st</sup> December 2008,</li> <li>- Not submitting a confirmation of warranty and after sale services for 12 months,</li> <li>- Submitting a</li> </ul>	<ul style="list-style-type: none"> <li>- Considering article 11.1.5 and 11.1.12 of ITB in Bid Data Sheet which requested to the bidders to provide a valid Social Security Fund Certificate and confirmation of warranty and after sale services;</li> <li>- Considering that, the “attestation de non-relevance” submitted in the Bidding Document for HS Distributors (the bidding partner) was not valid on the opening day of the bids (05/05/2009);</li> <li>- Given the article 71 of the Law N°12/2007 of 27<sup>th</sup>/03/2007 on Public Procurement;</li> </ul>

					<p>non valid National Social Security Fund (NSSF) Certificate for HS Distributors (its partner in the Joint bidding Venture) that expired on 30 April 2009. MEDIPHARM was claiming that their bid covered all the requirements of the Tender Document</p>	<p>IRP rejected the appeal of MEDIPHARM as unfounded based on the facts that two of the required documents; the “attestation de non-relevance” submitted was not valid on the opening day of the bids and confirmation of warranty and after sale services were not submitted in the original Bidding Document on 05 May 2009.</p>
19	30/11	REX CONSTRUCT	DISTRICT DE RUTSIRO	Tender for «Travaux d’élaboration du plan de lotissement du centre de négoce de Congo Nil».	The appeal was lodged against the decision of re-advertising the mentioned tender.	<p>- Considering that REX CONSTRUCT did not provide the credit line as required by the Bidding Document;</p> <p>- Considering that REX CONSTRUCT did not respect article 34 of MO N° 001/08/10/MIN of 16/01/2007</p> <p>IRP rejected the appeal because it was baseless.</p>

**C. INADMISSIBLE CLAIMS FOR LEGAL IRREGULARITY**

01	16/02	GARAGE FMA	MUHIMA HOSPITAL	Tender N° 02/2008 for Servicing and Maintenances of vehicles for Muhima Hospital.	GARAGE FMA was contesting the decision taken by MUHIMA District to disqualify them from the tender process because the reasons advanced by the hospital are not provided in the tender document.	Given the articles 69 and 71 of Law N°12/2007 of 27/03/2007 on Public Procurement;  The National Independent Review Panel rejected the appeal submitted by GARAGE FMA for non compliance with legal duration of submitting appeals.
02	16/02	CMT	KAVUMU COLLEGE	Tender N°002/F/2008/O.B/KCE for Supply of a Generator.	CMT was contesting the decision taken by KAVUMU COLLEGE OF EDUCATION to disqualify them from the tender process for not fulfilling the necessary technical	Given the articles 69 and 71 of Law N°12/2007 of 27/03/2007 on Public Procurement;  The National Independent Review Panel rejected the appeal submitted by CENTRE MULTI TECHNIQUES for non compliance with legal duration of submitting appeals.

					requirements.	
03	02/06	ROYAL ENTERPRISE	NLC	Tender N° 04/NLC/ORLT/2009 for Supply of metallic filing cabinet drawers.	ROYAL ENTERPRISE S.A.R.L. claimed that the licence trade it provided was valid even if NLC disqualified it reporting that the company submitted a photocopy of license trade while the bid document requested for an original and certified license trade.	<ul style="list-style-type: none"> <li>- Considering that ROYAL ENTERPRISE was not satisfied by the decision made by NLC since 15<sup>th</sup> April 2009;</li> <li>- Considering that ROYAL ENTERPRISE introduced the appeal to the IRP only on 30<sup>th</sup> April 2009, after 15days;</li> </ul> <p>Given the article 69 of Law N°12/2007 of 27/03/2007 on Public Procurement,</p> <p>IRP rejected the claim presented by ROYAL ENTERPRISE S.A.R.L. because it did not respect the period of appeal.</p>
04	07/08	SEKAM	GLOBAL FUND	Tender N° 18/B/2009-AONO/UGP GF AND CTP/HIV ROUND 7 for Supply of 182 of computers and printers.	SEKAM claimed that the receptionist of GLOBAL FUND refused to receive its offer pretending that it was late while according to the Bidding Document SEKAM reached	<ul style="list-style-type: none"> <li>- Considering that SECAM lodged the initial appeal to the Global Fund on 10<sup>th</sup> Jun 2009;</li> <li>- Considering that SECAM lodged the second appeal to the RPPA instead of appealing to the Independent Review Panel;</li> <li>- Considering that SECAM lodged its third appeal to the Panel only on 15<sup>th</sup> July 2009, one month later;</li> </ul>

					the place an hour before the opening ceremony.	- Given articles 69 and 71 of Law N°12/2007 of 27/03/2007 on Public Procurement; IRP dismissed the complaint presented by SECAM because it has been submitted after the prescribed period for appeal.
05	07/09	SEKAM	RPPA/ GLOBAL FUND	Tender N° 032/T/2009-N/UGP-GF/RPPA for Furniture and Installation of solar panel in 34 health center.	SEKAM contested the decision which disqualified it because, according to the evaluation committee, the personnel provided were unqualified.	- Considering that SECAM lodged the initial appeal to Global Fund on 10 <sup>th</sup> Jun 2009, - Considering that SECAM lodged the second appeal to the RPPA instead of appealing to the Independent Review Panel, - Considering that SECAM lodged its third appeal to the Panel only on 15 <sup>th</sup> July 2009, one month later, - Given articles 69 and 71 of Law N°12/2007 of 27/03/2007 on Public Procurement, IRP dismissed the complaint presented by SECAM because it was submitted after the prescribed period for appeal.
06	14/09	BIG FIVE	MINAFFET	Tender N° 007/F/2009-N/MINAFFET for Supply of diplomatic bags.	.BIG FIVE lodged an appeal contesting the decision taken by MINAFFET to	- Considering that BIG FIVE lodged the initial appeal on 03 <sup>rd</sup> August 2009; - Considering that the same company lodged the second

					negotiate a reduction on the price of its financial offer.	appeal to the Panel on 31 <sup>st</sup> August 2009, twenty nine (28) days later; - Given the article 69 and 71 of the Law 12/2007 of 27 <sup>th</sup> March 2007 on Public Procurement; IRP dismissed the complaint presented by BIG FIVE because it has been submitted after the prescribed period for appeal.
07	12/10	DSR LTD	KFH	Tender N° 001/SS/07/E.O.I/KFH for Supply of Medical & Surgical Consumables.	The DSR LTD was requesting for a review of decisions taken by KFH regarding the following acts: -Failure to execute their part of the contract, -Unilaterally to remove some items from the items successfully bid. -Recommending award of the tender for supply of the sutures to another entity.	- Considering that after introducing the initial appeal, DSR spent 4 months and 10 days (from 08/04-18/08/2009) before introducing the appeal to the Independent Review Panel;  - Considering that DSR did not provide a receipt from Rwanda Revenue Authority as a proof of payment of appeal' fees.  Given the article 37 of Ministerial Order N° 001/08/10/MIN of 16/01/2008 on Public Procurement and standard Bidding Documents,  - Given the articles 69 and 71 of the Law N°12/2007 of

						27/03/2007 on Public Procurement,  IRP dismissed the complaint presented by DSR LTD because it did not respect the procedure of appeal.
08	30/11	BONUS ENTREPRISE	IRST	Tender N° 02/IRST/2009-2010 for « Service d'inventaire du patrimoine et immobilier, leurs valeurs, gravures du matériel et installation des étiquettes des portes, codification étiquetage par gravure du matériel et mobilier ainsi que l'acquisition et la formation du système informatique de gestion du patrimoine de l'I.R.S.T ».	BONUS ENTERPRISES LTD was contesting the decision taken by the IRST disqualifying it due to the fact that the mentioned company did not get the first score.	- Considering the article 36 of the MO N°001/08/10/MIN of 16/01/2008 Establishing Regulations on Public Procurement, "the request for review shall be acceptable if it explains a specific act of omission or commission contravening the law on public procurement ...." - Given the article 71 of the Law N°12/2007 of 27/03/2007 on Public Procurement; IRP rejected the complaint presented by BONUS ENTERPRISES LTD because it did not respect the appeal's procedure.
09	30/11	ENVIRO-CARE	MINEDUC	Tender N° 012/S/MIN/2009-MINEDUC for cleaning service.	ENVIROCARE CONSULTANT claimed that MINEDUC awarded the tender to HIGH	Considering that ENVIROCARE CONSULTANT did not respect the period of appeal,  Given the article 69 of the Law

					CLASS which offers the highest offer comparatively to ENVIROCARE.	N° 12/2007 of 27/03/2007 on Public Procurement,  The IRP decides to reject the appeal introduced by the mentioned company because of the disrespect of the appeal's procedure.
10	28/12	ROKO CONSTRUCT	RPPA/ SFB	Tender N° 108/T/2009-I/SFB/RPPA for Construction works for a proposed learning complex for the SFB.	The appeal was lodged against the decision of disqualification due to the fact that ROKO provided the unqualified personnel and the latter was not agreed.	- Considering that ROKO CONSTRUCT did not respect the article 34 of MO N° 001/08/10/MIN of 15 <sup>th</sup> January 2009 which requires the payment of the appeal' fees;  - Given the article 69-4° of the Law N° 12/2007 of 27 <sup>th</sup> March 2009 witch allows a second appeal after 7 days from the first one,  IRP dismissed the appeal lodged by ROKO CONSTRUCT because the latter did not respect the appeal's procedure.

## VI. SYNTHESIS OF THE APPEALS INTRODUCED DURING THE PERIOD OF 2007-2008-2009

The second table synthesizes the appeals introduced during three (3) years of activities of the National Independent Review Panel:

DESIGNATION	PRESENTED APPEALS			PERCENTAGES		
	2007	2008	2009	2007	2008	2009
Admissible and founded appeals	9	11	17	31,03 %	39,3 %	36,95 %
Admissible and unfounded appeals	8	14	19	27,58 %	50 %	41,30 %
Inadmissible appeals for procedure defect	12	3	10	41,37 %	10,71 %	21 ,73 %
<b>TOTAL</b>	<b>29</b>	<b>28</b>	<b>46</b>	<b>100%</b>	<b>100%</b>	<b>100 %</b>

As indicated below, the third year of activity for the National Independent Review Panel was marked by a general strong increase of the requests for review. Compared with the previous two (2) years (2007-2008) in the course of which cases of appeals were successively 29 and 28, in total, the Panel received 46 requests for review.

Furthermore, it has been observed that the main part of the presented appeals (41, 37 %) during year of 2007 was rejected for procedural irregularity. And this was proving the lack of knowledge in the appeal procedures by bidders.

Nevertheless, compared to the second year of activity (2008), appeals rejected by the Committee decreased considerably (10, 71 %). Also for the third year (2009), taking into account that twenty six percent (21, 73%) represents the rejected appeals, it can be noticed that the bidders improved their understanding about the appeal procedures.

Last but not least, and basing on the above indications which point out a general increase of the activity of the National Independent Review Panel, we can conclude that the latter plays a major role in guaranteeing the respect of laws and regulations governing public procurement in Rwanda.