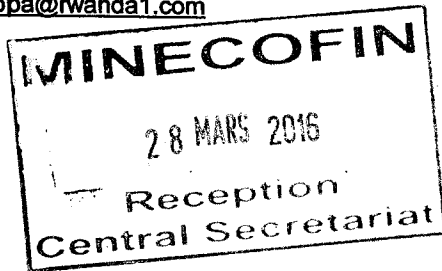
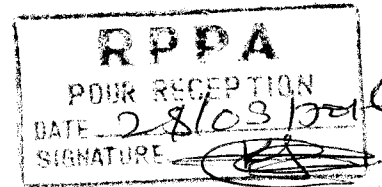


REPUBLIC OF RWANDA



**NATIONAL INDEPENDENT REVIEW PANEL (NIRP)  
PUBLIC PROCUREMENT**

KN 3 AV, 2 KIGALI/RWANDA  
10<sup>th</sup>, FLOOR, GRAND PENSION PLAZA  
P. O .Box: 4276,  
E-mail: [rppa@rwanda1.com](mailto:rppa@rwanda1.com)



Kigali, on 24 MARS 2016  
N° 010/2016- 059/NIRP

**HONORABLE MINISTER OF FINANCE  
AND ECONOMIC PLANNING**

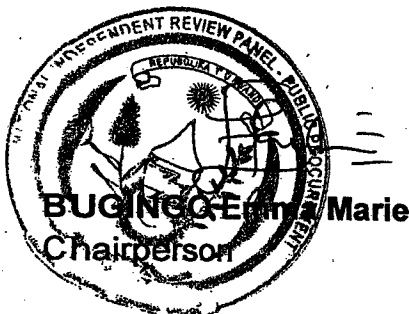
Honorable Minister,

**SUBJECT: TRANSMISSION OF THE QUARTERLY ACTIVITY REPORT FOR THE  
FIRST TERM OF FISCAL YEAR 2015/2016 (July – September 2015)**

Pursuant to article 61 of the Ministerial Order N°001/14/10/TC of 19/02/2014 establishing regulations on public procurement, standard bidding documents and standard contracts;

I have pleasure to submit to you the report of the National Independent Review Panel, herewith attached, for the First Term of Fiscal Year 2015/2016.

Sincerely,



**CC:**

- Director, General of RPPA

REPUBLIC OF RWANDA



**NATIONAL INDEPENDENT REVIEW PANEL (NIRP)  
PUBLIC PROCUREMENT**

KN 3 AV, 2 KIGALI/RWANDA  
10<sup>th</sup>, FLOOR, GRAND PENSION PLAZA  
P. O .Box: 4276,  
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**ACTIVITY REPORT FOR THE FIRST TERM OF FISCAL  
YEAR 2015/2016 (July – September 2015)**



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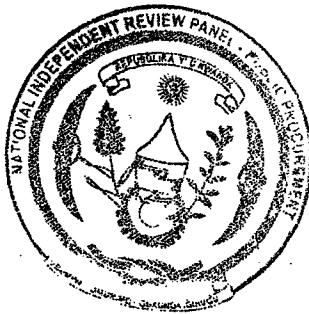
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**LIST OF ABBREVIATIONS**

1. BNR	: Banque Nationale du Rwanda
2. Fy	: Fiscal Year
3. IT	: Information Technology
4. ITB	: Instructions to Bidders
5. LTD	: Limited
6. MINECOFIN	: Ministry of Finance and Economic Planning
7. NIRP	: National Independent Review Panel
8. RURA	: Rwanda Utilities Regulatory Agency
9. PE	: Procuring Entity
10. RDB	: Rwanda Development Board
11. RFP	: Request For Proposal
12. RPPA	: Rwanda Public Procurement Authority
13. RRA	: Rwanda Revenue Authority
14. RSSB	: Rwanda Social Security Board
15. RAB	: Rwanda Agriculture Board



## INTRODUCTION

The National Independent Review Panel, "NIRP", is provided by the Law N° 12/2007 of 27/03/2007 on Public Procurement. The panel has the role of receiving, and analyzing the appeals presented by different bidders. To be acceptable an appeal has to clarify a specific act of omissions or commissions contravening the law and regulations on public procurement.

During the first term of the fiscal year 2015/2016, NIRP received 15 dossiers of appeals. Among the received 15 appeals, 06 were admissible and founded, 06 were admissible and not founded and 1 conducted to the termination of procurement proceedings; while 02 cases were ongoing at the end of the term.

## 2. ACTIVITIES OF THE NIRP DURING THE FIRST TERM OF THE FY 2015-2016 (July – September 2015)

### 2.1. ADMISSIBLE AND FOUNDED APPEALS

To be judged admissible and founded, an appeal has to be introduced in accordance with the procedure of appeal provided for in Article 69 of the Law N°12/2007 of 27/03/2007 on Public Procurement, and Article 53 of the Ministerial order N°001/15/10/TC of 19/02/2015 establishing regulations on public procurement, standard bidding documents and standard contracts.

If the appeal is against the Procuring Entity's decision that contravenes the Law on Public procurement and its subject matter is sound, NIRP's decision is therefore taken in favor of the complainant. In this respect, NIRP took **six (06) admissible and founded appeals**.



## 2.2. ADMISSIBLE AND UNFOUNDED APPEALS

The complainants introduced their appeals taking into consideration the appeal's procedure but ignoring the basis of facts. Therefore, after analyzing the latter, Panel members decided to reject and dismiss appeals. During the first term of the fiscal year 2015/2016, NIRP took **six (06) admissible and not founded** appeals.

## 2.3. PROCUREMENT PROCEEDINGS TERMINATED

NIRP took **one (01)** decision of termination of procurement proceedings because the principles of fairness, transparency and economy (value of money) were not observed by the Procuring entity during the tender award process in accordance with the provision of the law and regulation on Public Procurement.

## 2.4. ONGOING APPEALS

At the end of the first term of the fiscal year 2015-2016, **two (02)** appeals were ongoing, and the decisions will be taken in the following term of the same fiscal year.

## 3. SUMMARY OF THE APPEALS ANALYZED DURING THE FIRST TERM OF THE FY 2015-2016

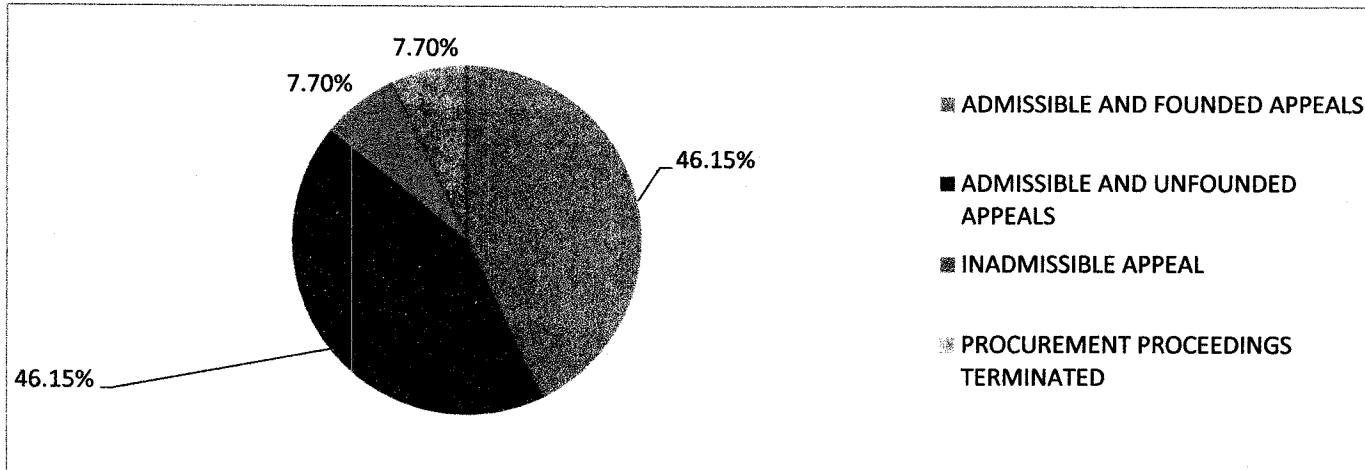
The table below shows the number of appeals analyzed during the first term of the fy 2015/2016 and the details are in Annexes 1:

DESIGNATION	NUMBER OF APPEALS	PERCENTAGE
A. ADMISSIBLE AND FOUNDED APPEALS	06	46.15 %
B. ADMISSIBLE AND UNFOUNDED APPEALS	06	46.15 %
C. INADMISSIBLE APPEAL	1	7.7 %
C. PROCUREMENT PROCEEDINGS TERMINATED	1	7.7 %
<b>TOTAL</b>	<b>13</b>	<b>100 %</b>



- The above table shows the equal percentage of analyzed appeals which were founded and not founded.

**Graph 1: Graph representing the % of the decisions taken on the appeals analyzed during the first term of the fy 2015-2016 (July – September 2015)**



## CONCLUSION AND RECOMMENDATIONS

NIRP received 15 appeals and 13 cases were analyzed and decisions taken while 02 cases were ongoing at the end of this first term.

It is the first time in the history of quarterly report of appeals against decision taken by the procuring entities that the number of founded appeals is equal to unfounded appeals. This is, mainly, due to the unfairness of evaluations carried out by procuring entities.

In this connection, NIRP strongly recommends the procuring entities to demonstrate fairness in the evaluation as well in relation with the provisional successful bidder as the disqualified bidders.





## ANNEXES:

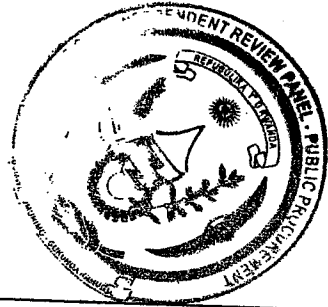
## 1. DECISIONS TAKEN ON THE APPEALS ANALYZED DURING THE FIRST TERM OF THE FY 2015-2016

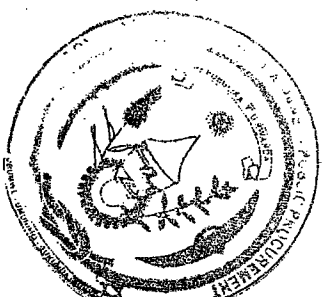
## A. ADMISSIBLE AND FOUNDED APPEALS

N°	Reception date	Date of the decision	N° of the decision	Bidder	Procuring Entity	Tender N° and title	Subject of Appeal	Decision of NIRP
01	24/06/15	18/07/15	027/2015/ NIRP	JV Reliance Security Limited - Smart Line Integration (PTY) Ltd & Miccon Real Line Limited	BANQUE NATIONALE DU RWANDA	43/F/2015-2015/NOCEB/C/BNR for Supply, Installation and Commissioning of Security equipment to BNR Branches.	Appeal against its disqualification	Pursuant to Article 41, para 2 of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007, on Public Procurement, NIRP members ordered BNR to disqualify the bid of the complainant and continued the award tender process to the second responsive and lowest evaluated bidder(s), if any, and/or to cancel and re-advertise the tender if bid(s) was/were evaluated non responsive.
02	15/07/15	18/08/15	030/2015/ NIRP	BONUS ENTERPRISE LTD	RWANDA EDUCATION BOARD	1.117/65/015/JMM/HQ for Supply of asserted ICT Equipment, Projector, and Weighing Scales & Envelopes	Appeal against its disqualification	NIRP members considered that the "Online document of Tax Clearance Certificates" issued by the Rwanda Revenue Authority Headquarter was equivalent to the "Original of the Tax Clearance Certificate".  Given that the Evaluation report judged responsive the "Online document of Tax Clearance Certificates" presented by other bidders, NIRP members found out




03	18/08/15	08/09/15	033/2015/ NIRP	AGROTECH LTD	RWANDA AGRICULTU RE BOARD	01.11/1132/014//JJMM/HQ for Supply of Laboratory Equipment, Materials and Consumables (Lot1).	Appeal against its disqualification.	<p>unjustifiable the RAB's decision to disqualify BONUS ENTERPRISE LTD on their presented certificate.</p> <p>Furthermore, NIRP members judged the presented "Online document of Statement of Arraars" by SUPER-NET LTD not responsive since it was not for Public tendering.</p> <p>Pursuant to the Article 41, para 2, 5° of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement, NIRP members ordered a re-evaluation of all bids, by considering BONUS ENTERPRISE LTD in the next step and award the tender to the responsive and lowest evaluated bidder.</p> <p>Concerning the "manufacturers' authorisation", NIRP members did concur with the decision taken by RAB as they were complying with the tender document requirements.</p> <p>On the issue of arithmetic verification of less than 30% of the initially offered price, NIRP members found out no irregularity carried out in this operation, but deplore the absence by the law in public procurement of limited proportion above or below of the initial amount.</p> <p>The Panel members found out that the discrepancies yet the evaluation report judged them responsive, thus</p>
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							<p>breaching the Article 25, para 2 of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement.</p> <p>NIRP members recommended the re evaluation for the Lot1 of this tender for all bids as per the provisions of laws and regulations in the public procurement as the evaluation made was unfair.</p>
04	23/07/15	01/09/15	0322/2015/ NIRP	RWANDA DEMOBILIS ATION AND REINTEGR ATION PROGRAM ME	MAXWELL LTD	<p>Consultancy service for supervision of construction of rehabilitation workshop and retaining walls.</p> <p>Appeal against its disqualification.</p>	<p>Considering that both MAXWELL LTD and RDRP agreed the meeting of contract negotiation held on 12<sup>th</sup> June 2015 and had concluded on reducing the cost of the MAXWELL LTD's Financial Proposal;</p> <p>Given the absence of the minutes of contract negotiation between MAXWELL LTD and the Internal Tender Committee of RDRP;</p> <p>Basing on the "DOCUMENT ROUTING SLIP" stating that there was no risk as the returned Proposal was intact in its original form with all Internal Tender Committee genuine signatures;</p> <p>NIRP members did not found evidence that the document was fraudulently taken by MAXWELL LTD.</p> <p>Pursuant to Article 41, para 2, 3<sup>o</sup> of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public</p>

05	31/07/15	22/09/15	034/2015/ NIRP	Doppelmayr. Seilbahnen GmbH & NPD- COTRACO	RWANDA DEMOBILISA TION AND REINTEGRA TION PROGRAMM E	1948/G/NCEB/CT/RDB/GOR/14 for construction of Cable Car System at mount Karisimbi on turnkey contract	Appeal against its disqualification	<p>Procurement, NIRP members decided to cancel the decision of disqualification and recommended RDRP to invite MAXWELL LTD in the meeting of contract negotiation, and a minutes should be immediately written at the end of that negotiation.</p> <p>Given that besides the proposed technical specifications, the tender document requested potential bidders to provide additional proposals,</p> <p>Considering that the Public Procurement of this tender was on turnkey contract where bidders could propose their own design;</p> <p>Basing on the RDB clarification confessing that they took into consideration the provided cheapest price without scrutinizing deeply the proposed technical aspects of each offer;</p> <p>There was no fairness to select the cheapest price without assessing the offered technical features as per the tender documents requirements;</p> <p>On the financial evaluation, NIRP found out that it was not possible to point out the lowest price since the report mention that taxes would be subject to further negotiation with the provisional successful bidder.</p> <p>Considering that the RDB evaluation team was quick to conclude the tender award while the presentation, yet</p>
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	18/08/15						<p>required by the same team during the equipment evaluation never occurred;</p> <p>NIRP recommended RDB to undertake the session for demonstration where each bidder should present its project that RDB could appreciate the strengths and weaknesses.</p> <p>Pursuant to the Article 41, para 2, 5<sup>o</sup> of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement, NIRP members recommended the session of demonstration. The most technically responsive project to the RDB's expectation might be selected and the price of the tender should be negotiated with the selected bidder.</p>
	13/09/15	035/2015/ NIRP	EL TECH	RWANDA DEVELOPME NT BOARD	1991/G/NCB/AD/RDB/GoR/14 for Design, Printing and Supply of RDB Staff Business Cards	Appeal against its disqualification	<p>RDB should not have signed the contract while the process of appeal was ongoing;</p> <p>Considering that the Bid Data Sheet of the tender document was not specific on the kind of bidder to be eligible to this tender, disqualifying EL TECH for reason that they bided as Individual enterprise rather than a Company was unfounded.</p> <p>As EL TECH should have been awarded the tender, NIRP members deplored the decision taken by RDB for disqualifying EL TECH and for signing contract during appeal process, in accordance to Article 41,</p>



documents and standard contracts.

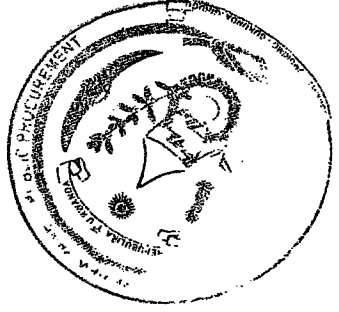
Considering that disrespect of the prescribed time (3 days) for transmission of document delayed the process of taking appropriate decision by NIRP;

NIRP decided to examine the appeal regardless the withdrawal letter from CHICO because the latter did not provide convincing reason to withdraw the appeal while the tender process was already suspended by the panel.

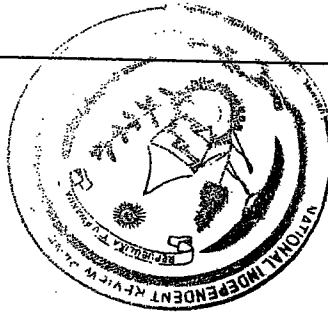
Basing on the Article 25, para 2 of the Law N°05/2013 of 13/02/2013 modifying and completing the Law N° 12/2007 of 27/03/2007 on Public Procurement where it is stipulated that "A bid shall be responsive if it substantially conforms to the requirements specified in the bidding document";

The bid of CHICO was legally disqualified as the provided Bid security was no responsive as per the tender document requirements. Thus, NIRP members did concur with the decision taken by RTDA on this issue



Reception date	Date of the decision	N° of the decision	Bidder	Procuring Entity	Tender N° and title	Subject of Appeal	Decision of NIRP
20/07/15	18/08/15	029/2015/ NIRP	COMPUTER POINT LTD	BANQUE NATIONALE DU RWANDA	41/S/2014- 2015/NOCB/IOCB/QCBS/BNR for Supply, installation and commissioning of an Enterprise data warehouse and Business Intelligence system to National Bank of Rwanda.	Appeal against its disqualification	NIRP members found out that the Joint Venture did not fulfil the requirements of the Law since BRING CONSULTING LTD was a Sub contractor to COMPUTERPOINT LTD. Thus BRING CONSULTING LTD could not be accountable before BNR yet each member of the JV should be jointly and severally liable towards the procuring entity.  Therefore, certificates of good completion and key staff presented by BRING CONSULTING LTD were no responsive. Furthermore, no "National staff" presented in the Technical proposal of the complainant as per the Request For Proposal requirements. The appeal was unfounded.
22/07/15	25/08/15	031/2015/ NIRP	ECOBASA LTD	GATSIBO DISTRICT	043/GAT/INFRA/14-15 "ryo Kubaka centre sportif kuri Guest House ya Kabarore".  	Appeal against its disqualification	Based on the Article 33, para 2, of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date; the RDB letter Ref. RDB/3/RG/0855/0710 of 17/07/2014 could not be considered as it was provided by the complainant after the deadline of bid submission.  Since the contract signed by ECOBASA LTD on 05/05/2014 yet ECOBASA was still an individual enterprise by that time, and not a Company, NIRP members maintained the decision taken by GATSIBO District on this issue. The appeal was unfounded.

Reception date	Date of the decision	N° of the decision	Bidder	Procuring Entity	Tender N° and title	Subject of Appeal	Decision of NIRP
27/08/15	29/09/15	038/2015/ NIRP	MP Enterprise Ltd	RWANDA DEMOBILISATI ON AND REINTEGRATI ON PROGRAMME	06/WI/2014-2015/RDRRC/RDRP for construction of 35 houses for ex-combatant	Appeal against its disqualification	Concerning the credit line presented by the complainant, NIRP members did concur with RDRP because the presented credit line was not complying with the tender document requirements.  NIRP members noted the qualification of both the complainant and the provisional successful bidder on administrative level even if the credit lines presented were considered as non responsive.  Pursuant to Article 70 of the Law N°12/2007 of 27/03/2007 on Public Procurement as modified and complemented to date, NIRP members decided to dismiss the appeal introduced by MP ENTERPRISE LTD because it was unfounded.
01/09/15	29/09/15	037/2015/ NIRP	IBC LTD	SINGLE PROJECT IMPLEMENTATION UNIT/RWANDA BIOMEDICAL CENTER	044/S/2014-2015/QCBS/BTC- PAREC/RWA 761/SPIU-RBC for the recruitment of a firm to conduct the consultancy services of the Rwanda Emergency Obstetric and Newborn care (EMONC) needs assessment;	Appeal against its disqualification	Concerning the similar experience in the domain of the mission and the Testimonials for Good Performance certified by MSH, NIRP members did concur with the decision taken by SPIU/RBC on this issue because the main theme of the project worked on, namely, the Verification of Performance Based Financing (PBF) was not similar to the one of the mission included in this tender.  Concerning the "Methodology", NIRP members noted that SPIU/RBC analysis stated that the approach and







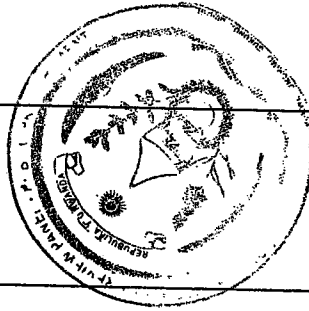
report judged them conforming to the requirements;

Considering that the disrespect of the above provision of law in the first evaluation caused the appeal process leading to the second evaluation, and the latter instead of improving the quality of evaluation repeated the same mistake causing a long time of appeal process from 30/04/2015 to date, meaning more than two months;

Given that:

- All bids were not responsive as per the tender document requirements;
- BURERA DISTRICT wrongly admitted several no responsive technical requirements as "Fourni conform" without any explanation in the evaluation report.

With respect of the conditions of fairness, transparency and economy (value of money) that were not observed during the tender award process in accordance with the provision of the Law and regulation on Public Procurement; NIRP members recommended the cancellation of the tender.



### D. ONGOING APPEALS AT THE END OF FIRST TERM OF THE FY 2015-2016

Reception date	Bidder	Procuring Entity	Tender N° and title	Subject of Appeal
01/09/15	BUREAU D'ETUDE D'ARCHITECTURE ET DE REALISATION (BEAR LTD)	RWANDA SOCIAL SECURITY BOARD	001/SIN/2015-2016/RSSB/OB for Design and Supervision of RSSB Tower III.	Appeal against its disqualification
25/08/15	ENVIRONMENT CARE AND GENERAL HYGIEN (ECGHY LTD)	GATSIBO DISTRICT	"Gukora Isuku mu Centre z'ubucuruzi zo mu Murenge wa Rugarama"	Appeal against its disqualification

### 2. MEMBERS OF NATIONAL INDEPENDENT REVIEW PANEL

No	Name	Position
1	BUGINGO Emma-Marie	Chairperson
2	BAGILIZINA Emmanuel	Vice chairperson
3	KAYITESI Eugenia	Member
4	MUKANTABANA Crescence	Member
5	MUNYURA Kamere Pierre	Member
6	SANGANO Yves	Member
7	BIRANGWA Amri	Member

