

Independent Review Panel

Decision No.14/26

In the matter of:

G.F.A Insurance Ltd

(Applicant)

v/s

Central Electricity Board

(Respondent)

(Cause No. 23/26/IRP)

Decision



A. History of the case

On 23 March 2026, the Respondent (Central Electricity Board) invited bids from eligible and qualified bidders, restricted to entities incorporated in Mauritius through the Government e-Procurement System for the Provision of Various Insurance covers for period July 2026 to June 2028
Project Reference: OAB-FIN-2026-10303(IFB 10920).

The closing date for submission of bids was initially scheduled on 20 April and extended up to 27 April 2026.

Two (2) bids were received. The Applicant (G.F.A Insurance Ltd) was one of the bidders.

B. Evaluation

A Bid Evaluation Committee (BEC) was set up to evaluate the bids received and to identify the lowest evaluated substantially responsive bid.

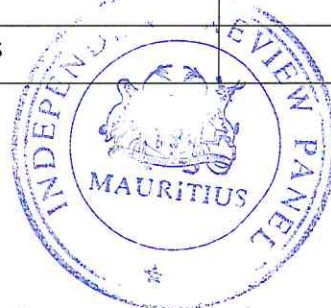
C. Notification of Award

On 12 June 2026, the Respondent informed G.F.A Insurance Ltd. that an evaluation of the bids received had been carried out and that its bid had not been retained for award. The particulars of the successful bidder are as given below:

Item No	Covers	Name & Address of Selected Bidder	Discounted Premium Amount for 24 Months
1	Electronic Equipment	SICOM General Insurance Ltd SICOM Building Sir Celicourt Antelme Street Port Louis	4,904,346.00
2	Public Liability Insurance		37,256,938.00
3	Public Liability Insurance		181,808.00
4	Employer's Liability/Workman Compensation		6,253,522.00
5	Good-in-Transit Insurance		181,230.00
6	Contractor' Plant & Equipment		63,021.00
		Total Amount	48,840,865.00




Item No.	Description	Name & Address of Selected Bidder	Quoted Marine Cargo Rate
7	Voyage Item 1	SICOM General Insurance Ltd, SICOM Building	0.1%
	Voyage Item 2	Sir Celicourt Antelme Street	0.25%
	Voyage Item 3	Port Louis	0.05%



D. Challenge

On 17 June 2026, the Applicant challenged the procurement proceedings under regulation 48 of the Public Procurement Regulations 2008 on the following grounds:-

- (i) Because the Principal failed to conduct a proper, fair and transparent evaluation of the bids submitted by the Bidder and SICOM General Insurance Ltd. The Bidder had quoted a total sum of Rs. 57,179,300 for the 8 items concerned, whereas SICOM General Insurance Ltd had quoted a total sum of Rs. 80,084,315.75 for the same items, as reflected on the e-Procurement System. In the circumstances, the rejection of the Bidder's bid is Wednesbury unreasonable, arbitrary, unjustified and contrary to the principles of fairness, transparency and natural justice.
- (ii) Because the Principal has failed to take into account that the addition of the premium quoted by SICOM General Insurance Ltd under Item No. 7 in its letter dated 12/06/2026 would ordinarily be expected to increase the overall premium, such that the Principal was wrong to have kept the overall premium identical to that set out in its letter dated 10/06/2026 despite the addition of Item No. 7;
- (iii) Because the Principal has failed and/or neglected to provide any explanation for the omission of Item No. 3 from its letter dated 12/06/2026, thereby rendering the evaluation process opaque and preventing the Bidder from understanding the basis upon which its bid was rejected;
- (iv) Because the Principal has failed to consider that upon addition of the premium amount quoted by SICOM General Insurance Ltd under Item No.3, the overall premium of the latter may likely increase to such an extent as to surpass the total sum of Rs. 57,179,300 quoted by the Bidder for the 8 items concerned, thereby confirming the Bidder as being the substantially responsive one;
- (v) Because the Principal has failed to disclose any information or justification regarding the apparent discrepancy between the premium amount of Rs. 80,084,315.75 quoted by SICOM General Insurance Ltd on the e-Procurement System and the amount of Rs. 48,840,865

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stated in the Letter of Award, thereby raising serious concerns as to the integrity, consistency and transparency of the evaluation process, the moreso, according to the information available on the e-Procurement System, neither SICOM General Insurance Ltd nor the Bidder had provided for any discount that could account for such a substantial reduction in the quoted premium;

- (vi) Because the apparent discrepancy between the bid amount submitted by SICOM General Insurance Ltd and the contract amount stated in the notification of award raises serious concerns as to whether post-bid negotiations, amendments, adjustments and/or modifications were effected and, if so, whether the same were carried out in accordance with the applicable provisions of the Public Procurement Act and the bidding documents;
- (vii) Because the Principal's decision is tainted by procedural impropriety inasmuch as the information communicated to the Bidder is incomplete, inconsistent and insufficient to enable an unsuccessful bidder to understand the basis of the award decision. The Principal failed to provide adequate reasons for the rejection of the Bidder's bid, thereby depriving the Bidder of the opportunity to understand, verify and, if necessary, challenge the basis of the decision;
- (viii) Because the Principal's bid was fully responsive to the requirements, specifications and conditions of the bidding documents and complied with the applicable procurement guidelines. Accordingly, the rejection of its bid is unwarranted, unreasonable, arbitrary and in breach of the principles of natural justice and legitimate expectation.



E. Reply to Challenge

On 19 June 2026, the Respondent, in reply to the challenge of the Applicant, stated that:

You may wish to note that your bid was not retained for award since you failed to score the minimum marks in one criterion in the Technical Evaluation. As per Section V of the bidding document, proposals will be evaluated on the basis of the submissions and marks will be allocated for Technical (40 marks) and Financial (60 marks) criteria.

The Technical Criteria for markings are tabled hereunder:

Criteria	Minimum Marks	Maximum Marks
Experience	7.00	10.00
Reinsurance Arrangement	7.00	10.00
Net Capital Employed	7.00	10.00
Return on Capital Employed (ROCE)	7.00	10.00
	28.00	40.00



Proposals which secure at least 28 marks (and obtain the minimum passing marks in each criterion) out of the maximum of 40 marks in the Technical Evaluation shall be considered for Financial Evaluation. The Financial Evaluation consists of a score of 60 marks for Insurance Premium.

Your bid scored zero mark in the ROCE Criterion where you failed to secure the minimum mark.

As per your audited Financial Statements, Earnings Before Interest & Tax resulted in a negative value since the figures for Year 2023 show a significant loss amounting to Rs 38,128,468. Hence, while computing the Return on Capital Employed for the last three years, the percentage obtained for this criterion is below 2.5%. As such, you failed to secure the minimum passing mark. As mentioned in the Bidding Document, when a Bidder fails to obtain a minimum passing mark in one criterion, its submissions shall not be considered for further evaluation.



F. Grounds for Review

On 25 June 2026, the Applicant seized the Independent Review Panel for review on the following grounds:

- (i) Because the Respondent failed to conduct a proper, fair and transparent evaluation of the bids submitted by the Applicant and SICOM General Insurance Ltd (the Co-Respondent). The Applicant had quoted a total sum of Rs. 57,179,300 for the 8 items concerned, whereas SICOM General Insurance Ltd (the Co-Respondent) had quoted a total sum of Rs. 80,084,315.75 for the same items, as reflected on the e-Procurement System. In the circumstances, the rejection of the Applicant's bid is Wednesbury unreasonable, arbitrary, unjustified and contrary to the principles of fairness, transparency and natural justice;
- (ii) Because the Respondent has failed to take into account that the addition of the premium quoted by SICOM General Insurance Ltd (the Co-Respondent) under Item No. 7 in its letter dated 12/06/2026 would ordinarily be expected to increase the overall premium, such that the Respondent was wrong to have kept the overall premium identical to that set out in its letter dated 10/06/2026 despite the addition of Item No. 7;
- (iii) Because the Respondent has failed and/or neglected to provide any explanation for the omission of Item No. 3 from its letter dated 12/06/2026, thereby rendering the evaluation process opaque and preventing the Applicant from understanding the basis upon which its bid was rejected;
- (iv) Because the Respondent has failed to consider that upon addition of the premium amount quoted by SICOM General Insurance Ltd (the Co-Respondent) under Item No.3, the overall premium of the latter may likely increase to such an extent as to surpass the total sum of Rs. 57,179,300 quoted by the Applicant for the 8 items concerned, thereby confirming the Applicant as being the substantially responsive one:

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- (v) Because the Respondent has failed to disclose any information or justification regarding the apparent discrepancy between the premium amount of Rs. 80,084,315.75 quoted by SICOM General Insurance Ltd (the Co-Respondent) on the e-Procurement System and the amount of Rs. 48,840,865 stated in the Letter of Award, thereby raising serious concerns as to the integrity, consistency and transparency of the evaluation process, the moreso, according to the information available on the e-Procurement System, neither SICOM General Insurance Ltd (the Co-Respondent) nor the Applicant had provided for any discount that could account for such a substantial reduction in the quoted premium;
- (vi) Because the apparent discrepancy between the bid amount submitted by SICOM General Insurance Ltd (the Co-Respondent) and the contract amount stated in the notification of award raises serious concerns as to whether post-bid negotiations, amendments, adjustments and/or modifications were effected and, if so, whether the same were carried out in accordance with the applicable provisions of the Public Procurement Act and the bidding documents;
- (vii) Because the Respondent's decision is tainted by procedural impropriety inasmuch as the information communicated to the Applicant is incomplete, inconsistent and insufficient to enable an unsuccessful bidder to understand the basis of the award decision. The Respondent failed to provide adequate reasons for the rejection of the Applicant's bid, thereby depriving the Applicant of the opportunity to understand, verify and, if necessary, challenge the basis of the decision;
- (viii) Because the Applicant's bid was fully responsive to the requirements, specifications and conditions of the bidding documents and complied with the applicable procurement guidelines. Accordingly, the rejection of its bid is unwarranted, unreasonable, arbitrary and in breach of the principles of natural justice and legitimate expectation;
- (ix) The Respondent applied an irrational, arbitrary and disproportionate evaluation criterion which does not bear a rational connection to the stated objective of assessing the financial standing and strength of an insurer/bidder;
- (x) The Respondent erred in law and in fact in treating Return on Capital Employed (hereinafter referred to as "ROCE") as an automatic disqualification criterion inasmuch as ROCE is not an indicative marker of an insurance company's financial standing and strength as a bidder;
- (xi) The Applicant has reason to believe that the computation of the ROCE by the Evaluation Committee was flawed inasmuch as the constituent members of the said Committee did not possess any relevant technical and/or expert knowhow in/ insurance matters;
- (xii) The Respondent failed to act in a transparent and fair manner;



- (xiii) The Respondent failed to disclose the methodology, formula and figures used calculate the alleged ROCE score;
- (xiv) The Respondent adopted an erroneous accounting approach in the computation of the ROCE criterion inasmuch as the Respondent failed to consider the ROCE on a yearly basis rather as an average the moreso in view of the amended IFRS applicable as from 2023;
- (xv) The ROCE and Profit Before Interest and Tax (hereinafter referred to as "PBIT") requirements in the tender documents are inconsistent and incoherent and fail to constitute a proper financial assessment criteria;
- (xvi) The Respondent failed to take into account relevant considerations and took into account irrelevant considerations;
- (xvii) The impugned decision results in unequal treatment and inconsistent application of procurement requirements;
- (xviii) The decision is Wednesbury unreasonable; and
- (xix) For all other reasons/grounds of review to be given in due course of time.

G. The Hearing

The matter was heard on 20 July 2026. The Applicant was represented by Mr A.R.M.A. Peeroo, SC, GOSK, appearing together with Ms A. Peeroo and Mr M.R. Sydamah, both of Counsel, instructed by Mr H.B.A. Rojubbally, Attorney-at-Law. Mr Z. Rajani appeared as Counsel for the Respondent, while Mr H. Sunasee appeared as Counsel for the Co-Respondent, the successful bidder.

The Statements of Case and Reply together with witness statements filed by the parties stood as the parties' respective evidence-in-chief. The Applicant also called Mr K. Moonien, the Applicant's Assistant Risk and Compliance Officer, to give oral evidence. The Applicant further relied upon the expert evidence of Mr C. Etwareea, MIPA, FCCA, whose report dated 10 July 2026 was produced as Document A. The Respondent, for its part, called Mrs F. Hossen Khan, an accountant in its employment who had also served as a member of the Bid Evaluation Committee, as its sole witness. All witnesses were tendered for cross-examination. The parties thereafter provided both oral and written submissions.

Mention was also made at the outset of the hearing of statements reportedly made to the press while the matter was pending before the Panel. The Panel expresses no view on any such statements. Its Determination is based exclusively upon the pleadings, documents and evidence properly placed before it, together with the oral and written submissions made by counsel.



H. Findings

In its written submissions, the Applicant conveniently grouped the issues arising under the 19 grounds into three principal limbs. The Panel will address those limbs in turn, although not in the order adopted in the Applicant's written submissions.

The Panel will begin with Limb (iii), which concerns the Return on Capital Employed (ROCE) criterion, before turning to Limbs (i) and (ii). The latter limbs both concern the negotiations which took place between the Respondent and the Co-Respondent following the evaluation process and will accordingly be considered together.

(i) Limb (iii): Inclusion of ROCE**(a) The ROCE**

The Panel notes from page 57 of the bidding documents that the evaluation of bids was to be conducted in two stages: a *“Technical Evaluation”*, followed by a *“Financial Evaluation”*, the latter being concerned principally with the prices quoted by bidders. The Technical Evaluation comprised three components, namely: *“Experience of Bidder”*, *“Reinsurance Arrangement – Treaty & Facultative”*, and *“Financial Standing and Strength of Bidder”*.

Under the component *“Financial Standing and Strength of Bidder”*, the profitability of the bidder was to be assessed by reference to its average Return on Capital Employed (ROCE) over the preceding three years. The bidding documents defined ROCE as: *“Earnings Before Interest & Tax / Total Assets Less Current Liabilities”*.

The ROCE criterion carried a minimum score of 7 marks and a maximum score of 10 marks. Page 58 of the bidding documents further provided that a bidder was required to attain the minimum pass mark of 7 under each criterion. An average ROCE of 2.5% attracted the minimum score of 7 marks, with one additional mark being awarded for each further one percentage point of ROCE, up to a maximum of 3 additional marks.

(b) The Applicant's failure to obtain the minimum marks

The Applicant does not dispute that it failed to attain the minimum average ROCE of 2.5%. The evidence, including the financial documents placed before the Panel, established that the Applicant's average ROCE for the relevant three-year period was negative, largely due to the significant loss that the Applicant recorded during the financial year 2023.

The Applicant consequently failed to obtain the minimum score of 7 marks prescribed under the profitability criterion and was accordingly awarded zero marks under that criterion. As the bidding documents required a bidder to attain the minimum pass mark under each individual criterion of the Technical Evaluation, the Applicant's bid was treated as technically non-responsive and did not qualify to proceed to the Financial Evaluation stage.

(c) The Applicant's criticism of the ROCE criterion

At paragraphs 32 to 41 of its written submissions, the Applicant advanced a number of overlapping criticisms of the ROCE criterion. The Applicant's principal contentions may be summarised as follows:

- (i) ROCE is a profitability and capital-efficiency ratio, rather than a measure of solvency or capital strength, and is thus not an appropriate indicator of the financial standing and strength of an insurer. Its inclusion was accordingly irrational or Wednesbury unreasonable and was intended to disqualify the Applicant in favour of the Co-Respondent.
- (ii) The Applicant is entitled, in the present proceedings brought pursuant to section 45 of the Public Procurement Act (the Act), to challenge the inclusion of that criterion in the bidding documents.

The Panel will consider the second contention first, as it must first determine whether the Applicant is entitled to challenge the inclusion of the ROCE criterion in these proceedings.

(d) Review under Section 45

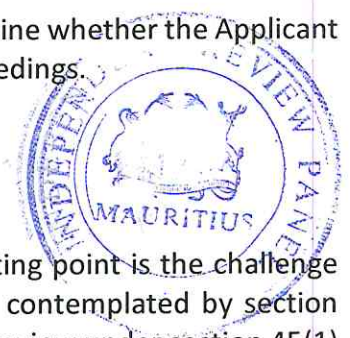
In an application for review made under section 45 of the Act, the starting point is the challenge made under section 43. This is because, save for the distinct situation contemplated by section 45(1)(c) (which is not relevant in the present case), the right to apply for review under section 45(1) arises either where the Chief Executive Officer of the public body has failed to issue a decision on the challenge within the prescribed time or where the bidder is dissatisfied with the decision given on that challenge.

Section 43(1) of the Act entitles a bidder who claims to have suffered, or that it will likely suffer, loss or injury from a breach of a duty imposed by the Act to challenge the procurement proceedings. That entitlement is, however, qualified by section 43(2), which requires the challenge to identify *"the specific act or omission alleged to contravene this Act"*.

A challenge under section 43 is therefore not a challenge to the procurement proceedings at large, but to a specific act or omission occurring within those proceedings. Section 43(3)(b), read with regulation 48(2) of the Public Procurement Regulations (the Regulations), further provides that such a challenge shall not be entertained unless it is submitted within five days from the invitation to bid or from the opening of bids.

Two consequences necessarily follow.

First, regulation 48(2) identifies two distinct points from which the statutory period may run: the invitation to bid and the opening of bids. The applicable statutory period depends upon the nature of the specific act or omission complained of and the stage at which it became apparent. Thus, where an act or omission is apparent from the bidding documents upon the invitation to bid, it must be challenged within five days of that invitation. Any other construction would deprive the express



reference to the invitation to bid of any separate effect and render the corresponding time limit redundant, whereas the legislature does not use words in vain.

Second, the scope of the challenge is confined to the specific act or omission identified under section 43(2). It follows that, save for the distinct situation contemplated by section 45(1)(c), the scope of the right of review under section 45 must likewise be confined to that act or omission.

(e) Application to the Applicant's case

The Applicant's case is that ROCE is inherently inappropriate for assessing the financial standing and strength of an insurer.

It is not disputed that the ROCE criterion was expressly set out in the bidding documents. Mr Moonien, the Applicant's representative and principal witness, further accepted in cross-examination that the Applicant was aware of the ROCE requirement and that it could have challenged the criterion following the invitation to bid. Indeed, section 43 expressly permits a challenge where a bidder claims not only to have suffered loss or injury, but also where the bidder is likely to suffer loss or injury.

In the present case, given the Applicant's audited financial position, including the significant loss recorded in 2023, the Applicant ought reasonably to have known, upon seeing the criterion, that its average ROCE might fall below the prescribed minimum and that it was consequently at risk of exclusion from further evaluation. That likelihood of exclusion, and of the resulting loss or injury, was sufficient to entitle the Applicant to challenge the inclusion of ROCE at the stage of the invitation to bid under section 43.

The Applicant not only did not do so, but it also failed to identify the inclusion of ROCE as a specific act or omission in its formal challenge dated 17 June 2026, which gave rise to the present application for review.

The inclusion of ROCE was challenged for the first time before the Panel. Mr Moonien nevertheless maintained that the Applicant was entitled to raise it at that stage. The Panel cannot accept that proposition. To do so would render ineffective both the requirement under section 43(2) to identify the specific act or omission complained of in the prior challenge and the time limit prescribed by regulation 48(2).

It is precisely in such circumstances that compliance with the statutory time limits and the requirement to identify the specific act or omission assumes particular importance. Those requirements promote certainty, fairness to all bidders and the proper administration of public procurement. They enable the public body to know, before it proceeds to receive, open and evaluate bids, whether the terms of the bidding documents are under challenge.



The Panel therefore finds that, if the Applicant was aggrieved by the inclusion of ROCE, it was required to challenge that criterion within five days of the invitation to bid. Having failed to do so, the Applicant is debarred from challenging the inclusion of ROCE in the present proceedings.

(f) Whether the inclusion of ROCE was Wednesbury unreasonable

Although the Panel has found that the Applicant is debarred from challenging the inclusion of ROCE in the present proceedings, it has nevertheless considered the Applicant's substantive contention that the criterion was irrational or Wednesbury unreasonable.

The evidence demonstrates a potential weakness in the use of ROCE as an indicator of the financial standing and strength of an insurer. In particular, the Applicant's average ROCE was materially affected by the significant loss recorded in 2023, which the Applicant attributed to exceptional or non-recurring events. The criterion was therefore capable of producing a result heavily influenced by a single adverse financial year. The Applicant also established that ROCE is principally a measure of profitability and capital efficiency, whereas the financial strength of an insurer is more commonly assessed by reference to other metrics, in particular those under section 14 of the Insurance Act.

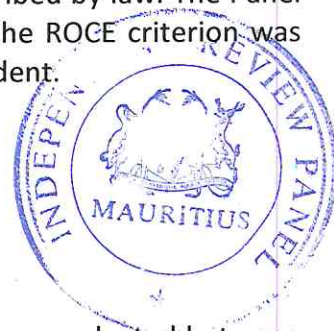
The question, however, is not whether another criterion would have been preferable. The Applicant must establish that the use of ROCE was so unreasonable that no reasonable public body could have adopted it. The evidence may demonstrate that ROCE was susceptible to distortion by an exceptional loss and that other more commonly used metrics could have provided a better assessment of an insurer's financial strength. It does not, however, establish that the inclusion of ROCE was wholly inappropriate or that it crossed the high threshold of Wednesbury unreasonableness. Indeed, it is difficult to accept that a criterion, whose inclusion the Applicant now contends was so unreasonable that no reasonable public body could have adopted it, did not, at the material time, prompt the Applicant to seek clarification or express any reservation, let alone lodge a challenge under section 43.

The Panel also finds that the allegation that the criterion was deliberately included to disqualify the Applicant in favour of the Co-Respondent is even less sustainable. At the time the invitation to bid was issued, the procurement was open to eligible insurers generally. There is no evidence that the Respondent knew that only the Applicant and the Co-Respondent would submit bids, that the Applicant would fail to obtain the minimum score under the ROCE criterion, or that the Applicant would participate without challenging the criterion within the period prescribed by law. The Panel accordingly finds that there is no evidential basis for the allegation that the ROCE criterion was deliberately included to disqualify the Applicant in favour of the Co-Respondent.

(ii) Limbs (i) and (ii): Legality of the post-evaluation negotiation

(a) The Applicant's contentions

Under Limbs (i) and (ii), the Applicant's contentions concern the negotiations conducted between the Respondent and the Co-Respondent following the evaluation of bids. The Applicant contends, in substance, that:



- (i) the statutory conditions permitting negotiations under regulation 8(a) of the Regulations were not satisfied;
- (ii) in any event, ITB 16.2 and ITB 16.3 governed the extent to which a bidder's price could be reduced. The Applicant contends that, since the Co-Respondent had stated an unconditional discount of zero in its Bid Submission Form, any further reduction obtained through post-bid negotiations was impermissible and materially altered its bid. In support of that contention, the Applicant submitted that section 40(2) provides two alternative bases for negotiation and that, where the bidding documents themselves regulate discounts, recourse cannot also be had to the special circumstances prescribed by regulation 8; and
- (iii) the Respondent acted unfairly by negotiating only with the Co-Respondent and excluding the Applicant from those negotiations.

As these contentions concern the legality and effect of the same negotiation process, the Panel will consider them together.



(b) The statutory and bidding framework

Section 40(2) of the Act provides: *"There shall be no negotiation between a public body and a selected bidder or other bidders **except in such special circumstances as may be prescribed or where the selected procurement method includes negotiations.**"* (Emphasis added)

The special circumstances prescribed for the purposes of section 40(2) are set out in regulation 8. For present purposes, only regulation 8(a) is relevant. Regulation 8(a) provides *"Negotiations may be carried out with a bidder or supplier where –*

(a) the lowest evaluated substantially responsive bid is substantially above the updated estimated costs and a re-bid exercise is considered not practical [...]".

The bidding documents also contained the following relevant provisions:

- (i) ITB 16.2 provided that the price quoted in the Bid Submission Form was to be the total price excluding any discount offered;
- (ii) ITB 16.3 required the bidder to quote any unconditional discount and indicate the method for its application in the Bid Submission Form; and
- (iii) ITB 34.2 provided: *"The Central Electricity Board reserves the right to split the contract and bidders may choose to quote for all covers or any one cover"*.

(c) The relevant facts

It is common ground that the Applicant submitted a bid of Rs 57,179,300 for all eight insurance covers, while the Co-Respondent submitted a total bid of Rs 80,843,015.75. Both bidders stated a discount of zero at the opening of bids.

As found under *Limb (iii)*, the Applicant failed to obtain the minimum score under the ROCE criterion. Its bid was consequently treated as technically non-responsive and did not proceed to the Financial Evaluation stage. The Co-Respondent was found substantially responsive in respect of Items 1, 2, 4, 5, 6, 7 and 8. Item 7 related to Marine Cargo insurance and was quoted by reference



to rates rather than a fixed premium payable at the outset. Any premium under that item would become payable as and when the relevant cover was required.

The Co-Respondent was not found substantially responsive in respect of Item 3, which was not awarded to it. Under ITB 34.2, the Respondent was expressly entitled to split the contract and award some covers without awarding the others.

(d) Were the conditions of regulation 8(a) met

Regulation 8(a) imposed two cumulative conditions: first, the lowest evaluated substantially responsive bid had to be substantially above the updated estimated costs, and second, a re-bid exercise had to be considered not practical.

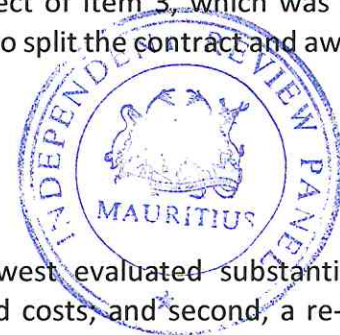
Following the Technical Evaluation, the Applicant's bid was no longer under consideration. The Co-Respondent was the only substantially responsive bidder for the covers which were subsequently awarded. It was therefore the Co-Respondent's evaluated bid, and not the Applicant's lower but technically non-responsive bid, which was the lowest evaluated substantially responsive bid that could be compared with the updated estimated costs.

The Panel has examined the Bid Evaluation Report and the underlying computation. It does not consider it necessary to reproduce the updated estimated costs or the corresponding component figures, which form part of the procurement record before it. Having compared the updated estimated costs for the relevant covers, after excluding Item 3, with the Co-Respondent's corresponding evaluated offer, the Panel is satisfied that the latter exceeded the former by approximately 22.1 per cent.

Regulation 8(a) does not prescribe a fixed percentage by which the bid must exceed the updated estimated costs. Whether the difference is substantial must therefore be assessed objectively in the circumstances of the particular procurement. The word "*substantially*" requires more than a slight or marginal excess. A difference of approximately 22.1 per cent is, in the Panel's view, a marked difference and was sufficient to satisfy the first condition.

As regards the second condition, Mrs Hossenkhan explained that the existing insurance covers were nearing expiry on 30 June 2026 and that a fresh bidding exercise would require considerable time. The insurance covers under the present procurement were intended to commence on 1 July 2026. The Respondent therefore considered that abandoning the exercise and commencing a fresh procurement was not practical.

The Applicant sought to rely upon the fact that, following the non-award of Item 3, the Respondent commenced a separate procurement exercise for that item. It submitted that the commencement of that exercise was inconsistent with the Respondent's assertion that a re-bid exercise was not practical. The Panel does not accept that the two courses were inconsistent. Item 3 was a separate insurance cover in respect of which the Co-Respondent had not been found substantially responsive. This meant that the Respondent found itself in a position where it had no substantially responsive bids for item 3. If the Respondent wished to procure cover for item 3, the Respondent



would have had little choice but to commence a separate procurement exercise for it. In addition, it stands to reason that a separate procurement exercise for a single cover would be materially different from cancelling and repeating the entire procurement exercise for all the remaining covers, in respect of which a substantially responsive bid had already been identified.

The Panel is accordingly satisfied that both conditions prescribed by regulation 8(a) were met and that the Respondent was entitled to enter into negotiations with the Co-Respondent pursuant to that Regulation.

(e) Whether ITB 16.2 and ITB 16.3 excluded regulation 8

The Applicant nevertheless contends that ITB 16.2 and ITB 16.3 precluded the Respondent from obtaining any discount beyond that stated in the Co-Respondent's Bid Submission Form. Since the Co-Respondent had stated a discount of zero, the Applicant argues that its price was fixed and could not subsequently be reduced.

The Applicant's interpretation of section 40(2) cannot be accepted. Section 40(2) permits negotiations either in the special circumstances prescribed by the Regulations or where the selected procurement method itself includes negotiations.

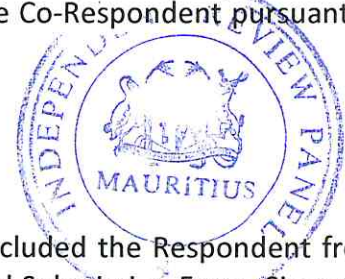
ITB 16.2 and ITB 16.3 did not provide that the selected procurement method included negotiations. They merely regulated the manner in which the original bid price and any unconditional discount offered as part of the bid were to be stated. The second basis contemplated by section 40(2) was therefore not engaged.

The entry of zero meant that the Co-Respondent offered no unconditional discount as part of its bid when submitted. It did not amount to an undertaking that its price could never subsequently be reduced through negotiations lawfully conducted under regulation 8(a).

There is nothing in ITB 16.2 or ITB 16.3 which expressly excludes the operation of regulation 8. Those provisions must be read consistently with section 40(2) and regulation 8, rather than as limiting or disapplying or ousting the statutory power of negotiation. A bidding document cannot, by implication, remove a power expressly conferred by the Act and the Regulations.

The decision in *Sinohydro Corporation Limited v Road Development Authority*, Decision No. 14/20, is consistent with that conclusion. The Panel observed in that case that, once the statutory conditions for negotiation arose, the bidder was free to reduce its price by a small or substantial amount or to decline to reduce it at all. The extent of the reduction was therefore a matter for the negotiations and was not limited by any discount previously stated in the original bid.

A reduction in price is inherent in a negotiation conducted under regulation 8(a) and cannot, without more, constitute an impermissible material alteration of the bid. The material question is whether the negotiations were used to cure a technical non-responsiveness or to alter the essential subject matter of the bid. The evidence does not establish that this occurred. The Co-Respondent



had already been found substantially responsive for the covers which formed the subject matter of the negotiations. Item 3, for which it was not substantially responsive, was neither negotiated nor awarded. The negotiations were directed to the price of the responsive covers and did not render responsive any part of the bid which had previously failed the evaluation.

(f) The Applicant's exclusion from negotiations

The Applicant further contends that the negotiations were conducted "*behind its back*" and that it should also have been invited to participate. That contention overlooks the fact that the Applicant's bid had been found to be technically non-responsive, and it was thus no longer in contention for the award. Mrs Hossenkhan's evidence was that the negotiations took place after the evaluation and that the Co-Respondent was the only substantially responsive bidder. There was therefore no legal or factual basis upon which the Respondent was required to invite the Applicant to negotiate or to inform it of the negotiations.

I. Conclusion

It remains for the Panel to dispose expressly of the 19 grounds of review advanced by the Applicant. Although those grounds overlap considerably, they may, consistently with the manner in which the case was ultimately presented, be grouped according to their essential subject matter.

Grounds (i) to (viii) concern, broadly, the evaluation of the respective bids and the decision to retain the Co-Respondent. They include the Applicant's reliance upon its lower overall bid price; the inclusion of Item 7; the omission and separate treatment of Item 3; the possible effect of Item 3 upon the respective total prices; the difference between the Co-Respondent's original bid and the eventual contract price; the adequacy of the information and reasons communicated by the Respondent; and the Applicant's contention that its bid was fully responsive.

Those grounds cannot succeed. The Applicant's lower price did not entitle it to the award because its bid had failed the Technical Evaluation and did not proceed to the Financial Evaluation stage. ITB 34.2 expressly entitled the Respondent to split the contract and not to award Item 3 to the Co-Respondent. Item 7 was a rate-based cover and did not carry a fixed premium payable at the outset. The difference between the Co-Respondent's original total bid and the eventual contract price is explained by the non-award of Item 3 and the subsequent negotiations lawfully conducted under regulation 8(a). The Respondent also communicated to the Applicant that its bid had not been retained because it had failed to obtain the minimum mark under the ROCE criterion. The Panel accordingly finds no merit in Grounds (i) to (viii).

Grounds (ix), (x), (xi), (xiv) and (xv) concern the ROCE criterion, including its relevance and appropriateness as a measure of the financial standing and strength of an insurer, its location within the Technical Evaluation, its formulation and computation, and the resulting exclusion of the Applicant from further evaluation.



For the reasons already given, the Applicant was required to challenge the inclusion of that criterion within five days of the invitation to bid. Having failed to do so, it is debarred from challenging the criterion in the present proceedings. In any event, although the evidence disclosed potential weaknesses in the use of ROCE for the stated purpose, it did not establish that the inclusion of the criterion crossed the threshold of Wednesbury unreasonableness. Grounds (ix), (x), (xi), (xiv) and (xv) therefore fail.

Grounds (xii), (xiii), (xvi), (xvii), (xviii) and (xix) contain the broader and overlapping allegations that the Respondent failed to act fairly and transparently and that the evaluation and award were arbitrary, unreasonable, procedurally improper, contrary to natural justice or otherwise favourable to the Co-Respondent.

Insofar as those grounds depend upon the Applicant's complaints concerning ROCE, the treatment of Items 3 and 7, the negotiations, the negotiated price or the Applicant's exclusion from those negotiations, they fail for the reasons already set out. No separate act or omission, or independent evidential basis, has been established which would sustain the general allegations made under those grounds. In particular, the evidence does not establish that the Respondent designed or conducted the procurement process for the purpose of favouring the Co-Respondent. Grounds (xii), (xiii), (xvi), (xvii), (xviii) and (xix) accordingly also fail.

The Panel therefore finds that none of the 19 grounds of review has been established. The application for review is accordingly dismissed. The Panel having determined that there is no merit in the application, 50 per cent of the deposit made by the Applicant shall be forfeited in accordance with section 45(3)(d) of the Act.

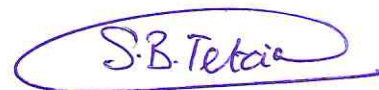
Finally, the Panel wishes to record its appreciation to the parties and their legal representatives for the assistance afforded to it and, in particular, for providing their oral and written submissions within the short timeframe available for the determination of the application.



Mr V. J. Reddi
(Chairperson)



Mr J.T.D. Dumazel
(Member)



Ms S. Bhugun-Tetarie
(Member)

Dated: 24 July 2026

