



Independent Review Panel

Decision No. 16/26

In the matter of:

AR Chumroo Ltd

(Applicant)

v/s

**Prime Minister's Office
(Defence and Home Affairs Division)**

(Respondent)

(Cause No. 25/26/IRP)

Decision



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A. History of the case

On 09 April 2026, the Respondent (Prime Minister's Office (Defence and Home Affairs Division)) invited bids from eligible bidders of Mauritian Nationals or entities incorporated in Mauritius opened to local Bidders through on the Government e-Procurement System for the Supply, testing and commissioning of Nine (9) Motorcycles for Prime Minister's Office. Project Ref: PMO/25-26/Q42/e-ONB PMO/IFB/2026/355.

The closing date for the submission of bids was initially fixed for 7 May 2026 and was subsequently extended to 18 June 2026.

The opening of bids was held on 19 June 2026.

**B. Challenge**

On 22 June 2026, following the opening of bids, the Applicant hand-delivered a challenge dated 20 June 2026 to challenge the procurement proceedings under Regulation 48 of the Public Procurement Regulations 2008 on the following grounds: -

The specifications have been tailored to allow a single supplier to bid for this particular procurement exercise. The intentional modification of the specs to restrict competition, in breach of Sec 43 of PPA, the PPO Guidelines

C. Reply to Challenge

On 26 June 2026, the Respondent, in reply to the challenge of the Applicant, stated that:

3. The Public Body denies that the specifications have been tailored to allow a single supplier to bid for this particular procurement exercise. The Public Body and the end user of the motorcycles have been consistent with regard to the key specifications since 2009 in terms of-

- (i) the drive system and maintained the Shaft Drive technology; and
- (ii) the engine rating as per the user requirement in the range of 1250 cc and 1350 cc.

4. These specifications have been prepared in line with the user requirements taking into consideration the safety aspects of the riders as well the need of the escorted VVIPs who are conveyed in high performance vehicles. The motorcycles are specialised vehicles for escort function for VVIPs whereby the riders have to drive at very high speeds with aggressive braking and acceleration.

5. While a market survey is conducted, the Public Body reiterates that a narrow supplier market for highly specialised goods does not render objectively justified specifications unlawful. The requirement for a Shaft Drive system paired with a specific 1250 cc - 1350 cc engine capacity is strictly dictated by the critical safety and high-performance needs of VVIP escort operations. The Public Body cannot compromise the safety



of police riders or the security of VVIP convoys simply to artificially broaden the market for suppliers who choose not to offer this standard of technology.

D. Grounds for Review

On 2 July 2026, the Applicant seized the Independent Review Panel for review on the following grounds:

The Applicant submits that the public body's decision of 26 June 2026 is legally and factually unsustainable for the following reasons:

- It relies on a safety justification for the shaft-drive and 4-cylinder requirements that is factually and technically unsupported, as demonstrated in Part 5 of this application by the Applicant as a qualified mechanical engineer and experienced motorcycle dealer;
- It asserts that the specifications have been consistent since 2009 - an admission that no meaningful market survey has been conducted in that period, and that the public body has failed to assess whether improved and equivalent technology has become available, including technology now deployed at the highest levels of state escort operations internationally;
- It mischaracterises the legal test - the question is not whether a narrow market makes specifications unlawful, but whether the specifications were written to create a narrow market;
- It attributes the single-bidder outcome to market forces and autonomous commercial decisions, when the evidence demonstrates it was caused by the specifications themselves; and
- It reserves a locus challenge against the Applicant before the IRP, while simultaneously entertaining the challenge on its merits - a contradiction that cannot stand.

E. The Hearing

Mr Z Ramtoolah and Ms M. Crouche, both of counsel, acted for the Applicant, whilst Ms K Domah, Senior State Counsel, acted for the Respondent instructed by Mrs Babboo, Senior State Attorney.

An oral hearing was initially scheduled for 24 July 2026 but could not proceed on that date owing to the unavailability of counsel for the Applicant. The parties thereafter agreed that the matter should proceed by way of written submissions pursuant to regulation 57(1A) of the Public Procurement Regulations 2008, having regard to the statutory deadline of 31 July 2026 for the determination of the application.

The Respondent was to file its Statement of Defence on 24 July 2026, and both parties were to file written submissions on the preliminary objection and the merits of the application on 27 July 2026. The parties were directed to file their respective replies by 29 July 2026. The Panel also accepted



and considered the further written submissions received on 30 July 2026, in order to afford the parties a full opportunity to present their respective cases.

The Panel is grateful to counsel on both sides for their clear and helpful written submissions.

F. Findings

The Panel proposes to deal first with the Respondent's preliminary objection filed on 9 July 2026, as it challenges the Panel's jurisdiction.

(i) The Respondent's Preliminary Objection

The Respondent's preliminary objection reads as follows:



Given that –

(a) the Independent Review Panel's jurisdiction is preconditioned on there being a valid challenge, which can only be made by a "bidder" as defined in section 2 of the Public Procurement Act; and

(b) Applicant cannot be considered to be a "bidder" for the purposes of sections 2, 43 and 45(1) of the Public Procurement Act by virtue of the fact that –

(i) the Applicant, not having submitted a bid, is not a participant in procurement proceeding; and

(ii) the Applicant is not a potential participant in procurement proceedings, the closing date for the submission of bids having expired, making any future submission of the impossible.

(c) in its letter dated 26 June 2026, the Public Body has, as it is entitled to do, reserved its rights to contend that the Applicant did not have locus to either make the challenge or to make any subsequent application for review,

the Independent Review Panel has no jurisdiction to entertain this application for review.

The preliminary objection is, in substance, directed to the Applicant's locus standi. It raises the question whether, when it filed its challenge under section 43, the Applicant was a "bidder" within the meaning of section 2 of the Public Procurement Act 2006 ("the Act") and, consequently, whether that challenge was capable of founding an application for review under section 45.

(ii) Chronology relevant to the Preliminary Objection

In determining the preliminary objection, the Panel finds it useful to first set out the chronology of facts.



On 9 April 2026, the Respondent invited bids, through the Government e-Procurement System, from eligible Mauritian nationals and entities incorporated in Mauritius for the supply, testing and commissioning of nine motorcycles for the Prime Minister's Office, under Procurement Reference PMO/25-26/Q42/e-ONB and e-Procurement Reference PMO/IFB/2026/355.

On 14 April 2026, the Applicant submitted a communication through the e-Procurement System in which it raised concerns regarding those technical requirements. The Applicant questioned, in substance, whether the specifications were unduly restrictive and had the effect of favouring a particular supplier. It is not disputed for the purposes of the present objection that this communication did not constitute the formal challenge under section 43 upon which the present application for review is founded. Indeed, in its Reply, the Applicant expressly stated that it relied upon the communication only as evidence of its interest and intention to participate in the procurement proceedings.

On 24 April 2026, the Respondent issued Addendum No. 1 maintaining the impugned technical specifications. By Addendum No. 3 dated 13 May 2026, the closing date for the submission of bids was fixed for 18 June 2026, while the opening of bids was fixed for 19 June 2026.

The Applicant did not submit a bid before the deadline of 18 June 2026. The bids received were opened on the following day, 19 June 2026. Only one bid had been submitted in response to the invitation.

On 22 June 2026, after the opening of bids, the Applicant submitted a challenge in the form prescribed by the Second Schedule to the Public Procurement Regulations 2008. The challenge alleged, in substance, that the technical specifications had been tailored so as to permit only a single supplier to bid and had thereby restricted competition. The formal challenge therefore concerned the formulation and effect of technical requirements which had appeared in the Bidding Documents from the commencement of the procurement exercise.

On 26 June 2026, the Respondent issued a written decision on that challenge. The Respondent rejected the Applicant's complaint on its merits while expressly reserving its right to contend that the Applicant lacked locus to submit the challenge or any subsequent application for review.

On 2 July 2026, the Applicant lodged the present application for review before the Panel. The application was not made on the ground that the Chief Executive Officer had failed to issue a decision within the prescribed period. It was made on the basis that the Applicant was dissatisfied with the Respondent's decision of 26 June 2026.

It is common ground that the formal challenge upon which the present application is founded was submitted after the closing date for the submission of bids and at a time when the Applicant had not submitted a bid in the procurement proceedings. The challenge also concerned technical specifications which had been contained in the Bidding Documents and were known to the Applicant before the closing date.



(iii) The Panel's analysis and findings

Section 2 of the Act defines a "bidder" as: "*a participant or potential participant in procurement proceedings*".

It is common ground that the definition is not confined to a person who has actually submitted a bid. A person who is a genuine potential participant in the procurement proceedings may also fall within the definition and may, subject to the other requirements of the Act, exercise the right of challenge under section 43.

The Applicant submits that the inclusion of the words "potential participant" was intended to extend the protection of the Act to an economic operator which has a genuine intention and capacity to participate, even though it has not submitted a bid. The Applicant relies upon the case of ***Sotraviv Limitée v Ministry of Environment, Solid Waste Management and Climate Change (Solid Waste Management Division), CN 10/25/IRP***, in which a potential participant was described as someone who can or is entitled to take part in the procurement proceedings.

The Applicant further submits that neither section 43 nor section 45 expressly provides that a potential participant ceases to be a bidder upon the expiry of the deadline for the submission of bids. It argues that the Respondent's restrictive interpretation would introduce into the Act a temporal limitation which Parliament did not enact. It also relies upon section 43(3A), which expressly restricts the right of a bidder which did not participate to submit a challenge or application for review under section 40(4). According to the Applicant, that express restriction demonstrates that, where Parliament intended to exclude a non-participant from the challenge and review procedures, it did so in clear terms.

The Respondent, on the other hand, submits that the expression "potential participant" must be understood in relation to the particular procurement proceedings under consideration. A person can be a potential participant only for so long as it remains legally possible for that person to become an actual participant in those proceedings. Once the deadline for the submission of bids has passed, a person which has not submitted a bid can no longer take part in the procurement and therefore ceases to be a potential participant.

The Panel agrees with the Respondent on this point. The statutory definition refers to a participant or potential participant in procurement proceedings. The potentiality must therefore relate to the existing procurement proceedings and not to a possible future procurement exercise. A potential participant is a person which, although it has not yet submitted a bid, remains capable or entitled to do so within the procedure then in progress. Once the deadline for the submission of bids has expired, a person which did not submit a bid can no longer become a participant in those proceedings.



The Panel finds that this conclusion is reinforced by regulation 33, which provides that a bid received after the deadline for the submission of bids shall not be opened and shall be returned to the bidder. Once the deadline has passed, the public body has no power to accept a bid from an economic operator which did not participate before the closing date. It would therefore be inconsistent with the statutory scheme to regard a person as continuing to be a potential participant after the point at which participation in the procurement proceedings has become legally impossible.

The Panel accordingly finds that, when it submitted its challenge on 22 June 2026, the Applicant was neither an actual participant nor a potential participant, namely a person which remained capable or entitled to become a participant in the existing procurement proceedings.

The possibility that the proceedings might later be annulled and a new invitation issued does not alter that conclusion. Any new invitation would constitute a separate procurement exercise in which the Applicant might again become a potential participant. The possibility of participating in a future exercise cannot confer the status of potential participant in proceedings in which the legal opportunity to participate has already expired.

The Applicant's reliance upon section 43(3A) does not lead to a different conclusion. That provision imposes a specific restriction in relation to challenges and applications under section 40(4). It does not provide that a person which was formerly a potential participant continues to be a bidder after it has become legally impossible for it to participate in the procurement. Before section 43(3A) can arise, the person concerned must first fall within the definition of a bidder at the material time.

The Applicant also contends that the Respondent's interpretation would produce an unreasonable result. It submits that an operator alleging that restrictive specifications prevented it from bidding would be required to submit a knowingly non-compliant bid merely to preserve its standing. It further argues that a public body could rely upon the exclusion produced by its own unlawful specifications to prevent any subsequent challenge.

That submission must also be considered in light of the statutory challenge procedure, which was explained in *G.F.A. Insurance Ltd v Central Electricity Board, CN 23/26/IRP*. The statutory challenge procedure actually provides another reason why the Applicant cannot succeed.

Although the Respondent's preliminary objection is framed principally in terms of the Applicant's locus standi, the validity and timeliness of the underlying section 43 challenge arise in any event. The present application is founded upon the Applicant's dissatisfaction with the Respondent's decision on that challenge. The Panel must therefore be satisfied that the challenge was one which could lawfully be entertained under section 43 and regulation 48 and was capable of founding an application for review under section 45.





This issue arises upon the undisputed chronology and the statutory provisions and was raised in the written submissions before the Panel. Even if the Applicant had retained the status of a bidder after the closing date, the application could not succeed if the challenge upon which it was founded had been made outside the period prescribed by regulation 48(2).

As explained in *G.F.A. Insurance Ltd v Central Electricity Board* (*supra*), section 43(1) provides that a bidder which claims to have suffered, or to be likely to suffer, loss or injury from a breach of a duty imposed by the Act may challenge the procurement proceedings.

Section 43(2) further requires the challenge to identify the specific act or omission alleged to contravene the Act. The challenge is therefore directed not to the procurement proceedings generally, but to the particular act or omission relied upon.

Section 43(3)(b), read with regulation 48, then prescribes the procedure and time within which that right must be exercised. Regulation 48 provides, so far as material:

*"(1) A challenge under section 43 of the Act shall be made in the form set out in the Second Schedule.
(2) For the purposes of section 43(3)(b), a challenge shall not be entertained unless it is submitted within 5 days from the invitation to bid or from the opening of bids.*

[...]

(5) Where the Chief Executive Officer of the public body fails to issue a decision within 7 days or if the bidder is not satisfied with his decision, the bidder may submit an application for review to the Review Panel, provided that the application is filed within 7 days of receipt of the decision of the public body or the time when that decision should have been received."

In an application for review under section 45, the starting point is the challenge made under section 43. Save for the distinct situation contemplated by section 45(1)(c), the right to seek review arises either where the Chief Executive Officer has failed to issue a decision on the challenge within the prescribed period or where the bidder is dissatisfied with the decision given on that challenge.

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 starting point depends upon the nature of the specific act or omission complained of and the stage at which it occurred or became apparent.

Where the act or omission is apparent from the Bidding Documents upon the invitation to bid, it must be challenged within five days from the invitation. Where the act or omission occurs or first becomes apparent upon the opening of bids, the period runs from the opening.

Any other construction would deprive the reference to the invitation to bid of separate effect. It would allow a person which was aware of an allegedly unlawful provision in the Bidding Documents to await the opening of bids before deciding whether to challenge it. It would also deprive the public body of the opportunity to consider and, where appropriate, amend the terms of the procurement before bids are prepared, submitted and opened.



The present case illustrates the operation of those principles. The specific act or omission identified in the Applicant's formal challenge was the formulation or maintenance of technical specifications which allegedly restricted competition and permitted only one supplier to bid. Those specifications appeared in the Bidding Documents issued on 9 April 2026.

Their alleged restrictive effect was also actually known to the Applicant at the invitation stage. On 14 April 2026, the Applicant raised concerns through the e-Procurement System regarding the four-cylinder engine and shaft-drive requirements. The Applicant therefore knew, before the closing date, both the content of the impugned specifications and the basis upon which it considered them restrictive. The opening of bids on 19 June 2026, and the fact that only one bid had been received, may have provided further evidence supporting the Applicant's view of the effect of those specifications. It did not, however, constitute a new formulation, amendment or maintenance of the specifications. It was the alleged consequence of an act already apparent from the invitation to bid, and it would have been open to the Applicant at that stage, while it remained a potential participant, to lodge a challenge to the impugned specifications and, if dissatisfied with the resulting decision or if the public body failed to issue a decision within the prescribed period, to apply for review.

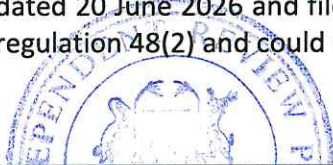
The applicable five-day period therefore ran from the invitation to bid and not from the opening of bids. The formal challenge submitted on 22 June 2026 could not revive the period for challenging technical requirements which had appeared in the Bidding Documents and were actually known to the Applicant from the outset.

The Panel also notes that the communication of 14 April 2026 cannot constitute the statutory foundation of the present application. It was not made in the form prescribed by regulation 48(1). More importantly, the Applicant expressly states in its written submissions that it does not rely upon that communication as the section 43 challenge upon which the present review is founded. It relies instead upon the formal challenge lodged on 22 June 2026. The earlier communication is relied upon only as evidence of its interest and intention to participate.

The Panel accordingly reaches two separate conclusions.

First, when the challenge was filed on 22 June 2026, the Applicant was no longer a bidder within the meaning of section 2. It had not submitted a bid and, the closing date having passed, it was no longer capable or entitled to become a participant in the existing procurement proceedings. The Respondent's preliminary objection as to locus standi is therefore upheld.

Second, and independently of that preliminary objection, the challenge concerned technical specifications which were apparent from the invitation to bid and were actually known to the Applicant at that stage. The applicable period therefore ran from the invitation to bid. The challenge dated 20 June 2026 and filed on 22 June 2026 was not submitted within the period prescribed by regulation 48(2) and could not be entertained.



The fact that the Respondent issued a written decision on 26 June 2026 does not cure either difficulty. Dissatisfaction with a decision may engage section 45 only where the underlying challenge was validly and timeously made under section 43. The Respondent's consideration of the substance of the complaint could not confer upon the Applicant a statutory right of review which did not otherwise exist. In any event, the Respondent expressly reserved its right to contend that the Applicant lacked locus to submit the challenge or any subsequent application for review.

The Panel therefore upholds the Respondent's preliminary objection as to locus standi. It further finds, independently, that the challenge upon which the application for review is founded could not be entertained under regulation 48(2). On either basis, the application for review cannot succeed.

G. Conclusion

For the reasons set out above, the Panel upholds the Respondent's preliminary objection that the Applicant was not a bidder entitled to file the challenge under section 43. The Panel further finds, independently, that the challenge dated 20 June 2026 and filed on 22 June 2026 was not submitted within the period prescribed by regulation 48(2).

The application for review is accordingly dismissed. In view of that determination, the Panel does not proceed to determine the substantive merits of the Applicant's complaint concerning the technical specifications.

The Panel does not consider that the application was frivolous, as it raised an arguable question concerning the meaning and scope of the expression "potential participant". It nevertheless determines, for the purposes of section 45(3)(d), that there is no merit in the application, it not having been founded upon a valid and timeous challenge capable of engaging section 45. Accordingly, 50 per cent of the deposit made by the Applicant shall be forfeited.



Mr V. J. Reddi
(Chairperson)



Mrs B.F. Abdool Raman Ahmed, O.S.K
(Member)



Mr J.T.D. Dumazel, MRICS
(Member)

Dated: 31 July 2026

