

Independent Review Panel

Decision No. 18/26

In the matter of:

Ken & Nish Co Ltd

(Applicant)

v/s

Ministry of Health and Wellness

(Respondent)

(Cause No. 18/26/IRP)

Decision



A. History of the case

In November 2025, the Ministry of Health and Wellness (Respondent) invited bids from eligible Bidders of Mauritian Nationals or entities incorporated in Mauritius through the Government e-procurement system for the "Procurement Supply of Bread for All Hospitals for a Period of One Year – Procurement Reference: MHPQ/NMED/2025-2026/Q31 E-Procurement Reference: HEALTH/IFB/2025/2450." The procurement method used for the bidding exercise was open National Bidding.

Five (5) bidders submitted their bids and Ken & Nish Co. Ltd (Applicant) was one them.

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

The Respondent informed the successful bidder of their respective awards as follows: -

Date of Notification	Name of Successful Bidder	Region	Item No	Description	Delivery Schedule
07.04.2026	Ken & Nish Co Ltd	1	3	White Sandwich Bread	Delivery shall be effected between 6.30 a.m – 7.00 a.m on a daily basis, including Sundays and Public Holidays
		2	1	White Bread with low salt	Delivery shall be effected between 6.30 a.m – 7.00 a.m on a daily basis, including Sundays and Public Holidays between 6.30 a.m – 7.00 am, 11.00 am Noon and 4.30 pm – 5.00 pm
			2	Whole Meal Bread Brown Bread with low Salt	Delivery shall be effected thrice on a daily basis, including Sundays and Public Holidays between 6.30 a.m - 7.00 a.m, 11.00 a.m Noon and 4.30 p.m - 5.00 p.m
			3	White Sandwich Bread	Delivery shall be effected between 6.30 a.m -
		3	3	White Sandwich Bread	

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		4	3	White Sandwich Bread	7.00 a.m on a daily basis, including Sundays and Public Holidays
		5	3	White Sandwich Bread	
16.04.26	Welcome Sunlight Bakers Co Ltd	3	1	White Bread with low salt	Delivery shall be effected thrice on a daily basis, including Sundays and Public Holidays between 6.30 a.m - 7.00 a.m, 11.00 a.m Noon and 4.30 p.m - 5.00 p.m
		4	1	White Bread with low salt	
		5	1	White Bread with low salt	
		3	2	Whole Meal Bread (Brown Bread) with low salt	Delivery shall be effected thrice on a daily basis, including Sundays and Public Holidays between 6.30 a.m - 7.00 (a.m, 11.00 a.m - Noon and 4.30 p.m-5.00 p.m
		4	2	Whole Meal Bread (Brown Bread) with low salt	Delivery shall be effected thrice on a daily basis, including Sundays and Public Holidays between 6.30 a.m - 7.00 a.m, 11.00 a.m - Noon and 4.30 p.m - 5.00 p.m
17.04.26		5	2	Whole Meal Bread (Brown Bread) with low salt	Delivery shall be effected thrice on a daily basis, including Sundays and Public Holidays between 6.30 a.m - 7.00 a.m, 11.00 a.m - Noon and 4.30 p.m - 5.00 p.m
		1	1	White Bread with low salt	Delivery shall be effected thrice on a daily basis including Sundays and Public Holidays, between 6.30 a.m- 7.00 a.m, 11.00 a.m - noon and 4.30 p.m - 5.00 p.m



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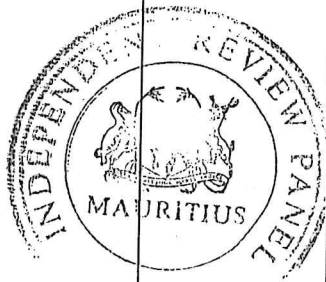
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	Al Rashid Industrial Bakery Ltd	2	1	White Bread with low salt	Delivery shall be effected thrice on a daily basis, including Sundays and Public Holidays between 6.30 a.m - 7.00 a.m, 11.00 a.m Noon and 4.30 p.m 5.00 p.m
		2	2	Whole Meal Bread (Brown Bread) with low salt	Delivery shall be effected thrice on a daily basis, including Sundays and Public Holidays between 6.30 a.m - 7.00 a.m, 11.00 a.m Noon and 4.30 p.m – 5.00 p.m

D. Purported Challenge

On 15 April 2026, the Applicant issued a letter to the Respondent purporting to challenge the procurement proceedings on the following ground:

- The Applicant has been the lowest responsive bidder for Region 1, Region 2, Region 3 and Region 5 but his bid for Region 2 only has been determined to be substantially responsive and the lowest evaluated bid qualified to perform the contract satisfactorily when this ought to have also been the case for the Region 1, Region 3 and Region 5. In the circumstances, the decision of the Respondent not to award the Applicant the contract for the above mentioned 3 regions is wrong.*
- The Applicant avers that by virtue of ITB 13.5 & ITB 31.5 Evaluation ought to have been done for all items in each region and contracts will be awarded on regionwise basis and that Bidder shall quote for each and every items in a region. The Applicant has been awarded the contract for only one item, white Sandwich Bread for Region 1, Region 3, Region 4 and Region 5. The Applicant bids having been the lowest evaluated and responsive bid for the Region 1, Region 3 and Region 5 he avers that as per the above ITB, the award for those contracts in these 3 regions cannot be itemwise but ought to have been awarded only regionwise. Consequently, the Applicant was thus entitled for the award of the contract of all the items quoted as per his bid for Regions 1,3 and 5.*
- The Applicant being holder of an SME Certificate & a "Made in Moris" Certificate ought to have benefited from a margin of preference of 40%, which is 10% more than the other bidders who are not holder of a "Made in Moris" certificate thus widening the difference in price and/or score obtained to render the Applicant's bid even more substantially responsive thus entitling the Applicant, to the award for all items for region 1, region 3 and region 5.*

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- d. The Public body has failed to carry out a proper evaluation and assessment of the bid of other bidders whose bid should not have been selected for award as they are not the lowest evaluated substantially responsive bids.

E. Applicant's Grounds for Review:

On 27 April 2026, the Applicant seized the Independent Review Panel for review on the following grounds: -

a. The Applicant has been the lowest responsive bidder for Region 1, Region 2, Region 3 and Region 5 but his bid for Region 2 only has been determined to be substantially responsive and the lowest evaluated bid qualified to perform the contract satisfactorily when this ought to have also been the case for the Region 1, Region 3 and Region 5. In the circumstances, the decision of the Respondent not to award the Applicant the contract for the above mentioned 3 regions is wrong.

b. The Applicant avers that by virtue of ITB 13.5 & ITB 31.5 Evaluation ought to have been done for all items in each region and contracts will be awarded on regionwise basis and that Bidder shall quote for each and every items in a region. The Applicant has been awarded the contract for only one item, white Sandwich Bread for Region 1, Region 3, Region 4 and Region 5. The Applicant bids having been the lowest evaluated and responsive bid for the Region 1, Region 3 and Region 5 he avers that as per the above ITB, the award for those contracts in these 3 regions cannot be itemwise but ought to have been awarded only regionwise. The Applicant has been awarded the contract for only 2 Hospitals out of 3 Hospitals in Region 2, but ought to have been awarded all the 3 Hospitals in this region. Consequently, the Applicant was thus entitled for the award of the contract of all the items quoted and for all hospitals as per his bid for Regions 1, 2, 3 and 5.

c. The Applicant being holder of an SME Certificate & a "Made in Moris" Certificate ought to have benefited from a margin of preference of 40%, which is 10% more than the other bidders who are not holder of a "Made in Moris" certificate thus widening the difference in price and/or score obtained to render the Applicant's bid even more substantially responsive thus entitling the Applicant, to the award for all items for region 1, region 3 and region 5.

d. The Public body has failed to carry out a proper evaluation and assessment of the bid of other bidders whose bid should not have been selected for award as they are not the lowest evaluated substantially 'responsive bids.



F. The Hearing

Two Hearings were held on 12 May 2026 and 04 June 2026. There is on record a Statement of Case and a Statement of Defence filed by the Applicant and Respondent, respectively.

The Applicant was represented by Mr P. Bacorisen, Counsel whilst Mr. T. Ramtale, State Counsel, instructed by the Chief State Attorney, represented the Respondent.

G. Findings

Prior to addressing the procedural objections raised by the Respondent, the Panel deems it expedient to clarify the statutory framework governing this application, particularly to address the misconception evident in the arguments submitted on behalf of the Applicant. Under the public procurement regime of Mauritius, two distinct and mutually exclusive review mechanisms operate strictly on the basis of contract value.

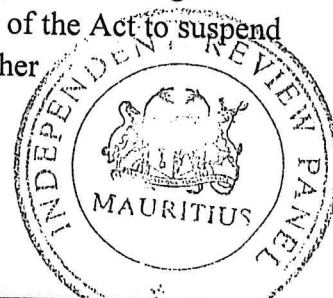
1. Challenge under s 43 of the PPA 2006

First and foremost, it is worth emphasizing that pursuant to Section 43(1) of the Act, a challenge to procurement proceedings is permissible only "*before the entry into force of the procurement contract*". It goes without saying that once a procurement contract has been awarded and entered into force, any recourse by way of a Section 43 challenge before the public body, is legally precluded. In the present application, the procurement contract has already been awarded, thereby rendering a challenge under Section 43 entirely unavailable. For the sake of clarity, it is expedient to explain precisely how and when the mechanism of a challenge comes into play across the two distinct contract value ranges.

(I) Procurement contract, the value of which exceeds Rs 15 M

For contracts exceeding the statutory threshold of Rs 15 million, Section 40(3) of the Act, read together with Regulation 38(3) of the Public Procurement Regulations 2008, obliges the public body to issue a notification of a "proposed award" to all participating bidders. This notification triggers a mandatory 7-day standstill period during which the procurement process is frozen.

It is within this specific pre-award window, that is, before any formal contract enters into force, that an unsatisfied bidder is entitled to lodge a challenge with the public body under Section 43 of the Act, with a subsequent right of review before this Panel. Because no contract has entered into force during this pre-award phase, the Panel retains its full remedial authority under Section 45(10) of the Act to suspend the procurement, recommend a re-evaluation, or annul the proposed award altogether.



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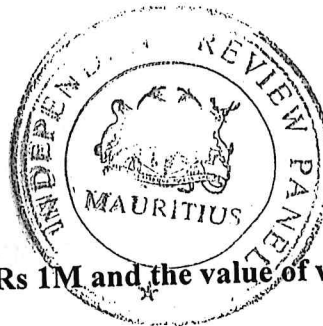
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(II) Procurement contract, the value of which exceeds Rs 1M and the value of which not exceeding Rs 15 M

For contracts valued between Rs 1 million and Rs 15 million, the standstill procedure is legally inapplicable. In this regime, the public body does not issue a notification of proposed award, but is instead authorized to issue a direct award, which brings the procurement contract into immediate force upon notification.

As established in *Banker Shoes Ltd v. National Transport Corporation* [Decision No. 13/21], the selection of a bidder and subsequent notification that its offer has been accepted constitutes a binding contract. Consequently, because the contract has already entered into force, a post-award challenge under Section 43 before the public body is unavailable, and the statutory remedies of suspension, annulment, or re-evaluation under Section 45(10)(a) and (b) of the Act are legally barred.

The sole statutory recourse for an unsatisfied bidder under this regime is to apply directly to the Panel under Section 45(1)(c) of the Act, read together with Regulation 48(7) of the Public Procurement Regulations 2008. In such instances, the Panel's remedial power is strictly limited under Section 45(10)(d) of the Act to recommending the payment of reasonable costs incurred by the applicant in preparing and submitting its bid, provided that, in the opinion of the Review Panel, the contract should have been awarded to the applicant.

Furthermore, the Panel considers it necessary to specifically address the argument advanced at paragraph 34 of the Applicant's written submissions, wherein Counsel asserts that the Public Body '*did not even deem it fit to have replied to the challenge*' which was allegedly '*properly made*' by email/letter dated 8 April 2026 and 15 April 2026. This contention is legally unsound and stems from a fundamental misapprehension of the governing statutory framework. As adumbrated above, because the subject contract falls within the low-value regime (below Rs 15 million) and had already entered into force, no statutory mechanism for a post-award challenge under Section 43 existed before the Public Body. Consequently, the email/letter dated 8 April 2026, and 15 April 2026 lodged by the Applicant are devoid of any legal effect or standing under Section 43 of the Act. The Public Body was under no statutory duty to entertain or reply to a challenge that was legally impossible in the first place.

2. Review under s 45 of the PPA

For the sake of completeness, it is useful to point out that an application for review before the Independent Review Panel under Section 45 of the Act remains an available option irrespective of the contract value, whether it exceeds Rs 15 million or falls within the Rs 1 million to Rs 15 million range. The statutory distinction lies not in the availability of review itself, but in the applicable statutory gateway and the scope of remedies available to the Panel under each regime. Under the high-value regime, an application for review under Section 45(1)(a) or (b) follows a Section 43 challenge before the public body. Conversely,

under the low-value regime, an unsatisfied bidder bypasses the public body entirely and applies directly to the Panel under Section 45(1)(c) of the Act read with Regulation 48(7) of the Regulations.

3. Issue of statutory delay and whether non-adherence to statutory set time limit is fatal

The Respondent raised a preliminary objection in law stating that the Application for Review was filed outside the mandatory statutory delay provided under Regulation 48(7) of the Public Procurement Regulations 2008 and should accordingly be set aside.

As already explained above, the Applicant's contention that it acted in compliance with the statutory procedure by lodging purported challenges before the Public Body on 8 and 15 April 2026, and that its Application for Review lodged on 27 April 2026 was consequently within the statutory delay, stems from a fundamental misinterpretation of the statutory framework. For procurement contracts below the Rs 15 million threshold that have already entered into force, the law does not provide for a two-stage mechanism consisting of a preliminary challenge to the Public Body followed by an application for review. Pursuant to Section 43(1) of the Act, a challenge before a public body can only be initiated prior to the entry into force of the procurement contract. Because the contract came into immediate binding force upon the issuance and dispatch of the awards on 7 April 2026, the purported challenges lodged by the Applicant on 8 and 15 April 2026 were procedurally redundant and could not interrupt or freeze the running of statutory time limits.

Under this specific low-value regime, the governing time limit is prescribed exclusively by Regulation 48(7) of the Regulations, which mandates that an application for review under Section 45(1)(c) of the Act *"shall be made within 5 days of the date the applicant becomes aware of the alleged breach (Emphasis is ours)"*.

The record confirms that the Applicant was notified of the outcome of the bidding exercise by letter dated 7 April 2026, wherein it was informed that its offer had been accepted for certain items and regions. It was upon receipt of this notification of award that the Applicant became aware of the alleged breaches, namely, that it had not been selected for the remaining items and regions. This awareness is further evidenced by its prompt email "challenge" sent on 8 April 2026. Consequently, the 5-day statutory time limit prescribed by Regulation 48(7) commenced, at the very latest, on 8 April 2026 and lapsed on 13 April 2026. The present Application for Review was lodged before the Panel on 27 April 2026, that is, 14 days after the statutory period had already expired.



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It is well-established jurisprudence of this Panel that statutory time limits governing public procurement reviews are mandatory and strict. In *Kalis Technologies Ltd v. Statistics Mauritius* [Decision No. 24/22], the Panel affirmed that a purposive and effective interpretation of the procurement laws leads to the inescapable conclusion that time limits for challenges and reviews go directly to jurisdiction and are mandatory in nature. As an administrative tribunal whose powers are strictly delimited by statute, the Panel possesses no inherent or statutory discretion to extend deadlines, excuse delays, or condone non-compliance, even in deserving cases.

A similar stance was maintained in *Banker Shoes Ltd v. National Transport Corporation* [Decision No. 13/21], where the Panel emphasized that strict adherence to statutory time limits is essential to protect public interest, avoid laches, and afford legal certainty to public bodies and successful bidders alike.

Accordingly, non-adherence to the mandatory 5-day time limit prescribed by Regulation 48(7) is fatal, depriving the Panel of jurisdiction *ratione temporis*. The application is time-barred and must be set aside on this ground alone.

4. Motion to amend Statement of Case and its retroactive effect of amendment

During the sitting of 4 June 2026, the Applicant moved to amend its Statement of Case to include an additional prayer under paragraph (f) requesting the Panel to “recommend payment of reasonable cost incurred in participating in the bidding process by the Applicant”. This motion represents a belated attempt to cure a fundamental defect in the original application, which had prayed for remedies, namely the quashing and suspension of the award, that are legally unavailable once a contract has entered into force.

To overcome the fatal hurdle of delay, Counsel for the Applicant relied heavily in his written submissions on the common law doctrine of retroactivity of amendments (*ab initio*). Citing *Warner v. Sampson* [1959] 1 QB 297, *Harel v. Société Jean Claude Harel* [1993 MR 251], and *Bhadain S v. ICAC* [2004 MR 11], the Applicant contended that once an amendment is allowed, it takes effect retrospectively from the date of the original filing, and thus the amendment cannot be said to be time-barred. Conversely, as rightly argued in the Respondent's written submissions, allowing such a substantial amendment to perfect an inherently flawed application outside the statutory timeframe would cause manifest injustice and circumvent the strict time limits of the Act.

The Panel cannot accept the Applicant's contention that the proposed amendment can be saved by the civil doctrine of retroactivity of amendments (*ab initio*). While the *ab initio* rule is a recognized



procedural mechanism in general civil litigation, its application is strictly confined to civil courts operating under general rules of pleading. It cannot be imported wholesale into the specialized, self-contained statutory framework of public procurement. Under the Public Procurement Act 2006, time limits, such as the mandatory 5-day period under Regulation 48(7), are not mere procedural guidelines; they are strict statutory boundaries of a jurisdictional nature. The legislature intentionally established brief, non-extendable deadlines to ensure that procurement disputes are resolved expeditiously so as not to derail public administration.

Allowing a late amendment to introduce the only available remedy under Section 45(10)(d) would allow the Applicant to bypass the statutory deadlines and revive an application that was lodged out of time. A fatal jurisdictional defect existing at the date of filing cannot be retrospectively breathed back to life.

Furthermore, for the sake of completeness, the Panel highlights that even if the Applicant's motion to amend were allowed and the legal fiction of retroactivity were applied, it would still not assist the Applicant. Because the doctrine of retroactivity of amendments merely anchors the amendment to the original filing date, the amended prayer would relate back to 27 April 2026, that is, the date the Statement of Case was lodged. As established above, the mandatory 5-day time limit under Regulation 48(7) expired on 13 April 2026. Consequently, even with full retroactive effect, the application remains hopelessly out of time.

As rightly highlighted by Counsel for the Respondent at paragraph 49 of its written submissions, Sections 45(2) and 45(2A) of the Act strictly require an applicant to specify '*precisely*' and '*concisely*' the grounds for review at the time of filing. The Panel fully agrees with this submission. The general catch-all relief/prayer under paragraph (e) (*'The review panel to make such other/s [sic] it may deem fit and proper to make in the circumstances'*) cannot be stretched to substitute for a proper statutory remedy or to cure a defective application. Introducing an entirely new prayer for relief at this late stage would cause uncompensated prejudice to the Respondent, who framed its Statement of Defence based strictly on the original prayers.

The motion to amend the Statement of Case is therefore refused.



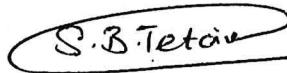
H. Conclusion

Having determined that the present Application for Review was lodged outside the mandatory statutory timeframe prescribed by Regulation 48(7), and that the motion to amend the Statement of Case must be refused, the Panel finds that it is without jurisdiction *ratione temporis* to entertain this matter.

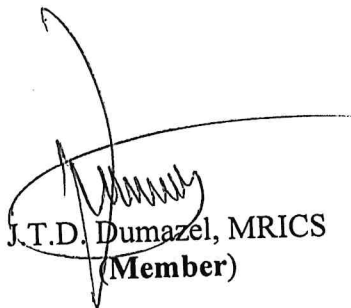
Consequently, the Panel considers it unnecessary, and indeed inappropriate, to embark upon an examination of the substantive merits of the Applicant's grounds for review. The Application for Review is accordingly dismissed as time-barred.

In the light of the above findings, the Panel holds that:

- (i) The procurement contract falls under the statutory regime for contracts below Rs 15 million, which came into force immediately upon notification of award on 7 April 2026. Once a contract has entered into force under this regime, the statutory remedies of suspension, quashing, or re-evaluation are legally unavailable.
- (ii) The Application for Review is set aside as it was filed on 27 April 2026, which is outside the mandatory 5-day statutory delay prescribed under Regulation 48(7) of the Public Procurement Regulations 2008.
- (iii) The motion to amend the Statement of Case to include a prayer for reimbursement of costs is refused, as it is out of time and seeks to cure a fatal jurisdictional defect.
- (iv) Pursuant to Section 45(3)(d) of the Public Procurement Act 2006, as the Panel has determined that there is no merit in the application, fifty per cent (50%) of the security deposit made by the Applicant upon filing shall be forfeited.



S. Bhugun-Tetarie
(Vice Chairperson)


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


J. Munbauhal
(Member)

Dated: 09 September 2026



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