

Independent Review Panel

Decision No. 19/26

In the matter of:

Knight Trading Co. Ltd

(Applicant)

v/s

Office of the Commissioner of Police

(Respondent)

(Cause No. 28/26/IRP)



Decision

[Handwritten signatures and initials]

A. History of the case

On 22 May 2026, the Respondent (Office of the Commissioner of Police), invited bids through open online advertised bidding method on the Government e-Procurement system for the Procurement of **Supply of Derby Shoes for Police Constables (PC) & Police Sergeants (PS)** bearing Procurement Ref No: ONB 42 of 2025-26 -Eproc Ref: POLICE/IFB/2026/1981.

The closing date for the submission of bids was scheduled for 23 June 2026.

Three (3) bids were received. The Applicant (Knight Trading Agency Co. 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

On 12 August 2026, the Respondent, informed the applicant that an evaluation of the bids received, has been carried out and that its bid had not been retained for award. Particulars of the successful bidder are as given below:

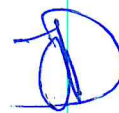
Bidder's Name			Address of Successful Bidder		Contract Price (Rs)	
Banker Shoes Ltd			59, Nicolay Road, Port Louis		Rs 21,450,000.00 (Excl of VAT)	
Sn	Item Code	Description of Goods	Qty	Unit Price Rs Excl Vat	Total Price Rs Excl Vat	Make & Country of Origin
1	A	Supply of Derby Shoes for Police Constable (PC) & Police Sergeant (PS),	26,000 pairs	825.00	21,450,000.00	New BSL Light Shoes/ Power Mauritius

D. Challenge

On 12 August 2026, the Applicant challenged the procurement proceedings under regulation 48 of the Public Procurement Regulations 2008 on the following grounds: -

8. Bidders ground for challenge

- (i) Why our Bid has not been retained
- (ii) Sole use of power by BSL not of Rubber
- (iii) Why no sample show to bidders.


E. Reply to Challenge

On 13 August 2026, the Respondent, in reply to challenge by the Applicant, stated that:

Sn	Challenge Raised	Reply to Challenge
1	Why our bid not retained	Your bid was found to be technically non-responsive as the samples submitted did not comply with the requirement specified at Item 18 of the Technical Specifications, which provides that: <i>"The waist portion of the outsole shall be legibly and indelibly steel stamped with the following: (a) Size/Fitting; and (b) Month and Year of Manufacture."</i> As indicated in the Technical Responsiveness Checklist, the sample submitted by your company did not bear the month and year of manufacture steel stamped on the waist portion of the outsole. Accordingly, the sample did not meet the specified technical requirement.
2	Sole use Power by BSL not of Rubber	The sample submitted by the successful bidder was examined against the technical requirements specified in the bidding documents and was found to comply with the applicable technical requirements.
3	Why no sample show to bidders	The bidding documents did not specify any requirement for the samples to be viewed.

F. Grounds for Review

On 14 August 2026, the Applicant seized the Independent Review Panel for review on the following grounds:

- (1) Sole not of Rubber Check Test Report
- (2) Sample refuse to be shown to bidders, how can we know the materials used and design of sole.
- (3) Challenge reply concern contractual obligation instead of offers.

G. The Hearing

The hearing was provisionally fixed for 7 September 2026.

Both parties were represented by counsel. Mr S. Dookhee, Counsel, appeared for the Applicant. Ms P. Babboo, Senior State Attorney, instructed Mr Y. Alimohamed, Senior State Counsel, for the Respondent.

In accordance with regulation 57(1A) of the Public Procurement Regulations 2008, the Panel offered the parties the possibility of having the application determined without an oral hearing. The parties agreed that the matter be determined on the basis of the documentary record and their written submissions.

No oral hearing was therefore held. Regulation 57(1A) provides that the Panel shall, as far as reasonably possible, offer to conduct reviews on the basis of submissions without hearings or through remote or virtual hearings.

The Panel notes that the Respondent filed its Statement of Defence outside the period prescribed by regulation 55(1) of the Public Procurement Regulations 2008. The Applicant raised no objection to the Statement of Defence being considered and, indeed, filed a substantive Reply and Written Submissions in response.

In those circumstances, and in the interests of a fair determination of the application, the Panel proceeded to consider the complete documentary record before it, including the Application for Review, the Applicant's Statement of Case, the Respondent's Statement of Defence and written submissions, and the Applicant's Reply and Written Submissions in Reply.

H. Findings

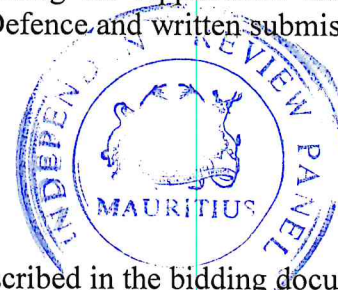
The dispute concerns principally the technical requirements prescribed in the bidding documents and the manner in which those requirements were applied during the evaluation of the samples and supporting test certificates.

The Panel first noted that clause 7.2 of the Instructions to Bidders provided: "*The Bidder is expected to examine all instructions, forms, terms, guidelines and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid.*"

Section VII of the bidding documents set out detailed Technical Specifications for the shoes. The Important Notes relating to the evaluation sample expressly provided, in bold and underlined terms: "*The proposed sample(s) should meet all criteria as mentioned in the Bidding Document.*"

The bidding documents further required a sample of one pair of shoes of size 41, conforming to the specifications in the Technical Responsiveness Checklist, together with an original test certificate. The test certificate was required to emanate from an agency accredited with the Mauritius Accreditation Service (MAURITAS) or from an agency accredited by an Accreditation Body which is signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement. The matters to be addressed by the certificate expressly included the "*Material of Sole*".

Before turning to the Grounds of Review, the Panel considers relevant to refer to section 37 of the Public Procurement Act, which governs the examination and evaluation of bids. Section 37(3) requires the Public Body, following the opening of bids, to examine them in order to determine whether they are complete and in accordance with the bidding documents. Section 37(9) further requires that every bid be evaluated according to the criteria and methodology set out in those bidding documents. Section 40(1) provides that



the procurement contract is to be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the bidding documents.

The role of the Panel is not to carry out a fresh technical evaluation of the bids or to substitute its own technical assessment for that of the Bid Evaluation Committee. Its function is to examine the procurement decision challenged before it and determine whether, having regard to the bidding documents, the applicable law and the material before the evaluator, the decision under review can properly stand.

Section 45(2) further requires an application for review to “specify the precise reasons for making the application”. The Third Schedule to the Regulations similarly requires the Applicant to identify its “grounds for review”. The Panel must therefore confine itself to the grounds of review before it. Accordingly, the Panel will proceed to determine the present application by reference to the grounds upon which it has been seized, read together with the Statement of Case and subsequent pleadings insofar as they explain and develop those grounds.

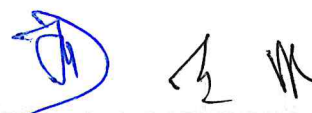
Ground 1

The Applicant’s first ground reads as follows: “*Sole Not of Rubber Check Test Report*”. The Panel understands that the Applicant is seeking, under its first ground, to challenge the successful bidder’s bid’s compliance with the technical specification relating to the material of the sole of the shoes to be supplied.

The Panel notes that the Technical Specifications expressly required the shoes to have a “*rubber sole and heel as per requirements*”. The bidding documents also required a test certificate submitted with the sample to expressly address and confirm, specifically and amongst other things, the material of the sole. The material from which the sole was made was therefore an express technical requirement against which compliance was to be assessed.

In the Bid Evaluation Report, Banker Shoes Ltd was recorded as compliant with that requirement.

The Public Body relies in that respect upon the test report dated 2 June 2026 issued by Planet Analysis Private Limited in relation to the sample submitted by Banker Shoes Ltd. That report identifies Banker Shoes Ltd as the customer and identifies the sample tested as one pair of “*New BSL Light Shoes / Power, Size-41, Colour-Black*”. Under the heading “*SOLE AND HEEL ANTISLIPPERY*”, the specified material is recorded as “*Rubber*”. The observed value is likewise recorded as “*Rubber*”, and the result is marked “*Conform*”.



The status and accreditation of Planet Analysis Private Limited have not been challenged by the Applicant. The Applicant nevertheless relies upon a document dated 15 July 2026 and headed “*List of Raw Materials for the production of shoes*”, which appears to have been obtained by the BEC during a visit to Banker Shoes Ltd’s manufacturing premises. That document contains as item 2: “*PVC Compound for Outsole*”.

The Panel finds first that the bidding documents themselves prescribed the manner in which compliance with the sole-material requirement was to be demonstrated. Banker Shoes Ltd complied with that requirement and submitted an independent test report from Planet Analysis Private Limited, whose status and accreditation are not in issue in this review. That report specifically identified the required material as “*Rubber*”, the observed material as “*Rubber*”, and concluded that the sample conformed to the requirement.

The Panel therefore finds that the BEC was entitled to rely upon that report as technical evidence that the sample submitted by Banker Shoes Ltd satisfied the prescribed requirement.

The reference to “*PVC Compound for Outsole*” in the later list of raw materials does not, in the Panel’s view, displace that conclusion, given especially that the bidding documents had prescribed how the material was to be ascertained. To conclude otherwise would have required the Panel itself to make a technical finding as to the chemical composition of the sole, or to infer that the accredited laboratory’s conclusion was erroneous, without an evidential basis for doing so.

The Panel therefore finds that the Applicant has not established, under this ground, that the proposed successful bidder failed to comply with the requirement for a rubber sole. Ground 1 is accordingly dismissed.



Ground 2

The Applicant’s second ground reads as follows: “*Sample refuse to be shown to Bidders. How can we know the materials used and Design of Sole*”.

The Panel understands the Applicant’s complaint to be about the absence of a physical reference sample that prospective bidders could have inspected before preparing their bids. This issue was in fact raised by prospective bidders prior to the closing date. By Addendum No. 1 dated 11 June 2026, the Respondent expressly informed bidders that “*there is no sample on view for inspection*” and that the shape of the shoes was to be according to the specifications contained in the bidding documents.

The Panel notes that the Applicant has, in its Reply, accepted that there was no invariable requirement that a physical sample be made available in the procurement exercise. Its contention is that, where no

reference sample is provided, the written specifications necessarily become the exclusive benchmark by which bidders are to prepare their offers and by which the BEC must subsequently evaluate them. The Applicant accordingly invited the Panel to test the evaluation strictly against the bidding documents and the Addendum.

ITB 20.2(a) required bidders to submit a sample of one pair of shoes of size 41 “*as per the specifications mentioned in the TRC*”, together with the original test certificate. The Important Notes further provided that:

“*The proposed sample(s) should meet all criteria as mentioned in the Bidding Document*”. The actual specifications themselves prescribed the characteristics of the shoes against which the samples were to be evaluated, including the pattern, upper material, leather thickness, method of assembly, eyelets, laces, material and dimensions of the sole, anti-slip cleats, insole, shank, lining, weight, pH, flex endurance and markings. In those circumstances, the absence of a reference sample did not leave bidders to speculate as to an undisclosed physical benchmark.

The Panel further notes that the Bid Evaluation Report further recorded the assessment of the submitted samples against the written specifications. There is nothing before the Panel establishing that the BEC evaluated the samples by reference to a previous Police shoe, an internal model or some other physical criterion which had not been disclosed.

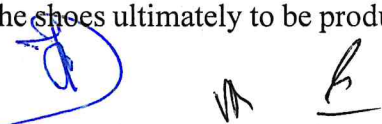
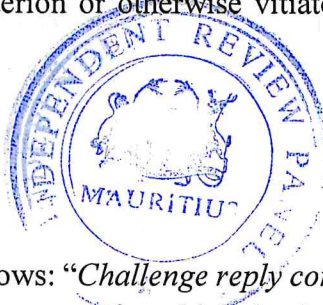
The Panel finds therefore that the Applicant has not established that the absence of a physical sample for inspection resulted in the application of an undisclosed criterion or otherwise vitiated the evaluation. Ground 2 is therefore dismissed.

Ground 3

The Applicant’s third and final ground of review reads as follows: “*Challenge reply concern Contractual Obligation instead of Offers*”. That third ground concerns the reason for which the Applicant’s samples were not retained during the technical evaluation.

In particular, item 17 of the Technical Specifications, relating to the “*Marking of Shoes*”, provided: “*The waist portion of the outsole shall be legibly and indelibly steel stamped with the following: (a) Size fitting; (b) Month and year of manufacture.*” The Applicant submitted two samples but neither bore the month and year of manufacture steel stamped on the waist portion of the outsole. The BEC consequently found both samples non-compliant and classified the omission as a major deviation.

The Applicant’s first contention is that the requirement concerning the month and year of manufacture was essentially a manufacturing or contractual requirement relating to the shoes ultimately to be produced



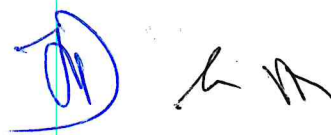
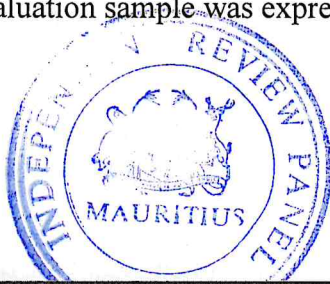
and supplied and should not have been treated as a requirement applicable to the sample submitted during evaluation. The Applicant relies in particular on **Mauri Sure Consumables Ltd v Ministry of Health and Wellness, Decision No. 11/26** in support of its submission that the legal character and timing of a procurement requirement must be ascertained from the structure and wording of the bidding documents and cannot be determined merely because the requirement appears somewhere within the specifications.

The Respondent, for its part, sought to distinguish **Mauri Sure** by submitting in reference to ITB 20.2(a) and the Important Notes, that, unlike the position in **Mauri Sure**, the bidding documents in the present case expressly incorporated the technical criteria into the sample-evaluation exercise. The Applicant accepts that ITB 20.2(a) required a sample complying with the specifications and that the Important Notes stated that the proposed sample should meet all criteria. It submits, however, that the expression cannot be read mechanically, and that the legal status and timing of each requirement must still be determined from the bidding documents read as a whole.

The Panel accepts that latter proposition as a matter of principle. The words “*meet all criteria*” cannot convert an obligation which, on its proper construction, arises only after award into a bid-stage requirement. The difficulty for the Applicant is that item 17 contains no language postponing compliance until after award or delivery. That is to be contrasted with provisions in the same bidding documents which expressly identify obligations arising at a later stage. For instance, item 18 provides: “*The successful bidder will have to supply shoes of sizes 37 to 50 “European sizes” (According to Mondo point system of sizing)*”.

The Applicant further relies upon the treatment of the Applicant’s sample. The record shows that the Applicant informed the Public Body that its evaluation sample did not bear the prescribed “*Made in Moris*” logo on the outside sole and explained that its mould would have to be sent abroad to incorporate that marking should the contract be awarded. The fact that the BEC nevertheless continued to treat Banker’s bid as responsive, demonstrates, according to the Applicant, that the evaluation process itself recognised a distinction between the state of an evaluation sample and requirements capable of being satisfied during later manufacture. It submits that the same approach ought therefore to have been considered in relation to its missing date stamp.

The Panel does not consider the two provisions to be equivalent. The provision concerning the “*Made in Moris*” marking is expressly framed by reference to goods which are locally manufactured and where the successful bidder qualifies for “*Made in Moris*” or “*Made in Mauritius*”. It provides that the successful bidder shall ensure that the appropriate logo is labelled inside the goods and embossed on the outside sole. Item 17, by contrast, is an unqualified technical specification applicable to the shoe itself and formed part of the criteria against which the evaluation sample was expressly required to comply.



The Panel therefore finds that the requirement that the month and year of manufacture be steel stamped on the outsole was applicable to the evaluation sample and was not merely a future contractual obligation.

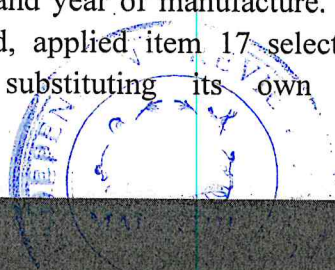
The Applicant alternatively submits that even if item 17 applied to the sample, it did not follow automatically that its absence constituted a material deviation warranting rejection. The Applicant relies on section 37(8) of the Act, which expressly contemplates that a bid may contain a minor deviation which does not warrant rejection. It submits that the BEC could not simply identify a departure from the specifications and label it “*major*”. Instead, the BEC had to consider whether the omission materially affected the substance of the offer. The Applicant argues that the absence of a date stamp did not alter the material, construction, quality or performance of the shoes. It further submits that the relevant information was already known to it and could have been incorporated when the shoes were ultimately manufactured.

The Public Body responds that the requirement was expressly prescribed as part of the physical sample. Its primary submission is that, where the procurement documents expressly require a technical characteristic to be physically present on the sample, the evaluator is entitled to verify its presence on the sample rather than accept an assurance that it could subsequently be provided.

At this juncture, the Panel considers relevant to refer to the judgment of the Supreme Court in **Securiclean (Mauritius) Ltd v The Ministry of Local Government & Outer Islands & Anor (2015) SCJ 327**. In that case, Securiclean had failed to comply with a requirement concerning the bank testimonial required under the tender documents and contended that the omission was merely a minor deviation capable of subsequent rectification. The Supreme Court stated: *“It was for the second respondent to decide in its discretion whether or not to allow the applicant to rectify its omissions or whether to award the contracts to co-respondent no. 1 by accepting the latter’s bid and rejecting that of the applicant. We cannot substitute ourselves for the second respondent whose role is to examine the tenders and decide whether in view of the provision of instruction 6.5(e) non-compliance thereof constituted a minor deviation which could be subsequently rectified...”*

It follows that the assessment whether a particular non-compliance may properly be treated as a minor or major deviation is primarily an evaluative matter entrusted to the procurement decision-maker. A reviewing body should not replace that assessment merely because it might itself have attached different weight to the omission.

In the present case, the BEC specifically examined the samples, identified the absence of the prescribed steel stamp, and classified the omission as a major deviation. The same criterion was applied to Triolet Noble Cooperative Society Ltd, whose sample was likewise not retained for failure to bear the prescribed month and year of manufacture. The Panel has not been shown that the BEC applied an undisclosed standard, applied item 17 selectively, or otherwise reached a conclusion which would justify the Panel substituting its own assessment under the principles explained in Securiclean.



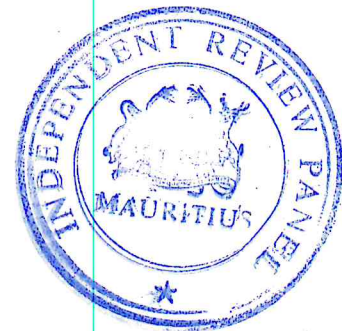
In those circumstances, the Panel finds no sufficient basis to interfere with the BEC's conclusion that the Applicant's omission amounted to a material deviation. Ground 3 is accordingly dismissed.

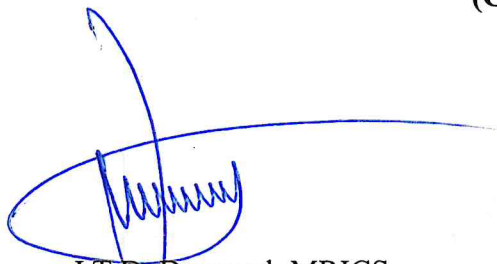
I. Conclusion

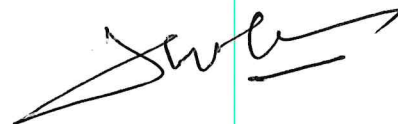
For the reasons set out above, the Panel finds no merit in any of the grounds of review. The Application for Review is accordingly dismissed.

Pursuant to section 45(3)(d) of the Public Procurement Act, 50 per cent of the security deposit paid by the Applicant shall be forfeited. The remaining 50 per cent shall be returned to the Applicant. The processing fee paid under Regulation 51(1)(b) remains non-refundable.


V.J. Reddi
(Chairperson)




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


J. Munbauhal
(Member)

Dated: 17 September 2026

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