



Independent Review Panel

Decision No. 32/16

In the matter of:

Maxi Clean Co. Ltd

(Applicant)

v/s

**Ministry of Environment, Sustainable
Development & Disaster & Beach Management
(Solid Waste Management Division)**

(Respondent)

(Cause No. 26/16/IRP)

Decision

A. Background

A.1

Contract Name and Description: “Cleaning and Maintenance of Toilet Blocks on Public Beaches for Lots No 1 to No 4”. Under this contract, the contractor is required to make provision for supervision, labour, administration and management, spare parts, repairs, replacement (as necessary) and procedures for cleaning and maintenance services over toilet blocks grouped in 4 lots as follows:

Lot	Sites
1	Le Goulet, Trou aux Biches (Opposite Police Station), Trou aux Biches (Opposite Ex-Aquarium), Bain Boeuf, Cap Malheureux, PG Union Ribet, Anse La Raie, Butte a L’Herbe, Grand Gaube (New integrated beach) , Pointe aux Piments (Near Parking) and Pointe aux Piments (Near cemetery)
2	Poste Lafayette, Bras D’Eau, Trou d’Eau Douce (Four a Chaux) and Trou D’Eau Douce (Debarcadere).
3	Le Bouchon, Gris Gris, Telfair Garden (Souillac), Batelage, Riambel (SSR Beach), St Felix (Pte aux Roches), Baie du Cap and Riviere Des Galets
4	P.G Le Morne (near Dinarobin), P.G Le Morne (between Berjaya and Les Pavillons), P.G Le Morne (Pte Sud Ouest) , Wolmar, PG Albion (Main beach), Petit Verger (Tilac), Albion (Mon Plaisir), Petit Verger (La Pointe), PG Anna (Flic en Flac), Flic en Flac (Near Pearl Beach) ,Pte aux Sables (main Beach) , and Pointe aux Sables (Near Fisheries Centre)

Works comprise the following:

- *“Deployment of Labour Force (adequate resources) for the cleaning of toilet blocks and immediate surroundings on a daily basis.*
- *Cleaning and sanitizing of Toilet Blocks including cleaning, and pressure cleaning where required, of all bowls, toilets seats, urinals, basins, bathrooms, waste receptacles, floors, walls, mirrors, dispensers and accessories used by public, doors (both sides) partitions, windows, glass panes, window sills and ceilings as per frequency stated in the scope of works.*
- *Removal of leaves, branches, dust, water etc. accumulating on roofs, cleaning and weekly washing of the roof.*
- *Weekly cleaning of external walls, glass panes and wooden fence surrounding toilet blocks.*

- *Supply of waste receptacle, stainless steel dispenser and locker for storage of cleaning consumables.*
- *Providing for cleaning equipment such as 2 Pressure Cleaners per lot.*
- *Making arrangements for the pumping and carting away of waste water from septic tank by effluent waste carriers.*
- *Carry such maintenance, repairs or replacement to the existing system such that the intended purpose is met in line with all safety regulations.*
- *Maintenance works shall be undertaken by qualified plumbers and electricians”*

A.2

Objective: The objective of the Contract is to keep the toilet blocks and the amenities cleaned and well maintained and safe so as to adequately serve their intended purpose during the term of the Contract.

A.3

Bidding Procedure: Bids were invited from eligible bidders through open national bidding. Initially, the closing date for the submission of bids was Thursday 21st July 2016.

- (a) General Procurement Notice:
 - (i) Open National Bidding
 - (ii) Date of issue: 08th June 2016
- (b) List of addendum/clarification issued with details:
 - Addendum No 1 : Issued on 15th July 2016
 - Clarification No 1 : Issued on 30th June 2016
- (c) Date of pre-bid meeting: 17th June 2016
- (d) Date minutes of pre-bid meeting sent to CPB: 30th June 2016

A.4

Procuring Entity: Ministry of Environment, Sustainable Development and Disaster and Beach Management.

A.5

Bid Submission and Opening: The closing date for the submission of bids was fixed for Thursday 21st July 2016 up to 13.30 hours (local time) at latest at the Central Procurement Board (CPB).

Fifteen (15) bids were received and Public Opening was carried out on the same day at 14.00 hours (local time) in the Conference Room at the CPB.

Bidder	Name of Company
1	Mauriclean Ltd
2	Ideal Supplies and Services Ltd
3	Altipro Ltd
4	New Cleaning Service Ltd
5	Maxi Clean Co Ltd
6	Chez Van and Pat Cleaning Ltd
7	Brillant Cleaning Services Ltd
8	Care Keen Cleaning Ltd
9	Securiclean (Mauritius) Ltd
10	Keep Clean Ltd
11	Norba Nettoyage Ltee
12	Good Peace Co Ltd
13	Neo Clean Ltd
14	Hyper Cleaning Ltd
15	Season Care Commercial and Domestic Cleaning Services Ltd

B. Evaluation

B.1

Bid Evaluation Committee Composition:

Mr. Shakeel Subratty	Lead Engineer, Ministry of Health and Quality of Life <i>(Team Leader & registered evaluator)</i>
Mr. Rajesh Gopaul	Scientific Officer, Ministry of Agro-Industry and Food Security <i>(Member & registered evaluator)</i>
Mrs. Sharmeela Ram Racheya	Technical Officer, Ministry of Environment, Sustainable Development and Disaster and Beach Management <i>(Member & registered evaluator)</i>
Mr. Michael Rene	Technical Officer, Ministry of Environment, Sustainable Development and Disaster and Beach Management <i>(acting as Secretary)</i>

B.2

Methodology of Evaluation: The Bid Evaluation Committee adopted a method of evaluation appropriate for a 2-envelope system, that is, after technical evaluation and marking, financial evaluation was carried out only for those bids having attained the minimum marking in technical evaluation.

B.3

Technical Evaluation: 1. General Responsiveness

Bidder Maxiclean was found fully responsive, whereas the following shortcomings were noted in regard to the Selected Bidder:

- *Bidder 4 – New Cleaning Service Ltd*
 - *ITB 5.1 (c) – The bidder has submitted the total monetary value of services for 2013 and 2016 only. However, a testimonial from the Ministry of Education and Human Resources has also been submitted confirming that New Cleaning Services Ltd has undertaken cleaning services in 28 Government Schools in Zone 4 for the period June 2012 and March 2015. Clarification has to be sought with respect to monetary value of services undertaken by bidder for Year 2014 and Year 2015.*
 - *ITB 5.1 (g) – Financial Statements for years 2013-2015 have been submitted however certified copies of Financial Statements/Audited Accounts as filed at the Registrar of Companies before the deadline set for the submission of bids have not been submitted.*
 - *ITB 5.1 (j) - List of contracts that have been terminated prior to their expiry dates and reasons have not been submitted.*

However, during clarification, *Bidder 4 - New Cleaning Service Ltd has positively clarified the queries.*

2. Minimum Qualifying Criteria

Bidder 4 - New Cleaning Service Ltd

The average annual financial amount of services provided over the last two years does not represent half of the annual contract value for all four (4) lots and neither a combination of three (3) lots nor a combination of two (2) lots.

Accordingly, the Bidder qualifies for either Lot 2 or Lot 3 only, for which other minimum criteria are also fulfilled.

Bidder 5 - Maxi Clean Co Ltd

Bidder qualifies for all Lots.

At the end of this stage, the bids having passed the Minimum Qualifying Criteria and that are considered for further Technical Analysis are as follows:

Bidder	Name of Company	Remarks
4	New Cleaning Service Ltd	Qualifies for either Lot 2 or Lot 3
5	Maxi Clean Co Ltd	Qualifies for all 4 Lots
10	Keep Clean Ltd	Qualifies for all 4 Lots
11	Norba Nettoyage Ltee	Qualifies for Lot 2 only

3. Marking of Technical Proposal

After analysis of the four surviving bids, according to the listed criteria, the Bid Evaluation Committee marked the bids as follows:

Bidder	Lot 1	Lot 2	Lot 3	Lot 4
4. New Cleaning Service Ltd		27	27	
5. Maxi Clean Co Ltd	30	30	30	30
10. Keep Clean Ltd	29	29	29	29
11. Norba Nettoyage Ltee		29	Not Quoted	

B.4

Financial Evaluation: For the Financial Analysis of proposals, the lowest financial proposal (Fm) of responsive bids have been given the maximum mark (Sm) which is 70 marks. Marks to be allocated to other financial proposals have been computed as follows: $S = Sm \times Fm/F$ where *F* is the price of the proposal under consideration.

Bidder		Financial Marks obtained (S)			
		Lot 1	Lot 2	Lot 3	Lot 4
4	New Cleaning Service Ltd			70	
5	Maxi Clean Co Ltd	70	40.20	33.24	59.86
10	Keep Clean Ltd	66.74	50.14	32.31	70
11	Norba Nettoyage Ltee		70		

However, the Bid Evaluation Committee made a certain number of observations in regard to the financial bids of certain bidders:

The contract amounts quoted by the bidders having obtained highest marks have been compared to the Public Body's cost estimate as given in table below:

Lot No	Bidder	Quoted Amount MUR (VAT Inclusive)	Estimated Cost MUR (VAT Inclusive)	Variation MUR	% Variation
1	Maxi Clean Ltd	34,843,804.00	34,714,638.00	+129,166.00	+0.37 %
2	Norba Nettoyage Ltee	7,318,600.00	15,538,524.00	-8,219,924.00	- 52.90 %
3	New Cleaning Service Ltd	12,589,979.20	26,469,290.00	-13,879,311.00	- 52.44 %
4	Keep Clean Ltd	29,923,000.00	37,400,057.00	- 7,477,057.00	- 19.99 %

*Based on the above, it is noted that the prices quoted for Lot 2 and Lot 3 are **much less** than the Public Body's Cost Estimate.*

Even for Lot 4, the price quoted is less by nearly 20% of the estimated cost.

Accordingly, the BEC undertook calculations to make its own estimate of the cost of Labour deployed by each tenderer and reached figures that are well below those estimated by the Public Body, but which justified the very low prices tendered by the Selected Bidder.

However, this did not satisfy the CPB, and after clarifications were sought from certain bidders, the BEC produced a Supplementary Report:

Further to the submission of BEC's Evaluation Report to the Board on 26 September 2016, wherein the BEC highlighted the fact that the prices quoted for some lots were quite low as compared to the Public Body Cost Estimate, the

CPB has sought clarifications from two Bidders Norba Nettoyage Ltee and New Cleaning Services Ltd.

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Upon the request of the Board, the BEC was requested to assess the clarifications and following reply of the BEC dated 04 October 2016, a meeting was held on 07 October 2016. It was agreed that the BEC will re-assess the labour cost estimate based on remuneration orders so as to ascertain that they are able to comply to their undertaking mentioned in the Bid Submission Form namely “We confirm that the salaries and wages payable to our personnel in respect of this proposal are in compliance with the relevant Laws, Remuneration Order and Award, where applicable and that we shall abide with the provisions of sub clause 4.6 of the General Conditions of Contract, if we are awarded the contract or part thereof”.

Labour cost only (excluding Bonuses/Overtime) were calculated, the purpose being to ensure that Bidders are able to pay their workers in line with remuneration orders in force and in the same line to provide comments on the replies of Norba Nettoyage Ltee and New Cleaning Services Ltd.

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Based on the new analysis, the Bid Evaluation Committee found that:

- (i) the amounts quoted by the Bidders Norba Nettoyage Ltee, New Cleaning Service Ltd and Keep Clean Ltd are less than the Public Body’s Estimated Cost,*
- (ii) the amounts quoted by the Bidders Norba Nettoyage Ltee, New Cleaning Service Ltd and Keep Clean Ltd exceed the Remuneration of Labour Cost with a divergences of 7%, 2% and 67% respectively.*

Nevertheless, the Bid Evaluation Committee did not change its conclusions reached in the main Report.

After analysis of the above, the BEC maintains its recommendations as given in the Evaluation Report dated 26 September 2016.

In the main Report, the Bid Evaluation Committee concludes its financial evaluation with the following statements:

Based on the Estimate as per Remuneration order for labour cost and associated cost, it is noted that the amount quoted for Lot 2 and Lot 3 is abnormally low as compared to the respective cost estimate. The capacity of Norba Nettoyage Ltee and New Cleaning Service Ltd to perform the contract efficiently, whilst respecting Labour laws/Remuneration Orders is debatable.

*However, the BEC within its sphere of responsibility, is not ability (Sic) to further question the capacity of the Bidder to perform the contract efficiently, the more so, as per the Bid Submission Form signed by the responsive Bidders, it is mentioned that **“We confirm that the salaries and wages payable to our personnel in respect of this proposal are in compliance with the relevant Laws, Remuneration Order and Award, where applicable and that we shall abide with the provisions of sub clause 4.6 of the General Conditions of Contract, if we are awarded the contract or part thereof”.***

C. Notification of Award

The Ministry of Environment, Sustainable Development & Disaster & Beach Management (Solid Waste Management Division) through a letter dated 14 October 2016 informed the Applicant of the particulars of the successful bidders as follows:

Contract No.	Name of Bidder	Address	Contract Price (Rs) INCL. VAT
CPB/04/2016	New Cleaning Service Ltd (Lot 3)	Impasse Tonta, Curepipe	12,589,979.20

D. The Challenge

On 21 October 2016, the Applicant challenged the award on the following grounds:

- (a) *“The Aggrieved Bidder MAXI CLEAN Co. LTD (herein after referred to as Maxi Clean) contends that the successful bidder New Cleaning Service Ltd does not have the experience required under ITB 5.1(d) ‘experience in services of a similar nature and of similar size as far as possible, in each of the last two years’ and under ITB 5.2 (b) ‘experience and satisfactory performance over the last two years as prime contractor in providing services on sites of similar nature as specified in the scope of service”*

- (b) *“The experience which the successful bidder claims it has relates to “Cleaning of Premises in Schools/Institutions”. As per the scope of work of this bid where Maxi Clean was also a bidder, ‘premises’ did not include “toilet” hence the successful bidder does not have **any** experience of a similar nature and of similar size as far as possible, in each of the last two years. Maxi Clean herewith attaches:*
- ***Annex A letter of notification from the Ministry of Education and Human Resources dated 22 March 2012 relating to bid “Cleaning of Premises in Schools/Institutions” MOEHR/Serv/OAB30/2011***
 - ***Annex B scope of work relating to bid “Cleaning of Premises in Schools/Institutions” MOEHR/Serv/OAB30/2011 and MOEHR/Serv/OAB35/2013***
 - ***Annex C scope of work relating to the present bid.***
- (c) *“Maxi Clean verily believes that because the successful bidder has no experience in cleaning and maintenance of public toilets, it will not be able to provide the level of service required by the contract since cleaning of toilet blocks on beaches necessitates the presence of cleaners from 6.00a.m to 7.00p.m every single day of the year, with very large crowds on public holidays, weekends and festivals. The successful bidder will not be able to cope with this volume of work with the skeleton employees that its quoted figures will allow him to hire.*
- (d) *“As per Maxi Clean, the Public Body can easily verify that the successful bidder has no such ‘experience and satisfactory performance over the last two years as prime contractor in providing services on sites of similar nature as specified in the scope of service’ as required in ITB 5.2(b) since the successful bidder has not obtained any contract for providing services on sites of a similar nature from the Public Body in the last 2 years.”*
- (e) *“For its lack of experience as expatiated above the successful bidder New Cleaning Service Ltd should have been disqualified from the outset. Should it have still made it somehow, it would then lost marks under Section VI – Schedules 1. Evaluation Criteria as follows: in A. Company Profile subsection (ii) Experience, under subsection (iii) Magnitude and*

under section (iv) References of Client for Services of similar nature as specified in Scope of Services – Section III. It would score much minimum pass mark.”

- (f) **“Under Section III. Scope of Service and Performance Specifications the bidder is required to provide 16 Male Cleaners and 16 female 1 supervisor, 1 plumber and 1 electrician with provision for necessary shift system arrangement to ensure permanency during operating hours.**

Specific Cleaning Activities

1.2.1 Labour Force – The Contractor shall deploy adequate resources for cleaning of the toilets block and immediate surroundings as from 6.00 a.m to 7.00 p.m on all days. Two attendants shall be permanently available for each toilet block, i.e One male attendant for the Male Section and one female attendant for the Female Section. These attendants shall all times be present at the toilet blocks or in the vicinity to provide continuous cleaning services. The Contractor shall provide for the necessary shift system arrangement among its workers to ensure permanency over the Operating hours of the Toilet blocks.

The Contract shall deploy the necessary labour force on the contract as follows:

S/N	Requirements	Lot 1	Lot 2	Lot 3	Lot 4
1.	Supervisor	1	1	1	1
2.	Attendants – male	22	8	16	24
3.	Attendants– female	22	8	16	24
4.	Plumbers	1	1	1	1
5.	Electricians	1	1	1	1

Under ITB 5.2(d) the bidder to furnish an ‘undertaking from the Bidder that the salaries and wages to be paid to its personnel in respect of this bid are compliant with the relevant Laws, Remuneration Order and Award

where applicable and that it will abide to the sub-clause 4.6 of the General Conditions of Contract, if it is awarded the contract or part thereof'

*In the **Bid Submission Form** the bidder is required to state that “we confirm that the salaries and wages payable to our personnel in respect of this proposal are in compliance with the relevant Laws, Remuneration Order and Award, where applicable and that we shall abide with the provisions of sub clause 4.6 of the General Conditions of Contract, if we are awarded the contract or part thereof”*

Maxi Clean verily believes that the successful bidder made false statements in such undertaking in as much as a simple arithmetical exercise will show that after deduction of 15% VAT from the quoted figures, the balance will not suffice to pay the cleaners, in the light of the number of workers including shift replacements, which have to be provided as per the tender document, their normal hours, overtime rates, end of year bonus, travelling, administrative costs, other impositions of the law such as uniform, gloves, boots, raincoats as well as costs for cleaning consumables and equipment and other costs related to services to be supplied and borne by the Service Provider, including but not limited to all plumbing and electrical repairs and maintenance, including replacement of damaged water pumps, over 36 months; supplying water by carriers in case of interruption in water supply, disposal of effluents by licensed carriers.

It is Maxi Clean’s contention that the sole undertaking on the part of the selected bidder to comply with the remuneration orders is not sufficient to allow the Bid Evaluation Committee of the CPB to conclude that it is compliant bid.”

- (g) *“By filing the Bid Submission Form the successful bidder New Cleaning Service Ltd accepts ‘that transgression of the above is a serious offence and appropriate actions will be taken against such bidders’ but at the same time it is not catering for the lawful remuneration of its employees thereby establishing its disregard for compliance to the law. The*

successful bidder New Cleaning Service Ltd is transgressing the conditions of the bid and the Laws of Mauritius.”

(h) *“Under Section IV – Activity Schedules the Employer places the responsibility on the bidder to present a bid that includes “all that is necessary to discharge the liabilities and obligations arising out of the Contract. The rates and amounts inserted against items in the Activity Schedules must cover the cost of the services described in the, Scope of Works and all consequential and associated costs and expenses including those relating and not limited to:*

- (i) *Compliance with the Conditions of Contract.*
- (ii) *Labour*
- (iii) *Materials and goods*
- (iv) *Provision of plant, tools and equipment*
- (v) *Temporary works*
- (vi) *Establishment charges, overheads and profits.*

The rates and prices must also take into account the conditions referred to in the Conditions of Contract and include the weather conditions, payment of guaranteed minimum and holidays with pay. The cost of any travelling time, subsistence, and incentives such as overtime, etc must be included in the rates and prices”

It is Maxi Clean’s contention that the successful bidder is non-compliant with the requirements of the bid documents and non-compliant with the law.”

(i) *By preferring New Cleaning Services Ltd’s quoted figures over the other bidders the Public Body is condoning as well as participating in the successful bidder’s illegal practices and breaches to the laws of Mauritius.*

The Maxi Clean herewith attaches:

– Annex D Cleaning Enterprises (Remuneration) Regulations 2013 GN no.191 of 2013

- **Annex E Cleaning Enterprises (Remuneration) (Amendment) Regulations 2016 GN no.55 of 2016**
 - **Annex F Breakdown Cost of Wages of Staff – Cleaners for one toilet block & Supervisors for whole lots in strict compliance with the employment Laws of Mauritius.** It is important to note that the salary mentioned in this breakdown is the salary as per the employment Laws and Regulations of Mauritius.
 - **Annex G Breakdown Cost of Repairs and Maintenance for the whole Lot No.3 (8 Toilet Blocks)**
 - **Annex H IRP Decision no.12/13**
 - **Annex I Parliamentary Debates (Hansard) First Session Tuesday 06 August 2016** concerning remuneration of cleaners by certain service providers for ‘Cleaning of Premises in Schools. Institutions’
 - **Annex J Article from Défi <http://defimedia.info/monde-du-travail-ces-femmes-qui-vivent-avec-un-salaire-de-moins-de-rs-2500>** where trade unionist Jane Rago, pins the successful bidder as being one of the companies that do not comply with employment and remuneration laws in Mauritius.
- (j) As per the article of Défi as highlighted by Mrs Jane Rago, the Public Body and the CPB/BEC are in duty bound to enquire from the Ministry of Social Security, National Solidarity and Reform Institutions Department of National Pensions Scheme:
- (i) whether New Cleaning Service Ltd is contributing as per the requirements of the Law for the NPF and NSF and levy for all its employees and
 - (ii) and confirm the number of employees New Cleaning Service Ltd
 - (iii) and the amount of its contributions,
- Since all this should reflect the alleged activities of New Cleaning Service Ltd and its compliance with Laws of Mauritius.”
- (k) “The Maxi Clean refers the Public Body to **Annex H IRP Decision no.12/13.** Searches at the Companies Division carried out on the 18 October 2016 have revealed that New Cleaning Service Ltd and Service Maison Ltée are

owned by one and same party, as sole shareholder, who is also the director of both companies: **Mr Appalsamy PYNDIAH.**

Service Maison Lté was the applicant/aggrieved bidder in Cause No.21/13/IRP – Service Maison Ltée vs Min of Health and Quality of Life which led to **Annex H** IRP Decision no.12/13.

The then aggrieved bidder was successful bidder since the IRP recommended a re-evaluation of the bids.

Since Service Maison Ltée and New Cleaning Service Ltd belonged and are managed by the same party, the successful bidder New Cleaning Service Ltd cannot plead ignorance of the consequences of non-compliance with the employment laws of Mauritius.

The Maxi Clean herewith attaches:

– **Annex K Searches at the Companies Division re: Service Maison Ltée**

– **Annex L Searches at the Companies Division re: New Cleaning Service Ltd”**

- (l) “Under the bid requirements ITB 5.1(g) the bidder is required to submit “reports on the financial standing for the Bidder for the last three years, such as Certified copies of Financial Statements/Audited Accounts as files at the Registrar of Companies before the deadline set for such submission of bids”

Annex M obtained from the Registrar of Companies Division is the accounts files by New Cleaning Service Ltd, the Successful Bidder. A quick glance at such accounts shows that the Cost of Sale Item = 0, no costs of sale.”

- (m) It is the Maxi Clean’s contention that in view of all the above New Cleaning Service Ltd does not qualify to bid and the contract cannot be allocated to it.
- (n) It is also the Maxi Clean’s contention that in the circumstances the bid of New Cleaning Service should have been rejected.

E. The Reply to Challenge

On 27 October 2016, the Public Body made the following reply to the challenge:

(a) Lot 2

- 1) “Section 8(a) – *Norba Nettoyage Ltée does not have the required experience to undertake the services of similar nature, as specified in the scope of services, and even as a prime contractor. Bases on its submission, Norba Nettoyage Ltée has undertaken cleaning works as Prime Service Contractor for more than 2 years. Works include cleaning of beaches, toilet blocks, streets, buildings and office amongst others.*”
- 2) “Section 8(b) – *Same as part (1) above.*”
- 3) “Section 8(c) – *Norba Nettoyage Ltée has provided the required number of labour force in its submission.*”
- 4) “Section 8(d) – *Same as part (1) above.*”
- 5) “Section 8(e) – *The minimum passing mark of the Technical Evaluation Criteria is 21 and markings allocated to Norba Nettoyage Ltée are in accordance with Section VI – Schedules of the Technical Evaluation Criteria. Norba Nettoyage Ltée has scored above the required minimum passing mark.*”
- 6) “Section 8(f) – *The Bid Evaluation Committee (BEC) (set up by the Central Procurement Board) has performed calculations on wages and determined that the bidder has demonstrated that the bid price quoted is above the minimum monthly wages to be paid to respective number of employees in line with the applicable Remuneration Order.*”

Nettoyage Ltée has submitted an undertaking that the wages to be paid to its personnel in respect of this bid are compliant with the relevant laws, Remuneration Order and Award where applicable and that it will abide to sub-clause 4.6 of the General Conditions of Contract, if it is awarded the contract.

Norba Nettoyage Ltée has signed the Bid Submission form wherein it is stated “We confirm that the salaries and wages payable to our personnel in respect of this proposal are in compliance with the relevant Laws, Remuneration Order and Award, where applicable and that we shall abide with the provisions of sub clause 4.6 of the General Conditions of Contract, if we are awarded the contract or part thereof”.

- 7) “Section 8(g) – *In addition to the fact Norba Nettoyage Ltée has ascertained that the company will be able to comply with the above, the calculations performed by the Bid Evaluation Committee on wages have demonstrated that the bid price quoted is above the minimum monthly wages to be paid to respective number of employees in line with the applicable Remuneration Order. Notwithstanding same, condition 4.6 “Labour Clause” as per the Conditions of Contract is clear in as much as much of the actions the Public Body may initiate in cases of non remuneration of employees.”*
- 8) “Section 8(h) – *The preamble to Section IV – Activity Schedules is clear to the fact that every bidder is made aware of the components to build his quoted rates. The strategy of each and every bidder of how it will quote, rests on the bidder itself. Yet, as pointed in part (6) and (7) above, it has nonetheless been ascertained that the bidder*

has a capacity to remunerate his workers. While Norba Nettoyage Ltée is compliant to the provisions of the bid document, the same document, as per the Conditions of Contract, makes provision for payment of Taxes and Duties compulsory as well as liquidated damages upon the service provider, should shortcomings be noted.”

- 9) “Section 8(i) – *Same as part (6), (7) and (8) above.”*
- 10) “Section 9(j) – *This relates to contract implementation issue.”*
- 11) “Section 8(k) – *The bidding document makes provision for the submission of the financial standing of the Bidder such as Certified Copies of Financial Statements/Audited Accounts as filed at the Registrar of Companies before the deadline set for submission of Bids. The Financial Statements/Audited Accounts of Norba Nettoyage Ltée complies with this requirement.”*
- 12) “Section 8(l) – *Norba Nettoyage Ltée has complied with the requirement of the Bid.”*
- 13) “Section 8(m) – *Norba Nettoyage Ltée has complied with the requirement of the Bid.”*

“In the light of the above, the bid of Norba Nettoyage Ltée has been recommended for award for Lot 2 by the BEC.”

(b) **Lot 3**

- 1) “Section 8(a) – *New Cleaning Service Ltd does not have the required experience to undertake the services of similar nature as specified in the scope of services and even as a prime contractor. Based on its submission, New Cleaning Service Ltd has undertaken cleaning works as*

Prime Service Contractor for more than 2 years. Works include cleaning of offices, kitchen, toilets, yard, tarmac, and drains amongst others.”

- 2) *“Section 8(b) – New Cleaning Service Ltd might not have undertaken specifically cleaning of Toilet for Ministry of Education as claimed by Maxi Clean Ltd for the last two years, but the bidder has however undertaken cleaning works for a number of schools. Furthermore, the said firm has also undertaken cleaning of toilets for other companies.”*

- 3) *“Section 8(c) – Cleaning and maintenance of public toilets does not differ much from a toilet block in a private company in as much as that for a public toilet the company will have to provide the labour resources required as per the Bid Document so as to perform the requires services. New Cleaning Service Ltd has provided as per its submission, the required labour force.”*

- 4) *“Section 8(d) – Same as part (1) and part (2) above.”*

- 5) *“Section 8(e) – The minimum passing mark of the Technical Evaluation Criteria is 21 and markings allocated to New Cleaning Service Ltd are in accordance with Section VI – Schedules of the Technical Evaluation Criteria. New Cleaning Service Ltd has scored above the required minimum passing mark.”*

- 6) *“Section 8(f) – The Bid Evaluation Committee has performed calculations on wages and determined that the bidder has demonstrated that the bid price quoted is above the minimum monthly wages to be paid to respective number of employees in line with the applicable Remuneration Order.*

New Cleaning Service Ltd has submitted an undertaking that the wages to be paid to its personnel in respect of this bid are compliant with the relevant laws, Remuneration Order and Award where applicable and that it will abide to sub-clause 4.6 of the General Conditions of Contract, if it is awarded the contract”

New Cleaning Service Ltd has signed the Bid Submission Form wherein it is stated that: ‘We confirm that the salaries and wages payable to our personnel in respect of this proposal are in compliance with the relevant Laws, Remuneration Order and Award, where applicable and that we shall abide with the provisions of sub clause 4.6 of the General Conditions of Contract, if we are awarded the contract or part thereof.’”

- 7) “Section 8(g) – *The calculations performed by the Bid Evaluation Committee on wages have demonstrated that the bid price quoted is above the minimum monthly wages to be paid to respective number of employees in line with the applicable Remuneration Order. Notwithstanding same, condition 4.6 “Labour Clause”, as per the contract, is clear in and as much of the actions the Public Body may initiate in cases of non remuneration of employees.”*
- 8) “Section 8(h) – *The preamble to Section IV – Activity Schedules is clear to the fact that every bidder is made aware of the components to build his quoted rates. The strategy of each and every bidder of how it will quote, rests on the bidder itself. Yet, as pointed in part (6) and (7) above, it has nonetheless been ascertained that the bidder has a capacity to remunerate his workers. While New*

Cleaning Service Ltd is compliant to the bid document, the same document, as per the Conditions of Contract, makes provision for payment of Taxes and Duties compulsory and liquidated damages upon the service provider should shortcomings be noted.”

- 9) “Section 8(i) – Same as part (6, (7) and (8) above.”
- 10) “Section 8(j) – This relates to contract implementation issue.”
- 11) “Section 8(k) – Service Maison Ltée did not participate in the present bidding exercise.”
- 12) “Section 8 (l) – The bidding documents makes provision for the submission of the financial standing of the Bidder such as Certified Copies of Financial Statements/Audited Accounts as filed at the Registrar of Companies before the deadline set for submission of Bids. The Financial Statements/Audited Accounts of New Cleaning Service Ltd complies with this requirement.”
- 13) “Section 8(m) – New Cleaning Service Ltd has complied with the requirement of the Bid.
“
- 14) “Section 8(n) – New Cleaning Service Ltd has complied with the requirement of the Bid.”

“In the light of the above, the bid of New Cleaning Service Ltd has been recommended for award for Lot 3 by the BEC.”

F. Grounds for Review

On 01 November 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

1. *“The Ministry of Environment, Sustainable Development, and Disaster and Beach Management (hereinafter referred to as the Public Body) was wrong to dismiss the grounds for challenge in toto. By so doing the Public Body chose not to address the serious issues raised by the Applicant that, to wit:*

New cleaning Service Ltd, the Successful Bidder, does not have the experience required to qualify for award with respect to the scope of services specified in the bidding documents that is similar in nature and size, as per ITB 5.1(d) and especially 5.2(b) of the Bidding Documents, to wit:

“experience and satisfactory performance over the last two years as prime contractor in providing services on sites of similar nature as specified in the scope of service”

(a) Figures quotes by New Cleaning Service Ltd cannot objectively and mathematically cover the salaries of the number of workers required by the Bidding Documents, in compliance with the employment laws of Mauritius, for the whole duration of the contract inclusive of VAT, NPS/NPF, taxes and duties as well as the yearly salary increase;

(b) Maxi Clean Co Ltd, the Applicant has submitted the lowest responsive bid, compliant with all the Laws of Mauritius.

2. *The Public Body was wrong to have rejected the grounds of challenge dismissively after having admitted at paragraph (b) Lot 3 – 2) of its reply dated 27 October 2016 that New Cleaning Service Ltd does not have the experience requires for this tender.*
3. *“By awarding this contract to New Cleaning Service Ltd, despite admitting its lack of experience the Public Body has occulted the requirements of the Bidding Documents relating to experience as further specified in **Section III: Scope of Service and Further Specifications** more specifically but not limited to **B) Other Services** and brushed aside the specific nature of, hence the specific requirements for experience in cleaning and maintenance of toilet blocks on public beaches.”*

4. *“By awarding this contract to New Cleaning Service Ltd, despite admitting its lack of experience the Public Body is changing the rules of the game after the game has started: there was no need to ask for experience of a similar nature and of similar size as far as possible, in each of the last two years as per paragraph 1 of the Public Notice announcing the bid to the public.”*
5. *“The Public Body was wrong to have rejected the grounds of challenge dismissively: once the Public Body was in presence of the serious averments of the Applicant supported by evidence the Public Body was in duty bound to investigate same instead of relying upon the documents, undertakings and submissions, in short the ipse dixit of New Cleaning Service Ltd, in relation to compliance on salaries when the figures quoted by it in its bid demonstrate the contrary.”*
6. *“The Public Body was wrong to have rejected the grounds of challenge dismissively relying on “The calculations performed by the Bid Evaluation Committee on wages” concerning the applicant’ very serious averment supported by workings that the Successful Bidder will not be able to pay the salaries in compliance with the employment laws of Mauritius, namely the Employment Rights Act, the Employment Relations Act (as amended), Cleaning Enterprises (Remuneration) Regulations 2013 and Cleaning Enterprises (Remuneration) (Amendment) Regulations 2016.”*
7. *“The Public Body is wrong in surmising that liquidated damages to be an adequate remedy “should any shortcomings be noted” on the part of the Successful Bidder New Cleaning Service Ltd since its financial statements for year ending December 2015 filed with the Registrar of Companies show at a glance that it does not have reserves or financial capacity to pay liquidated damages.”*
8. *“The Applicant maintains that the successful bidder New Cleaning Service Ltd does not have the experience required under ITB 5.1(d) ‘experience in services of a similar nature and of similar size as far as possible, in each of the last two years’ and under ITB 5.2(b) ‘experience and satisfactory performance over the last two years as prime contractor in providing services on sites of similar nature as specified in the scope of service”*

9. *“The experience which the successful bidder claims it has, relates to “Cleaning of Premises in Schools/Institutions.” As per the scope of work of this bid where Maxi Clean was also a bidder, ‘premises’ did not include ‘toilet’ hence the successful bidder does not have any experience of a similar nature and of similar size as far as possible, in each of the last two years.”*

“Applicant herewith attaches:

- Annex A** Letter of notification from the Ministry of Education and Human Resources dated 22 March 2012 relating to the bid “Cleaning of Premises in Schools/Institutions” MOEHR/Serv/OAB30/2011*
- Annex B** scope of work relating to bid “Cleaning of Premises in Schools/Institutions” MOEHR/Serv/OAB30/2011 and OAB35/2013*
- Annex C** scope of work relating the present bid.”*

10. *“Applicant verily believes that because the successful bidder has no experience in cleaning and maintenance of public toilets it will not be able to provide the level of service required by the contract since cleaning of toilet blocks on beaches necessitates the presence of cleaners from 6.00 a.m to 7.00 p.m. every single day of the year, with very large crowds on public holidays, weekends and festivals. The successful bidder will not be able to cope with this volume of work with the skeleton employees that its quoted figures will allow him to hire.”*
11. *“Applicant maintains that the Public Body should know that the successful bidder has no such ‘experience and satisfactory performance over the last two years as prime contractor in providing services on sites of similar nature as specified in the scope of service’ as required in ITB 5.2(b) since the successful bidder has not obtained any contract for providing services on sites of a similar nature from the Public Body in the last 2 years”*
12. *“For its lack of experience as expatiated above the successful New Cleaning Service Ltd should have been disqualified from the outset. Should it have still made it somehow, it should then have lost marks under Section VI – Schedules 1. Evaluation Criteria as follows: in A. Company*

Profile subsection (ii) Experience, under subsection (iii) Magnitude and under section (iv) References of Client for Services of similar nature as specified in Scope of services – Section III. It would score much below minimum pass mark.”

13. **“Under Section III. Scope of Service and Performance Specifications the bidder is required to provide 16 Male Cleaners and 16 female 1 supervisor, 1 plumber and 1 electrician with provision for necessary shift system arrangement to ensure permanency during operating hours.**

Specific Cleaning Activities

1.2.1 Labour Force – The Contractor shall deploy adequate resources for cleaning of the toilet block and immediate surroundings as from 6.00 a.m to 7.00 p.m on all days. Two attendants shall be permanently available for each toilet block, i.e One male attendant for Male Section and one female attendant for the Female Section. These attendants shall all times be present at the toilet blocks or in the vicinity to provide continuous cleaning services. The Contractor shall provide for the necessary shift system arrangement among its workers to ensure permanency over the Operating hours of the Toilet blocks.”

The Contract shall deploy the necessary labour force on the contract as follows:

S/N	Requirements	Lot 1	Lot 2	Lot 3	Lot 4
1.	Supervisor	1	1	1	1
2.	Attendants – male	22	8	16	24
3.	Attendants – female	22	8	16	24
4.	Plumbers	1	1	1	1
5.	Electricians	1	1	1	1

“Under ITB 5.1(d) the bidder has to furnish ‘an undertaking from the Bidder that the salaries and wages to be paid to its personnel in respect of this bid are compliant with the relevant Laws, Remuneration Order and Award where applicable and that it will abide to the sub-clause 4.6 of the General Conditions of Contract, if it is awarded the contract or part thereof’.”

In the Bid Submission Form the bidder is required to state that “We confirm that the salaries and wages payable to our personnel in respect of this proposal are in compliance with the relevant Laws, Remuneration Order and Award, where applicable and that we shall abide with the provisions of the sub clause 4.6 of the General Conditions of Contract, if we are awarded the contract or part thereof.”

“Applicant verily believes that the successful bidder has made false statements in such undertaking in as much as a simple arithmetical exercise will show that after deduction of 15% VAT from the quoted figures, the balance will not suffice to pay the cleaners, taking into consideration the number of workers including shift replacements, which have to be provided as per the tender document , their normal hours, overtime rates, end of year bonus, travelling, administrative costs, other impositions of the law such as uniform , gloves, boots, raincoats as well as costs for cleaning consumables and equipment and other costs related to services to be supplied and borne by the Service Provider, including but not limited to all plumbing and electrical repairs and maintenance, including replacement of damaged water pumps, over 36 months; supplying water by licensed carriers in case of interruption in water supply, disposal of effluents by licensed carriers.”

“It is Applicant’s contention that the sole undertaking on the part if the selected bidder to comply with the remuneration orders is not sufficient to allow the Bid Evaluation Committee of the CPB to conclude that it is a compliant bid.”

14. *“By filing the Bid Submission Form the successful bidder New Cleaning Service Ltd accepts ‘that transgression of the above is a serious offence and appropriate actions will be taken against such bidders’ but at the*

same time it is not catering for the lawful remuneration of its employees thereby establishing its disregard for compliance to the Law. The successful bidder New Cleaning Service Ltd is transgressing the conditions of the bid and the Laws of Mauritius.”

15. *“Under Section IV – Activity Schedules the Employer places the responsibility on the bidder to present a bid that includes “all that is necessary to discharge the liabilities and obligations arising out of the Contract. The rates and amounts inserted against items in the Activity Schedules must cover the cost of the services described in the, Scope of Works and all consequential and associated costs and expenses including those relating and not limited to:*

- (i) Compliance with the Conditions of Contract.*
- (ii) Labour*
- (iii) Materials and goods*
- (iv) Provision of plant, tools and equipment*
- (v) Temporary works*
- (vi) Establishment charges, overheads and profits.*

The rates and prices must also take into account the conditions referred to in the Conditions of Contract and include the weather conditions, payment of guaranteed minimum and holidays with pay. The cost of any travelling time, subsistence, and incentives such as overtime, etc must be included in the rates and prices”

“It is Applicant’s contention that the successful bidder is non-compliant with the requirements of the bid documents and non-compliant with the law.”

16. *“By preferring New Cleaning Service Ltd’s quoted figures over the other bidders the Public Body is condoning as well as participating in the successful bidder’s illegal practices and breaches to the laws of Mauritius.*

Applicant herewith attaches:

– Annex D Cleaning Enterprises (Remuneration) Regulations 2013 GN no.191 of 2013

- **Annex E Cleaning Enterprises (Remuneration) (Amendment) Regulations 2016 GN no.55 of 2016**
 - **Annex F Breakdown Cost of Wages of Staff – Cleaners for one toilet block & Supervisors for whole lots in strict compliance with the employment Laws of Mauritius.** It is important to note that the salary mentioned in this breakdown is the salary as per the employment Laws and Regulations of Mauritius.
 - **Annex G Breakdown Cost of Repairs and Maintenance for the whole Lot No.3 (8 Toilet Blocks)**
 - **Annex H IRP Decision no.12/13**
 - **Annex I Parliamentary Debates (Hansard) First Session Tuesday 06 August 2016** concerning remuneration of cleaners by certain service providers for ‘Cleaning of Premises in Schools/Institutions’
 - **Annex J Article from Défi <http://defimedia.info/monde-du-travail-ces-femmes-qui-vivent-avec-un-salaire-de-moins-de-rs-2500>** where trade unionist Jane Rago, pins the successful bidder as being one of the companies that do not comply with employment and remuneration laws in Mauritius.
17. “As per the article of Défi as highlighted by Mrs Jane Rago, the Public Body and the CPB/BEC are in duty bound to enquire from the Ministry of Social Security, National Solidarity and Reform Institutions Department of National Pensions Scheme:
- (i) whether New Cleaning Service Ltd is contributing as per the requirements of the Law for the NPF and NSF and levy for all its employees and
 - (ii) and confirm the number of employees New Cleaning Service Ltd
 - (iii) and the amount of its contributions,
- Since all this should reflect the alleged activities of New Cleaning Service Ltd and its compliance with Laws of Mauritius.”

18. *“Applicant refers the IRP to **Annex H** IRP Decision no.12/13. Searches at the Companies Division carried out on the 18 October 2016 have revealed that New Cleaning Ltd and Service Maison Ltée are owned by one and same party, as sole shareholder, who is also the director of both companies: **Mr Apalsamy PYNDIAH**.*

*Service Maison Ltée was the applicant/aggrieved bidder in Cause No.21/13/IRP – Service Maison Ltée vs Min of Health and Quality of life which led to **Annex H** IRP Decision no.12/13.*

The then aggrieved bidder was successful since the IRP recommended a re-evaluation of the bids.

Since Service Maison Ltée and New Cleaning Service Ltd belonged and are managed by the same party, the successful bidder New Cleaning Service Ltd cannot plead ignorance of the consequences of non-compliance with the employment laws of Mauritius.

Maxi Clean herewith attaches:

*–**Annex K** Searches at the Companies Division re: Service Maison Ltée
–**Annex L** Searches at the Companies Division re: New Cleaning Service Ltd”*

19. *“Under the bid requirements ITB 5.1(g) the bidder is required to submit “reports on the financial standing of the Bidder for the last three years, such as Certified copies of Financial Statements/Audited Accounts as filed at the Registrar of Companies before the deadline set for such submission of bids”*

***Annex M** obtained from the Registrar of Companies Division is the accounts filed by New Cleaning Service Ltd, the Successful Bidder. A quick glance at such accounts shows that the Cost of Sale Item = 0, no costs of sale.”*

20. *“It is the Applicant’s contention that in view of all the above New Cleaning Service Ltd does not qualify to bid and the contract cannot be allocated to it.”*

21. *“It is also the Maxi Clean’s contention that in the circumstances the bid of New Cleaning Service Ltd should have been rejected.”*

G. The Hearing

Following Applicant’s Statement of Case, written submissions were made by the Respondent No. 1 on 16 November 2016 and 29 November 2016; Respondent No. 2 on 18 November 2016 and 25 November 2016; Applicant on 18 November 2016, 21 November 2016 and 28 November 2016 respectively, and the Selected bidder on 28 November 2016.

Hearings were held on 14 November 2016 and 22 November 2016.

The Applicant was represented by Mrs Ayesha Jeewa (Attorney) and Mr Yousuf Mohamed Senior Counsel, whereas the Respondent was represented by Mrs Pillay-Nababsing (State Counsel) and Mrs Aartee Mohun (Temporary State Attorney).

H. Findings

H.1

Issues: The Application for Review rests mainly on two issues:

1. The alleged lack of experience on the Selected Bidder for lot 3
2. The alleged abnormally low bid price of the Selected Bidder for lot 3, which will not, according to the Applicant, allow him to adequately perform the Contract whilst respecting all the Tender and Contract Conditions.

H.2

Alleged lack of experience: Cleaning of toilets is not rocket science. Without wishing to diminish in any way the credit of those who take pride in their achievements in this field, the Panel has to admit that the actual cleaning of toilets on public beaches requires no more skilled labour than general cleaning of yards or classrooms or toilets in RCA schools. What is sought for in *“experience in works of a similar nature”* is the acquisition of managerial ability and the development of an ethos for delivery of quality services. The Panel is therefore satisfied that the experience submitted by the Selected Bidder is

adequate and the activities performed may be considered as “*of a similar nature*”. The Panel therefore rejects all arguments of the Applicant under this ground.

H.3

Bid Price: The cost of deployment of personnel is much more than the sum total of their salaries. Even if it would seem that the number of Attendants provided in the Scope of Services for each lot in the Bidding Documents allows for the implementation of a shift system, computation of salaries alone will not cater for such incidental costs as provision of uniforms, protective clothing and equipment, materials, transport, back office support and general overhead costs.

The Public Body’s only concern seems to be the respect of Remuneration Orders. However, in submitting a tender, all bidders implicitly commit themselves to the respect of all Labour and other Laws, including Health and Safety Regulations, and to the satisfactory performance of all duties listed in the Bidding Documents. It is the duty of the Public Body to ensure that the Bidder will be able to perform the Contract in the respect of all contract conditions, and that he will not default because of financial difficulties.

The Public Body cannot rely on liquidated damages which are but a poor compensation for disruption of services and new procurement procedures. The intention to step in and pay the Contractor’s labour directly in case Remuneration Orders are not respected, is also not workable, as this would entail taking over and managing the Contract on behalf of the Contractor.

The Panel does not wish to go into matters that seem to concern implementation. However, it wishes to state emphatically that it is the duty of the Public Body to ensure that the Bidder has the means of respecting all Tender and Contract Conditions, whether explicit or implicit, before awarding him a Contract. Even though this has provided an easy way out to the Bid Evaluation Committee, the mere undertaking that a bidder will respect any Legislation is not enough if there are serious doubts that he will be able to do so, as is the case for lot 3 of this tender.

The way to ensure that a Bidder shall be able to perform the Contract, as per conditions imposed in the Bidding Documents, is to ask him to provide a

detailed costing detailing all items of cost likely to be incurred in the performance of the Contract. In fact, such a Schedule should have been provided in the Bidding Documents, instead of a one line item for each site. Details of the make-up should include (but should not be limited to) provision of uniforms, protective clothing and equipment, materials, transport, back office support and general overhead costs. The Bidder should also demonstrate what, if any, provisions have been made for leaves and absences, bonuses, meal times etc in accordance with the relevant provisions of the law. Such information may be furnished through clarifications in the context of a re-evaluation exercise.

I. Decision

In the light of the above, and since similar concerns have been raised in regard to another lot of the same tender, the Panel hereby orders an annulment of the decision to award to the Selected Bidders for all four lots, and a fresh financial evaluation (with clarification) of the bids of the four bidders who have passed technical evaluation.

(M Reshad Lalloo)
Chairperson

(Mrs Christelle Sohun)
Member

(Ramsamy Rajanah)
Member

Dated 06 December 2016