



# Independent Review Panel

Decision No. 33/16

**In the matter of:**

**Keep Clean Ltd**

**(Applicant)**

**v/s**

**Ministry of Environment, Sustainable Development &  
Disaster & Beach Management (Solid Waste Management  
Division) (Lot 2)**

**(Respondent)**

**(Cause No. 27/16/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, Troud’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 Ltée
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:

<b>Mr. Shakeel Subratty</b>	Lead Engineer, Ministry of Health and Quality of Life <i>(Team Leader &amp; registered evaluator)</i>
<b>Mr. Rajesh Gopaul</b>	Scientific Officer, Ministry of Agro-Industry and Food Security <i>(Member &amp; registered evaluator)</i>
<b>Mrs. Sharmeela Ram Racheya</b>	Technical Officer, Ministry of Environment, Sustainable Development and Disaster and Beach Management <i>(Member &amp; registered evaluator)</i>
<b>Mr. Michael Rene</b>	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 Keep Clean was found fully responsive, whereas the following shortcomings were noted in regard to the Selected Bidder:

- **Bidder 11- Norba Nettoyage Ltée**

- 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.

After clarifications, the Bid Evaluation Committee found that *Bidder 11- Norba Nettoyage Ltée has positively clarified the queries*

### **2. Minimum Qualifying Criteria**

The Bid Evaluation Committee reported that:

- *Bidder 10 - Keep Clean Ltd*

*Bidder qualifies for all Lots.*

- *Bidder 11 - Norba Nettoyage Ltee*

*Through a clarification letter issued to the bidder on 19 September 2016, the Bidder was required:*

*a) To confirm whether the monetary values submitted for Year 2014 and Year 2015 covered only the period January to December for these respective years and were not from the start date of the contract.*

*b) To submit letter of award/agreement including contract amount for the contracts undertaken during Year 2014 and Year 2015 for the clients mentioned.*

*Based on the information submitted, it was noted that some of the services included solely carting away of wastes or hiring of lorries for the purpose of waste disposal. Such services were only considered where they related to cleaning services and were substantiated with written evidence.*

*Thus, the annual value of services computed for works of similar nature and substantiated with written evidence were as follows:*

- Yr 2014: Rs 2,200,745
- Yr 2015: Rs 2,284,745

*The average annual value of services is therefore Rs 2,242,745. The Bidder thus qualifies for Lot 2 only, for which other minimum criteria are also fulfilled.*

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 Ltée	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 Ltée		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 Ltée		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 Ltée	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 Ltée and New Cleaning Services Ltd.*

*[---]*

*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 Ltée and New Cleaning Services Ltd.*

*[---]*

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

- (i) the amounts quoted by the Bidders Norba Nettoyage Ltée, 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 Ltée, New Cleaning Service Ltd and Keep Clean Ltd exceed the Remuneration of Labour Cost with 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 Ltée 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 able (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 bidder as follows:

Contract No.	Name of Bidder	Address	Contract Price (Rs) inclu. VAT
CPB/04/2016	Norba Nettoyage Ltée (Lot 2)	28, Rue De Rosnay Beau Bassin	7,318,600.00

### D. The Challenge

On 20 October 2016, the Applicant challenged the award on the following grounds:

*“(I) In respect of Lot 2 for which Norba Nettoyage Ltée has been retained for award, the financial offer of the bidder does not match the minimum resources to be deployed on site, in compliance with the Remuneration Order for Cleaning Services, and with the associated costs imposed by social security legislation.”*

- “(II) The bidder selected for award for Lot No. 2, namely Norba Nettoyage Ltée does not possess past similar experience as required for the present contract. Experience being acquired on ongoing contracts cannot be taken to mean past experience.”*
- “(III) The selected bidder for Lot No. 2 does not possess technical experience in the field of maintenance, especially regarding engineering, within the ambit required for the present bidding exercise.”*
- “(IV) For the reasons given above, the Public Body ought to disqualify the selected bidder for Lot No.2.”*

### **E. The Reply to Challenge**

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

#### **Lot 2**

*“1) Section 8(1) – The Bid Evaluation Committee (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.*

*Norba 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 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 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.”*

*Notwithstanding the above, condition 4.6 “Labour Clause” as per the contact is clear in and as much of the actions the Public Body may initiate in cases non remuneration of employees.”*

*“2) Section 8(II) – “Norba Nettoyage Ltée does 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 the 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 offices amongst others.”*

*“3) Section 8(III) – The technical experience in the field of engineering relates to plumbing and electric works for which the contract makes provision for qualified plumber and electrician with one year experience along with certificate from approved MQA institute. Norba Nettoyage Ltée complies with this requirement.*

*“4) Section 8(IV) – 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 Bid Evaluation Committee.”*

## **F. Grounds for Review**

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

- 1) *“The Public Body should have awarded the bid of Lot No.2 to the Applicant, the lowest substantially responsive bidder”*
- 2) *“The Public Body and/or the Bid Evaluation Committee has failed to properly assess and/or evaluate the bid of the successful bidder in as much as the successful bidder’s bid was non-responsive and was non-compliant with all requirements of the building documents as follows:*

- (a) *“The Public Body ought to disqualify Norba Nettoyage Ltée as successful bidder for Lot No2 since Norba Nettoyage Ltée has submitted a financial offer which does not match the resources to be deployed on site in compliance with the Remuneration Order for Cleaning Services, together with costs imposed by social security legislation, reasonable expenses to be incurred on uniforms, and other associated costs.”*
- (b) *“The Public Body ought to disqualify Norba Nettoyage Ltée for Lot No.2 for unresponsiveness to Clause 5.1(d) of Section I of the Bidding Documents – Instructions to Bidders. The Applicant contends that the successful bidder does not possess experience in services of a similar nature and of similar size in each of the last two years. The aggrieved bidder maintains that Norba Nettoyage Ltée only has experience in cleaning, and not in cleaning and maintenance services taken together. Both aspects are equally important and essential for this contract.”*
- (c) *“The Public Body ought to disqualify Norba Nettoyage Ltée for No2 in as much as it lacks technical experience in the field of maintenance, especially regarding the engineering part which is required for good performance of the contract.”*

## **G. The Hearing**

Following Applicant’s Statement of Case, written submissions were made by the Respondent and Applicant on 17 November 2016 and 21 November 2016 respectively, and the Successful Bidder on 28 November 2016.

Hearings were held on 10 November 2016, 24 November 2016 and 30 November 2016.

The Applicant was represented by Mr Nistish Hurnaum, Counsel whereas the Respondent was represented by Mrs Pillay Nababsing State Counsel and Miss Aartee Mohun, Temporary State Attorney, and the Successful Bidder was represented by Mr Ajay C. Daby, Counsel.

## 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 2
2. The alleged abnormally low bid price of the Selected Bidder for lot 2, 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. 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 2 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 lot. 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 in accordance with relevant provisions of law. The Bidder should also demonstrate what, if any, provisions have been made for leaves and absences, bonuses, meal times etc. 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**