



Independent Review Panel

Decision No. 26/17

In the matter of:

Norba Nettoyage Ltee

(Applicant)

v/s

The District Council of Pamplemousses

(Respondent)

(Cause No. 27/17/IRP)

Decision

(This Decision to be read in conjunction with Decision No. 25/17 (Cause No. 26/17/IRP)

A. History of the case

A.1 Summary

Name of Project: Procurement of services for Street Cleaning, Refuse Collection and Disposal, Cleaning of Market/ Fair, Public Places, Public Toilet, including Carting away of Post Cyclonic Waste at:

Lot 1: Baie du Tombeau

Lot 3: Triolet

Public Body Ref: ONB/DCP/03/2017

CPB Ref. Number: CPB/25/2017

A.2 Bidding Process

Method of Procurement: Open National Bidding

Date of Issue: 24 May 2017

Closing Date: 28 June 2017 at 13 hrs 30

Margin of preference (if applicable): N/A

Updated Estimate Cost: Exclusive of VAT

Lot 1 -Baie du Tombeau: Rs. 19, 779,868

Lot 3 –Triolet: Rs. 24,067,761

A.3 Bid Submission and Opening

The closing date for the submission of bids was fixed for 28 June 2017 at 13.30 hours at latest at the Central Procurement Board (CPB).

Four bids were received and Public Opening was carried out on the same day at 14.00 hours in the Conference Room at the CPB.

Prices of bids received, as read out at Opening were as follows:

SN	BIDDERS	LOT 1 (Rs.)	LOT 3 (Rs.)
1	Maxi Clean Co. Ltd	23,139,000	27,540,000
2	Atics Ltd	22,275,000	28,485,000
3	Norba Nettoyage Ltée	16,470,000	20,791,673.25
4	Brillant Cleaning Services Ltd	22,828,500	22,828,500

B. Evaluation

B.1 Bid Evaluation Committee

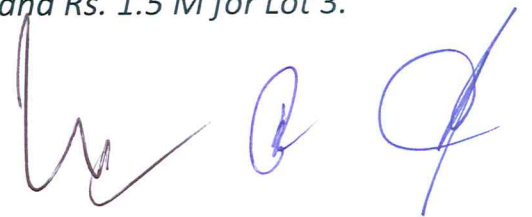
Composition of the Bid Evaluation Committee (BEC) and Official Status of each member, including profession

Mr. Navindranath Langur:	Chief Health Inspector –District Council of Riviere Du Rempart
Mr. Jaykrishna Lobin :	Chief Health Inspector - District Council of Moka
Miss. Shireen Kureemun:	Accountant/ Senior Accountant – District Council of Pamplemousses
Miss. Natacha Chowreemootoo:	Welfare Officer – District Council of Pamplemousses

B.2 Preliminary Examination of Bids

The Bid Evaluation Committee noted that:

- *Brillant Cleaning Services Ltd has not submitted certificate as registered scavenging contractors with the Ministry of Local Government and Outer Islands to provide services for collection of waste and disposal.*
- *Furthermore, Bidder Brilliant Cleaning Services Ltd has not submitted evidence of credit facility of Rs. 1.5 M for Lot 1 and Rs. 1.5 M for Lot 3.*



- *The price quoted by Brilliant Cleaning Services Ltd is same as the discount offered for both lots. This has resulted in rupees zero for the final quoted price.*

As such the bid has been considered as non-responsive and is not retained for further evaluation.

B.3 Examination for Completeness of Bids

The Bid Evaluation Committee observed as follows:

BEC observed that Bidder Norba Nettoyage Ltée has submitted copies of letter of award which date back in some cases to the Year 2007. For example, for highway properties, it is mentioned January 2008 till to date. Furthermore, there is no proof that the contract was valid for the respective years 2014, 2015 and 2016.

In addition to that, Norba Nettoyage Ltée did not submit the annual monetary value for scavenging services as per Table 1 in the bidding document .Rather; it has submitted annual monetary value of services which is inclusive of services not required by this bidding document, e.g. cleaning of toilets, traffic centers, office etc.

Hence, clarifications were sought on 18 September 2017 through the CPB and a reply was received on 22 September 2017.

Consequently, the BEC recomputed the annual monetary value in respect of scavenging services.

	<i>Year</i>	<i>Amount (Rs.)</i>	<i>Remarks</i>
<i>Financial Amount of cleaning services in respect of <u>collection and carting away of solid waste</u> (Excluding contracts and in respect of cleaning and maintenance of toilets , office,traffic centers etc)</i>	<i>2014</i>	<i>5,724,819</i>	<i><u>Annex B</u></i>
	<i>2015</i>	<i>5,668,157</i>	<i><u>Annex C</u></i>
	<i>2016</i>	<i>4,875,714</i>	<i><u>Annex D</u></i>
<i><u>Total</u></i>		<i>16,268,690</i>	

Average: Rs. 16,268,690/3 = Rs. 5,422,896

The 60% of the Annual contract amount quoted by Norba Nettoyage Ltée for Lot 1 and Lot 3 are Rs.4,392,000 and Rs.5,544,446 respectively.

Based on the above Norba Nettoyage Ltée is responsive for only Lot 1 .

B.4 Technical Evaluation of Bids

After Technical Evaluation, the Bid Evaluation Committee concluded that “.... it was found that the three bidders, Maxi Clean Co. Ltd, Atics Ltd and Norba Nettoyage Ltée were technically responsive as they have scored above the pass marks. (18 Marks)”

B.5 Financial Evaluation

Arithmetic checks were carried out on the quoted amounts of the three bidders who were technically responsive.

The prices were compared as per a prorated marking system. The lowest financial proposal (F_m) was given the maximum mark (S_m) allocate or that component and the marks for others for that component were computed as follows:

$$S = S_M \times F_M / F$$

Where F is the price of the proposal for that component under consideration.

The table hereunder shows markings for technical and financial assessment:

Financial Assessment (Maximum 70 marks)	Lot 1				Lot 3	
	Max. Marks	Maxi Clean Co. Ltd	Norba Nettoyage Ltee	Atics Ltd	Maxi Clean Co. Ltd	Atics Ltd



Financial Assessment (Maximum 70 marks)	Lot 1				Lot 3	
	Max. Marks	Maxi Clean Co. Ltd	Norba Nettoyage Ltee	Atics Ltd	Maxi Clean Co. Ltd	Atics Ltd
The lowest financial proposal scores 70 marks for the daily and regular cleaning; the other prorated as a ratio of the financial proposal of the lowest proposal	70	49.7	70	51.1	70	67.2
Markings for Technical Assessment	30	30	20.8	30	30	30
Total	100	79.7	90.8	81.1	100	97.2

Ranking:

Lot 1			Lot 3	
Bidders	Rank	Quoted Price (Rs.) Excl. VAT	Rank	Quoted Price (Rs.) Excl. VAT
Norba Nettoyage Ltee	1	16,470,000	Not Eligible	
Maxi Clean Co. Ltd	3	23,139,000	1	27,540,000
Atics Ltd	2	22,275,000	2	28,485,000

Variance with Estimates

Lots	Estimates for 27 Months Rs. (Excl VAT)	Quoted Price (Rs.)	Variance (%)
1	19,779,868	16,470,000	-16
3	24,067,761	27,540,000	14

B.6 Recommendations of the Bid Evaluation Committee

The Bid Evaluation Committee recommend[ed] the award for the Procurement of services for Street Cleaning, Refuse Collection and Disposal, Cleaning of Market/ Fair, Public Places, Public Toilet, including Carting away of Post Cyclonic Waste for:

Lot 1: Baie du Tombeau and

Lot 3: Triolet

for the intended period of 27 months with an initial period of one year, renewable on a yearly basis or fraction of, subject to the Employer being satisfied with the performance of the contractor during the preceding year as follows:

Lots	Bidders	Bid Amount (Rs.) Exclusive of VAT	Bid Amount (Rs.) Inclusive of VAT
Lot 1	Norba Nettoyage Ltée	16,470,000	18,940,500
Lot 3	Maxi Clean Co. Ltd	27,540,000	31,671,000

C. Notification of Award

The District Council of Pamplemousses through a letter dated 05 October 2017, informed the Applicant of the particulars of the successful bidder as follows:

Lot No.	Details	Recommended Bidder	Address	Amount for a period of 27 months (Rs) – VAT Exclusive
3	Triolet	Maxi Clean Co. Ltd	Grande Rosalie, D'Epinay	27,540,000

D. The Challenge

On 11 October 2017, the Applicant challenged the procurement on the following grounds:

- “(a). Norba Nettoyage Ltee is the lowest bidder for Lot No. 3 and is the lowest substantially responsive Bidder.
- (b) Norba Nettoyage Ltee is perfectly qualified as lowest Bidder for same and similar service to the knowledge of the Board, for the award of the present contract.”



E. The Reply to Challenge

On 16 October 2017, the Public Body made the following reply to the challenge:

“This is to notify that further to the grounds for challenge submitted, the Central Procurement Board informed the Council, vide letter dated 12 October 2017 that your Company was not qualified for Lot 3 as it does not meet the requirement spelt out at clause 6.5(a) of the Bid Data Sheet which stipulates that “the minimum required annual volume of services for the successful bidder shall be at least 60% if the annual contract amount for the Lot(s) to be allocated to him.

The Central Procurement Board further stated that the annual monetary values as submitted by you for Lot 3 i.e. financial amount of cleaning and carting away of solid waste (excluding contracts and in respect of cleaning and maintenance of toilets, office, traffic centres, etc.) were as follows:

Year	Amount (Rs)
2014	5,724,819
2015	5,668,157
2016	4,875,714
Total	16,268,690
Average	Rs16,268,690/3= Rs5,422,896

As the amount quoted by you for 27 months in respect of Lot 3 is Rs20,791,673.25 and 60% of annual contract amount is Rs5,544,446, therefore same is higher than the average figure computed above.

Hence, the challenge is set aside.”

F. Grounds for Review

On 23 October 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

“(a) Norba Nettoyage Ltee is the lowest bidder for Lot No. 3 and is the lowest substantially responsive bidder.

(b) *Norba Nettoyage Ltee is perfectly qualified as lowest Bidder for same and similar service to the knowledge of the Board, for the award of the present contract.*”

G. The Hearing

Hearings were held on 26 October and 07 November 2017. Respondent Statement of Reply was received on 31 October 2017 whereas Reply from Applicant to the Statement of Reply of the Respondent was received on 07 November 2017.

The Applicant was represented by Mr A. Daby and Mr T. Daby, both of Counsel whereas the Respondent was represented by S. Sauhoboa, Counsel. The Successful Bidder also attended the hearing and was represented Mr Y. Mohamed, Senior Counsel and Mrs A. Jeewa, Attorney.

At the Hearing, Counsel for the Selected Bidder requested for a copy of submissions from the Applicant and the Respondent, and for time to submit his views. There was no objection from the other parties, and the Selected Bidder undertook to submit his views within 2 days of the Hearing, which does not affect the schedule of the Panel to deliver this Decision.

The Panel gave the same ruling as for *Atics V. District Council of Pamplemousses* (Decision No. 25/17), and ordered that copies of submissions be given to the Selected Bidder by the Applicant and Respondent respectively.

H. Issues

The only issue to be decided by the Panel is whether the Applicant should have been found responsive for either Lot 1 or Lot 3 instead of being found *responsive for only Lot 1*.

It is not contested that *Norba Nettoyage Ltée* cannot be eligible for award of both lots. It is recalled that the Public Body has expressed the intention to award lot 1 to the present Applicant, and the latter, therefore, is effectively requesting that he be awarded lot 3 instead of lot 1.



I. Findings

The qualifying experience required of bidders are expounded in the following Clauses of the Instruction to Bidders and the Bidding Data Sheet of the Bidding Documents:

6.5 (ITB): *To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:*

(a) a minimum average annual financial amount of cleaning services in respect of collection and carting away of solid waste over the last three years or the number of years the company has been in existence if less than three, representing at least the percentage, as specified in the BDS, of the annual contract amount for the lot(s) for which the bidder is selected for award of contract.

(b) experience as prime contractor or sub-contractor in the provision of services for collection and disposal of solid waste of at least one year;

The corresponding Clauses of the BDS read as follows:

ITB 6.5(a): *The minimum required annual volume of Services for the successful Bidder shall be at least 60 % of the annual contract amount for the lot(s) to be allocated to him.*

ITB 6.5(b): *The experience required by the Bidder should be at least one year in collection and carting away of solid waste.*

Both sub-clauses (a) and (b) therefore, can only be satisfied by corresponding experience in the **collection and disposal of solid waste**, and such qualifying experience may not include experience in any other field.

As regards the experience of the Applicant, principles outlined in Decision 04/17, reproduced below, are still relevant: *“Any experience acquired in the carting away of wastes from one collection point would not qualify as required experience, as it would not include the essential component of collection from dispersed locations, as required under this exercise. The Applicant has provided, in his bid, a series of attestations from various clients for removal of wastes.*

The Panel is of opinion that this does not qualify as experience in collection and carting away of solid waste, as lacking in the essential element of collection.”

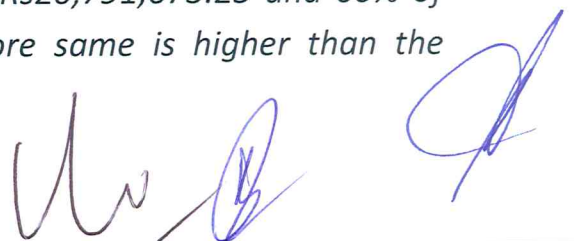
The Applicant did not provide the required information in respect of experience in the table provided in the Bidding Documents for that purpose, but *“has submitted annual monetary value of services which is inclusive of services not required by this bidding document, e.g. cleaning of toilets, traffic centers, office etc.”*

The Bid Evaluation Committee sought clarifications from the Applicant, resulting in a recommendation for award of Lot 1 to the latter, and Lot 3 to Maxi Clean.

The Panel has gone through the submissions of the Applicant, and cannot ascertain beyond reasonable doubt that experience claimed by the Applicant, which have been found relevant by the Bid Evaluation Committee, and in respect of which the Applicant has submitted documentation, can meet the criterion for evaluation of experience as stated above. In an eventual re-evaluation, the Bid Evaluation Committee could evaluate anew the experience of the Applicant, after deciding on what constitutes “relevant experience”.

In Decision No. 25/17, the Panel has already ordered a re-evaluation exercise, which would of necessity affect both lots. Thus, if the new evaluation should vindicate the Panel’s opinion that a bid price falling below properly calculated minimum estimates would tend to show that the bidder deliberately intends to flout employment laws, and that, properly computed, the annual volume of Services provided by the Applicant in relevant projects, would be found to be insufficient, the Applicant could be disqualified for both lots. However, the Panel is not empowered to direct the Bid Evaluation Committee as to the results of the new evaluation exercise, nor can it predict what those results shall be.

The present Application for Review arises from the results of the Bid Evaluation Report, where the Applicant was disqualified from lot 3 because *the amount quoted [---] for 27 months in respect of Lot 3 is Rs20,791,673.25 and 60% of annual contract amount is Rs5,544,446, therefore same is higher than the average figure[---] [Rs. 5,422,896].*





The average volume of relevant services, as computed by the Bid Evaluation Committee, falls short of the required figure of 60% of annual value of services offered, by about twenty-two thousand rupees, by no means an insignificant figure.

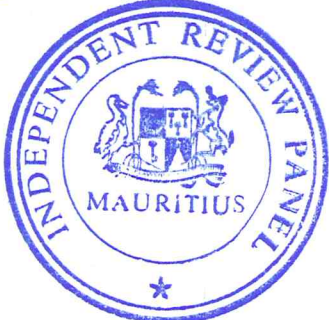
The Applicant has, of course, contested the findings of the Bid Evaluation Committee, and believes that all documentation provided by him refer to relevant experience. The Panel believes that the Bid Evaluation Committee has been on the contrary overly generous in the computation of annual volume of “relevant” services.


J. Decision

In the light of the above, the Panel does not find merit in this Application for Review.


(Reshad Laulloo)
Chairperson


(Virjanan Mulloo)
Member




(Ramsamy Rajanah)
Member

Dated 13 November 2017



Independent Review Panel

Decision No. 25/17

In the matter of:

Atics Ltd

(Applicant)

v/s

The District Council of Pamplemousses

(Respondent)

(Cause No. 26/17/IRP)

Decision

**(This Decision to be read in conjunction with Decision 26/17
(Cause No. 27/17/IRP)**

A. History of the case

A.1 Summary

Name of Project: Procurement of services for Street Cleaning, Refuse Collection and Disposal, Cleaning of Market/ Fair, Public Places, Public Toilet, including Carting away of Post Cyclonic Waste at:

Lot 1: Baie du Tombeau

Lot 3: Triolet

Public Body Ref: ONB/DCP/03/2017

CPB Ref. Number: CPB/25/2017

A.2 Bidding Process

Method of Procurement: Open National Bidding

Date of Issue: 24 May 2017

Closing Date: 28 June 2017 at 13 hrs 30

Margin of preference (if applicable): N/A

Updated Estimate Cost: Exclusive of VAT

Lot 1 -Baie du Tombeau: Rs. 19, 779,868

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A.3 Bid Submission and Opening

The closing date for the submission of bids was fixed for 28 June 2017 at 13.30 hours at latest at the Central Procurement Board (CPB).

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Prices of bids received, as read out at Opening were as follows:

<i>SN</i>	<i>BIDDERS</i>	<i>LOT 1 (Rs.)</i>	<i>LOT 3 (Rs.)</i>
1	Maxi Clean Co. Ltd	23,139,000	27,540,000
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3	Norba Nettoyage Ltée	16,470,000	20,791,673.25
4	Brillant Cleaning Services Ltd	22,828,500	22,828,500

B. Evaluation

B.1 Bid Evaluation Committee

Composition of the Bid Evaluation Committee (BEC) and Official Status of each member, including profession

Mr. Navindranath Langur: Chief Health Inspector –District Council of Riviere Du Rempart

Mr. Jaykrishna Lobin : Chief Health Inspector - District Council of Moka

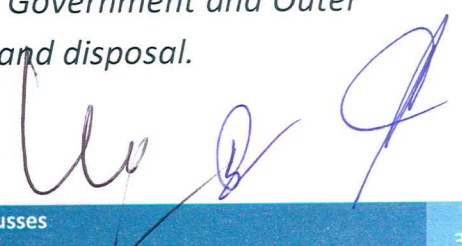
Miss. Shireen Kureemun: Accountant/ Senior Accountant – District Council of Pamplémousses

Miss. Natacha Chowreemootoo: Welfare Officer – District Council of Pamplémousses

B.2 Preliminary Examination of Bids

The Bid Evaluation Committee noted that:

- *Brillant Cleaning Services Ltd has not submitted certificate as registered scavenging contractors with the Ministry of Local Government and Outer Islands to provide services for collection of waste and disposal.*



- *Furthermore, Bidder Brilliant Cleaning Services Ltd has not submitted evidence of credit facility of Rs. 1.5 M for Lot 1 and Rs. 1.5 M for Lot 3.*
- *The price quoted by Brilliant Cleaning Services Ltd is same as the discount offered for both lots. This has resulted in rupees zero for the final quoted price.*

As such the bid has been considered as non-responsive and is not retained for further evaluation.

B.3 Examination for Completeness of Bids

The Bid Evaluation Committee observed as follows:

BEC observed that Bidder Norba Nettoyage Ltée has submitted copies of letter of award which date back in some cases to the Year 2007. For example, for highway properties, it is mentioned January 2008 till to date. Furthermore, there is no proof that the contract was valid for the respective years 2014, 2015 and 2016.

In addition to that, Norba Nettoyage Ltée did not submit the annual monetary value for scavenging services as per Table 1 in the bidding document. Rather; it has submitted annual monetary value of services which is inclusive of services not required by this bidding document, e.g. cleaning of toilets, traffic centers, office etc.

Hence, clarifications were sought on 18 September 2017 through the CPB and a reply was received on 22 September 2017.

Consequently, the BEC recomputed the annual monetary value in respect of scavenging services.

	<i>Year</i>	<i>Amount (Rs.)</i>	<i>Remarks</i>
<i>Financial Amount of cleaning services in respect of collection and carting away of solid waste (Excluding contracts and in respect of cleaning and maintenance of toilets , office,traffic centers etc)</i>	<i>2014</i>	<i>5,724,819</i>	<i>Annex B</i>
	<i>2015</i>	<i>5,668,157</i>	<i>Annex C</i>
	<i>2016</i>	<i>4,875,714</i>	<i>Annex D</i>
<i>Total</i>		<i>16,268,690</i>	

Average: Rs. 16,268,690/3 = Rs. 5,422,896

The 60% of the Annual contract amount quoted by Norba Nettoyage Ltée for Lot 1 and Lot 3 are Rs.4,392,000 and Rs.5,544,446 respectively.

Based on the above Norba Nettoyage Ltée is responsive for only Lot 1 .

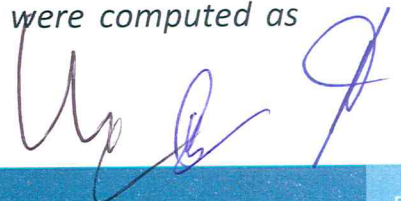
B.4 Technical Evaluation of Bids

After Technical Evaluation, the Bid Evaluation Committee concluded that “.... it was found that the three bidders, Maxi Clean Co. Ltd, Atics Ltd and Norba Nettoyage Ltée were technically responsive as they have scored above the pass marks. (18 Marks)”

B.5 Financial Evaluation

Arithmetic checks were carried out on the quoted amounts of the three bidders who were technically responsive.

The prices were compared as per a prorated marking system. The lowest financial proposal (F_m) was given the maximum mark (S_m) allocate or that component and the marks for others for that component were computed as follows:



$$S = S_M \times F_M / F$$

Where F is the price of the proposal for that component under consideration.

The table hereunder shows markings for technical and financial assessment:

Financial Assessment (Maximum 70 marks)	Lot 1				Lot 3	
	Max. Marks	Maxi Clean Co. Ltd	Norba Nettoyage Ltee	Atics Ltd	Maxi Clean Co. Ltd	Atics Ltd
The lowest financial proposal scores 70 marks for the daily and regular cleaning; the other prorated as a ratio of the financial proposal of the lowest proposal	70	49.7	70	51.1	70	67.2
Markings for Technical Assessment	30	30	20.8	30	30	30
Total	100	79.7	90.8	81.1	100	97.2

Ranking:

Lot 1			Lot 3	
Bidders	Rank	Quoted Price (Rs.) Excl. VAT	Rank	Quoted Price (Rs.) Excl. VAT
Norba Nettoyage Ltee	1	16,470,000	Not Eligible	
Maxi Clean Co. Ltd	3	23,139,000	1	27,540,000
Atics Ltd	2	22,275,000	2	28,485,000

Variance with Estimates

Lots	Estimates for 27 Months Rs. (Excl VAT)	Quoted Price (Rs.)	Variance (%)
1	19,779,868	16,470,000	-16
3	24,067,761	27,540,000	14

B.6 Recommendations of the Bid Evaluation Committee

The Bid Evaluation Committee recommend[ed] the award for the Procurement of services for Street Cleaning, Refuse Collection and Disposal, Cleaning of Market/ Fair, Public Places, Public Toilet, including Carting away of Post Cyclonic Waste for:

Lot 1: Baie du Tombeau and

Lot 3: Triolet

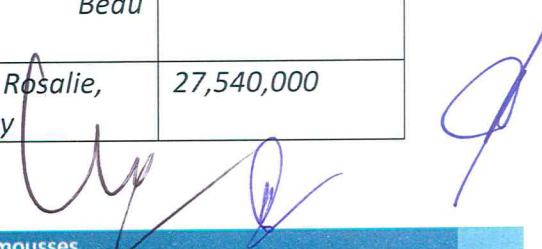
for the intended period of 27 months with an initial period of one year, renewable on a yearly basis or fraction of, subject to the Employer being satisfied with the performance of the contractor during the preceding year as follows:

Lots	Bidders	Bid Amount (Rs.) Exclusive of VAT	Bid Amount (Rs.) Inclusive of VAT
Lot 1	Norba Nettoyage Ltée	16,470,000	18,940,500
Lot 3	Maxi Clean Co. Ltd	27,540,000	31,671,000

C. Notification of Award

The District Council of Pamplemousses through a letter dated 05 October 2017, informed the Applicant of the particulars of the successful bidder as follows:

Lot No.	Details	Recommended Bidder	Address	Amount for a period of 27 months (Rs) VAT Exclusive
1	Baie du Tombeau	Norba Nettoyage Ltee	28, Rue de Rosnay, Beau Bassin	16,470,000
2	Triolet	Maxi Clean Co. Ltd	Grande Rosalie, D'Epina	27,540,000



D. The Challenge

On 10 October 2017, the Applicant challenged the procurement proceedings on the following grounds:

“I. The Applicant has taken note that, at the opening of bids, the following bids were received:

Name of Bidder	Price Quoted for Lot 1
<i>Maxi Clean Ltd</i>	<i>23,139,000</i>
<i>Atics Ltd</i>	<i>22,275,000</i>
<i>Brilliant Cleaning Services Ltd</i>	<i>22,828,500</i>
<i>Norba Nettoyage Ltee</i>	<i>16,470,000</i>

Norba Nettoyage Ltee has been retained for award but the price quoted by the selected bidder is significantly lower than the minimum cost estimates. The aggrieved bidder has made a detailed list of expenses to be incurred under Remuneration Order for Cleaning Services; NPF/NSF contributions and occupational safety and health legislation. The workings demonstrate that the minimum bid amount to be legally compliant will be around Rs21,869,097. The selected bidder has submitted a bid for the amount of Rs16,470,000. The ability of the selected bidder to be legally compliant to its duties under labour and other relevant legislation can be challenged.

- II. As per Section IV – Bidding Forms, it is mandatory for the bidder to submit a breakdown of Annual Monetary Value of Services as per format listed in Table 1, and “BIDDERS TO SUBSTANTIATE WITH COPIES OF LETTER OF AWARD OF CONTRACT DULY CERTIFIED”. Failure on the part of a bidder to submit these documents will render a bidder unresponsive. As the selected bidder is a well-known provider of taxi lorries, it cannot claim to have the annual monetary value of services in the type required for performance of this Contract.*
- III. To qualify under the Contract, the annual monetary value of services performed by bidders must be similar to the type of services being needed for the present procurement exercise. The selected bidder only has experience in renting its taxi lorries to main contractors and to local*

councils. This activity is not similar to the type of services being sought by the Public Body. Under Part 2 Section VI, Scope of Service and Performance Specifications, bidders are required to perform such services as will entail “Door to door collection of refuse from individual residences, bungalows, collective garbage rooms, public buildings, public places, commercial concerns, offices, restaurants, guest houses and hotels, small industries and small enterprises, dispensaries/community centers etc....”;

(b) Collection of refuse from streets, public places, public dustbins, drains, pavements, gutters, road side dumps, bare lands, taxi stands, markets fairs, cemeteries, cremation grounds, parks and gardens etc”.

The Findings noted in Decisions 4 of 2017 of the Independent Review Panel explains the strict requirement attached to “collection” of waste and it notes that:

“Any experience acquired in the carting away of wastes from one collection point would not qualify as required experience as it would not include the essential component of collection from dispersed locations”.

The IRP further noted that Norba Nettoyage Ltee “has provided a series of attestations from various clients for removal of wastes. The Panel is of opinion that this does not qualify as experience in collection and carting away of solid waste, as lacking the essential element of collection.”

Norba Nettoyage Ltee is thus not responsive in this present procurement exercise and cannot qualify as a successful bidder.

IX For the reasons given above, the Public Body ought to disqualify Norba Nettoyage Ltee for Lot No. 1 of the procurement exercise.”

E. The Reply to Challenge

On 16 October 2017, the Public Body made the following reply to the challenge:



“This is to notify that further to the grounds for challenge submitted, the Central Procurement Board informed the Council, vide letter dated 13th October 2017 about the following:

- (i) *The price quoted by Norba Nettoyage Ltee is not significantly lower than the minimum cost estimates. Furthermore, the bidder satisfied the requirement spelt out at clause 6.5(f) of the ITB which reads as follows:*

“To qualify for award of contract, bidders shall meet the following minimum qualifying criteria:

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 6.8 of the GCC if it is awarded the Contract.”

- (ii) *Norba Nettoyage Ltee has also satisfied the requirement laid out at clause 6.5(a) of the Bid Data Sheet, which stipulates that “The minimum required annual volume of Services for the successful bidder shall be at least 60% of the annual contract amount for the Lot(s) to be allocated to him.”*

The Bid Evaluation Committee has scrutinized the submission in respect of the Annual Monetary Values for scavenging services of Norba Nettoyage Ltee for Lot 1 excluding items not relevant to this procurement exercise (cleaning and maintenance of toilets, office, traffic centres, etc.). The Bid Evaluation Committee has concluded that the bidder meets the requirements to be eligible for award of contract for Lot 1 only.

- (iii) *The findings of IRP referred to by you (Decision 4 of 2017) refer to procurement exercise No. CPB/35/2016, completed on 01 March 2017 and therefore cannot be applicable to the present exercise. The*

bidder has undertaken similar type of services and cannot be disqualified for lack of experience.

- (iv) The price quoted by Norba Nettoyage Ltee is not significantly lower than the cost estimate.*
- (v) The bidder has duly substantiated its annual monetary value of services.*
- (vi) The bidder has undertaken similar type of services; and*
- (vii) The bid from Norba Nettoyage Ltee is substantially responsive to the requirements of the bidding documents.*

Hence, the challenge is set aside.”

F. Grounds for Review

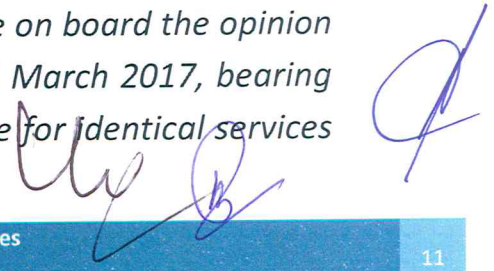
On 20 October 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

I. The Public Body ought to have disqualified the bid of the successful bidder, Norba Nettoyage Ltee, inasmuch the price quoted by the latter was significantly lower than the minimum cost estimates.

II. The Public Body ought to have disqualified the bid of the successful bidder, Norba Nettoyage Ltee, as the latter lacks the annual monetary value of services in the manner and form required by the contract.

III. The Public Body failed to carry out a proper evaluation and assessment of the bid of the successful bidder, Norba Nettoyage Ltee inasmuch as the latter lacks experience in the nature required by the bidding documents.

IV. Failure on the part of the Public Body and/or the Bid Evaluation Committee and/or the Central Procurement Board to take on board the opinion of the Independent Review Panel in its decision dated 01 March 2017, bearing decision number 04/17, concerning a bid of similar nature for identical services



of street cleaning, refuse collection and disposal cleaning of market/fair, public places, public toilets, including carting away of post cyclonic wastes as well as concerning same Parties. The Public Body and/or the Bid Evaluation Committee and/or the Central Procurement Board have acted in complete disregard of the IRP's conclusions thereby deriding the authority of the Independent Review Panel as the sole appellate authority under the Public Procurement Act.

V. *The Applicant is not satisfied with the response of the Public Body in its letter dated 16 October 2017, in reply to the Applicant's challenge and maintains that the bid of the successful bidder does not meet the requirements of the bidding documents to be eligible for the award of the contract for Lot 1: Baie du Tombeau. The Public Body ought to have declared the bid of the successful bidder in respect of Lot 1: Baie du Tombeau, as being non-responsive."*

G. The Hearing

Hearings were held on 26 October and 07 November 2017. Respondent Statement of Reply was received on 31 October 2017 and Applicant's Reply thereto was received on 06 November 2017 whereas the Reply of Successful Bidder was received on 09 November 2017.

The Applicant was represented by Ms S. Chuong, and Mr G. Hurnaum, both of Counsel, whereas the Respondent was represented by Mr S. Sauhobooa, Counsel. The Selected Bidder also attended the Hearing, and was represented by Mr A Daby and Mr T. Daby, both of Counsel.

In the course of the Hearing, the Applicant was requested to summarise the contents of his submissions, principally for the benefit of the Selected Bidder. Since the case of the Applicant rests principally on perceived shortcomings in the Selected Bidder's tender, the latter requested for a copy of submissions from the Applicant and the Respondent, and for time to submit his views.

There was no objection from the other parties, and the Selected Bidder undertook to submit his views within 2 days of the Hearing, which does not affect the schedule of the Panel to deliver this Decision.

The Panel therefore ruled that copies of submissions be given to the Selected Bidder by the Applicant and Respondent respectively.

H. Issues

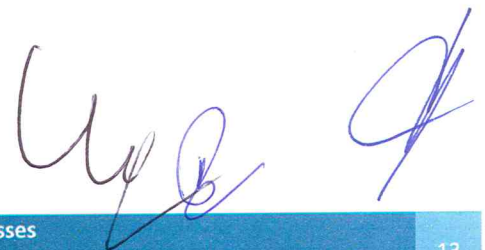
There are only two issues raised by the Applicant, both related to the evaluation:

1. The Applicant argues that the figure quoted by Norba being abnormally low, would not allow him to respect his obligations in respect of salaries and other benefits accruing to employees, in spite of any undertakings given by the Selected Bidder to that effect
2. Statements and other documents submitted by the Selected Bidder in his tender do not show that the latter has sufficient experience to satisfy the requirements of this tender.

I. Findings

I.1

This is a new tender exercise, with new Tender Documents, and the findings being contested are not the result of a re-evaluation exercise. However, the principles adopted in previous Decisions remain valid, and the Respondent cannot expect the Panel to be inconsistent by adopting a different approach that could lead to a different conclusion. It is true that any previous Decision cannot constitute a precedent, but in the absence of a successful Judicial Review at the Supreme Court, the same causes are bound to lead to the same results.



1.2

The Bidding Documents do not require bidders to give a breakdown of costs leading to the bid price. The only requirement to satisfy the Public Body that the bidder intends to respect all employment and other Laws, is an undertaking requested of the latter. Thus, if a bidder has given the required undertaking, the Public Body has taken the view that his figures may not be questioned, leaving open only the option of a re-tender exercise, should a bid be found to be abnormally low.

1.3

It may, however, still be possible to avoid a new bidding exercise, and attempt to salvage the one under discussion. In his reply to the Challenge, the Public Body stated: *“The price quoted by Norba Nettoyage Ltee is not significantly lower than the minimum cost estimates.”*

To begin with, a difference between the quoted price and the minimum cost estimates of 16.7% can hardly be said to be “not significant”. These estimates did not form part of the Bidding Documents, and nowhere is it specified what would be the accepted variance **below** the **minimum** estimates. The Panel is of the opinion that minimum estimates represent a figure below which any bid is questionable, whatever be the undertakings supplied by the bidder.

Having used the minimum estimates as a bench mark, the Public Body should at least try to justify these estimates. There has been no attempt to provide calculations or a basis for such estimates. A re-evaluation exercise would therefore entail a proper justification of cost estimates, by providing a build-up similar to that provided by the Applicant in an Annex, and thereafter comparing the bid price of all bidders with those estimates. Thus, it will not be necessary to request any bidder for a break down of prices to be able to judge whether he will be able to respect his obligations under Law.

Even though all bidders have produced undertakings, it is still the responsibility of the Public Body to avoid deliberate flouting of the Laws of the land,

especially in the light of recent events, involving female employees of toilet cleaning contractors. Although Decision 04/17 was not followed by a re-evaluation as recommended, the recommendations and arguments contained therein would have been of assistance in the drafting of Bidding Documents, and evaluation of tenders, to avoid a repetition of blunders that were noted in the exercise OAB/DCP/02/2016 (CPB/35/2016). It may also be noted that all other bidders have quoted substantially similar figures for lot 1, (between 12% and 13% above the minimum estimates), except Norba who is much lower.

1.4

The qualifying experience required of bidders are expounded in the following Clauses of the Instruction to Bidders and the Bidding Data Sheet of the Bidding Documents:

6.5 (ITB): *To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria:*

(a) a minimum average annual financial amount of cleaning services in respect of collection and carting away of solid waste over the last three years or the number of years the company has been in existence if less than three, representing at least the percentage, as specified in the BDS, of the annual contract amount for the lot(s) for which the bidder is selected for award of contract.

(b) experience as prime contractor or sub-contractor in the provision of services for collection and disposal of solid waste of at least one year;

The corresponding Clauses of the BDS read as follows:

ITB 6.5(a): *The minimum required annual volume of Services for the successful Bidder shall be at least 60 % of the annual contract amount for the lot(s) to be allocated to him.*

Three handwritten signatures in blue ink are located at the bottom right of the page. The signatures are stylized and appear to be initials or names of the panel members.

ITB 6.5(b): *The experience required by the Bidder should be at least one year in collection and carting away of solid waste.*

Both sub-clauses (a) and (b) therefore, can only be satisfied by corresponding experience in the *collection and disposal of solid waste*, and such qualifying experience may not include experience in any other field.

As regards the experience of the Selected Bidder, principles outlined in Decision 04/17, reproduced below, are still relevant: *“Any experience acquired in the carting away of wastes from one collection point would not qualify as required experience, as it would not include the essential component of collection from dispersed locations, as required under this exercise. The Selected Bidder has provided, in his bid, a series of attestations from various clients for removal of wastes. The Panel is of opinion that this does not qualify as experience in collection and carting away of solid waste, as lacking in the essential element of collection.”*

The Selected Bidder did not provide the required information in respect of experience in the table provided in the Bidding Documents for that purpose, but *“has submitted annual monetary value of services which is inclusive of services not required by this bidding document, e.g. cleaning of toilets, traffic centers, office etc.”*¹

The Bid Evaluation Committee sought clarifications from the Selected Bidder, resulting in a recommendation for award of Lot 1 to the latter.

The Panel has gone through the submissions of the Selected Bidder, and cannot ascertain beyond reasonable doubt that experience claimed by the Selected Bidder, which have been found relevant by the Bid Evaluation Committee, and in respect of which the Selected Bidder has submitted documentation, can meet the criterion for evaluation of experience stated

¹ Reproduced from the Bid Evaluation Report

above. In an eventual re-evaluation, the Bid Evaluation Committee could evaluate anew the experience of the Selected Bidder, after deciding on what constitutes “relevant experience”

J. Decision

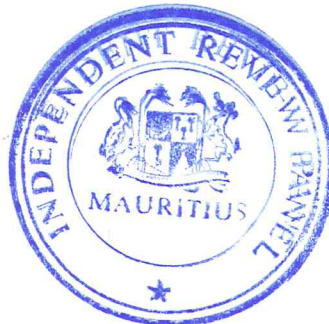
In the light of the above, the Panel finds merit in this Application for Review, and hereby orders a re-evaluation of bids.



(Reshad Laulloo)
Chairperson



(Virjanan Mulloo)
Member



(Ramsamy Rajanah)
Member

Dated 13 November 2017

