



# Independent Review Panel

**Decision No. 05/20**

**In the matter of:**

**Top Security Service Ltd**

**(Applicant)**

**v/s**

**Mauritius Institute of Training and Development**

**(Respondent)**

**(Cause No. 08/20/IRP)**

## **Decision**

## A. History of the case

On 08 January 2020, the Respondent invited bids through Open Advertised Bidding (**procurement ref: HO/OAB/15/19-20/Security**) for the provision of security services to the Respondent's Head Office and its 23 Training Centres and the closing date for the submission of bids was 05 February 2020.

Five bids were received, including the bid of Applicant.

## B. Evaluation

A Bid Evaluation Committee was set up to evaluate the bids. After evaluation of the bids, the Bid Evaluation Committee recommended that the contract of security services for MITD training centres and MITD Head Office for the period of 3 years be awarded to the two lowest evaluated substantially responsive bidders namely Quick Security Service for 20 sites for the sum of Rs 35, 685,540/- and RSL Security Services Ltd for 4 sites for the sum of Rs 7,775,380/.

## C. Notification of Award

Through a letter dated 03 June 2020 the Mauritius Institute of Training and Development notified the Applicant that an evaluation of the bids received has been carried out and its bid has **not** been retained for award. The particulars of the successful bidders are as given hereunder:

- “1. Bidder 3, Quick Security Services – Rs. 35,685,540.00**
- 2. Bidder 5, RSL Security Services- Rs. 7,775,380.80”**

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## D. The Challenge

On 05 June 2020, the Applicant challenged the procurement on the following grounds:

*“Minimum wages consideration as per directive 37 of Government Notice No: 223 of 2019.”*

## E. The Reply to Challenge

On 10 June 2020, the Public Body made the following reply to the challenge and stated that:

*“Item 1: List of bidders (five) and their prices quoted are enclosed.*

*Item 2: As per provisions in the bid documents, ref. HO/OAB/15/19-20/Security, bidders have confirmed that the salaries and wages payable to its personnel in respect of their proposals are in compliance with the relevant laws, remuneration order and award, where applicable”*

***“Mauritius Institute of Training and Development***

***Procurement for Security Services – Mauritius Institute of Training and Development***

***Procurement Ref. No. HO/OAB/15/19-20/Security”***

### 4.1 Prices quoted by Bidder 1, 2, 3, 4 and 5 is at Table 1 below.

Sn	Centre	Bidder 1 <i>Proguard</i>	Bidder 2 <i>High Security Guard Services Ltd</i>	Bidder 3 <i>Quick Security Service</i>	Bidder 4 <i>Top Security Service Ltd</i>	Bidder 5 <i>RSL Security Services Ltd</i>
		Rs	RS	Rs	Rs	Rs
1.	<i>Carreau Esnouf Training Centre</i>	62,100	57,500	43,470	54,740	53,995.70
2.	<i>Cote D’Or Training Centre</i>	62,100	57,500	43,470	54,740	57,405.70
3.	<i>Ecole Hotelière Sir Gaetan Duval + New Block (Extension to EHS GD) &amp;</i>	186,300	138,000	94,990	109,480	161,336.95

4.	<i>School of Information Technology, Electronics and Communications</i>					
5.	<i>Knowledge Based Training Centre</i>	155,250	120,000	69,805	82,110	109,045.30
6.	<i>Le Chou Training Centre</i>	155,250	120,000	69,805	82,110	109,045.30
7.	<i>Lycée Polytechnique Sir Guy Forget</i>	155,250	86,250	69,805	82,110	98,563.05
8.	<i>Mahebourg Training Centre</i>	62,100	57,500	43,470	54,740	53,995.70
10.	<i>Professional Drivers Training Centre</i>	62,100	69,000	43,470	54,740	56,225.70
11.	<i>Sir Kher Jagatsingh Training Centre</i>	62,100	69,000	43,470	54,740	53,995.70
12.	<i>Sir Rampersad Neerunjun Training Complex (East Wing)</i>	62,100	69,000	43,470	54,740	56,225.70
13.	<i>Surinam Training Centre</i>	62,100	57,500	43,470	54,740	53,995.70
14.	<i>Abercombie Training Centre</i>	62,100	69,000	43,470	54,740	56,225.70
15.	<i>Benares Training Centre</i>	62,100	57,500	43,470	54,740	53,995.70
16.	<i>Clairfonds Training Centre</i>	62,100	57,500	43,470	54,740	53,995.70
17.	<i>Colonel Maingard Training Centre</i>	62,100	69,000	43,470	54,740	56,225.70
18.	<i>Goodlands Training Centre</i>	62,100	69,000	43,470	54,740	56,225.70
19.	<i>La Gaulette Training Centre</i>	62,100	69,000	43,470	54,740	53,995.70
20.	<i>Mont Roches Training Centre</i>	62,100	69,000	43,470	54,740	56,225.70
21.	<i>R Bhundhun Training Centre</i>	62,100	69,000	43,470	54,740	53,995.70
22.	<i>Rivière du Rempart Training Centre</i>	62,100	69,000	43,470	54,740	56,225.70
23.	<i>Rose-Belle Training Centre</i>	62,100	69,000	43,470	54,740	53,995.70
24.	<i>MITD House</i>	155,250	161,000	78,280	109,480	115,691.15
	<b>Total</b>	<b>1,925,100</b>	<b>1,786,750</b>	<b>1,165,145</b>	<b>1,450,610</b>	<b>1,584,774.35</b>




## F. Grounds for Review

On 15 June 2020, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. The Applicant avers that in awarding the bids, the Respondent failed to ensure that the successful bidders had complied with provisions regarding remuneration and other conditions of work for their employees, as required by Directive 37 issued by the Procurement Policy Office pursuant to section 7(b) of the Act. These provisions include, inter alia, the Private Security Services Employees (Remuneration) Regulation 2019 (GN 223 of 2019). The Applicant on the other hand, at all times was compliant with provisions regarding remuneration and other conditions of work for their employees.
2. The Respondent was wrong to retain RSL Security Services Ltd, amongst others, whose bid price was substantially higher than the Applicant’s.
3. Further, the Applicant’s Bid was substantially responsive to all intents and purposes and should have been retained for the award.”

## G. Statement of Reply was file by Respondent, viz:-

“IN LIMINE LITIS

Respondent –

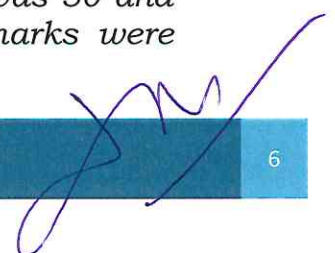
- (a) avers that on 16 June 2020, the Independent Review Panel suspended the procurement proceedings in respect of the Procurement Contract Reference No: HO/OAB/15/19-20/Security – Procurement of Security Services for the MITD House and MITD Training Centres until the present application for review is heard and determined pursuant to section 45 (4) of the Public Procurement Act and therefore, prayer 11(a) of the Applicant’s Statement of Case has no ‘raison d’être’.
  - (b) avers that prayer 11 (b) of the Applicant’s Statement of Case is misconceived in view of the clear wording of section 45 (5) of the Public Procurement Act and therefore, moves that the said prayer be set aside.
1. As regards paragraph 1 of the Applicant’s Statement of Case, the Respondent avers that on 8 January 2020, the Respondent invited bids through Open Advertised Bidding for the provision of security





*services to the Respondent's Head Office and its 23 Training Centres and the closing date for the submission of bids was 5 February 2020.*

2. *In reply to paragraph 2 of the Applicant's Statement of Case, the Respondent avers that-*
  - (a) *five bids were received, including the bid of Applicant and a Bid Evaluation Committee was set up to evaluate the bids;*
  - (b) *after evaluation of the bids, the Bid Evaluation Committee recommended that the contract of security services for MITD training centres and MITD Head Office for the period of 3 years be awarded to the two lowest evaluated substantially responsive bidders namely Quick Security Service for 20 sites for the sum of Rs 35, 685, 540/- and RSL Security Services Ltd for 4 sites for the sum of Rs 7, 775, 380/-;*
  - (c) *by letter dated 3 June 2020, the Applicant was inter alia informed by the Respondent that its bid for the procurement of security services for the MITD Head Office and its training centres has not been retained for award and that the successful bidders are Quick Security Service and RSL Security Services Ltd.*
3. *The Respondent admits paragraph 3 of the Applicant's Statement of Case and reiterates the averments made at paragraph 2 above.*
4. *The Respondent takes note of paragraphs 4 and 5 of the Applicant's Statement of Case.*
5. *As regards paragraph 6 of the Applicant's Statement of Case, the Respondent by letter dated 10 June 2020 and in reply to the letters of Applicant dated 4<sup>th</sup> and 5<sup>th</sup> June 2020, submitted to the Applicant a list of the five bidders and the prices quoted and inter alia informed the Applicant that as per the provisions in the bid document, bidders have confirmed that the salaries and wages payable to its personnel in respect of their proposals are in compliance with the relevant laws, remuneration order, where applicable.*
6. *The Respondent makes no admission to paragraph 7 of the Applicant's Statement of Case and reiterates paragraph 2 above.*
7. *As regards paragraph 8 of the Applicant's Statement of Case, the Respondent avers that-*
  - (a) *the Bid Evaluation Committee carried out a technical and financial evaluation of the bids;*
  - (b) *the minimum pass mark for the technical evaluation was 50 and only those bids having scored at least the pass marks were retained for further evaluation;*

- (c) Applicant, Quick Security Service and RSL Security Services Ltd met the minimum score of 50 marks for the technical evaluation and were retained for financial evaluation;
- (d) Quick Security Service and RSL Security Services Ltd scored higher marks than Applicant as regards the technical evaluation;
- (e) a financial evaluation was carried out and the ranking of the bids were made in the order of the highest marks after adding the technical score and the financial score;
- (f) after the technical and financial evaluation, the Bid Evaluation Committee recommended that the contract for the provision of security services over three years for the amount of Rs 43, 460, 920.80/- be awarded to Quick Security Service for a total yearly amount of Rs 11, 895, 180/- for the MITD Head Office and 19 training centres and to RSL Security Services Ltd for total yearly amount of Rs 2, 591, 793.60 for 4 training centres;
- (g) the Bid Evaluation Committee recommended that the contract for security services for MITD Head Office and MITD training centres for the period of 3 years be awarded to Quick Security Service for the sum of Rs 35, 685,540/- and RSL Security Services Ltd for the sum of Rs 7, 775,380.80/-;
- (h) during the bid evaluation exercise, the Bid Evaluation Committee considered the provisions pertaining to remuneration and other conditions of work for security guards as per the Private Security Services Employees (Remuneration) Regulations 2019 (GN 223 of 2019);
- (i) no bidder out of the 3 bidders evaluated after the technical evaluation set out their price structure for wages payable. However, the evaluation by the Bid Evaluation Committee went as far as ensuring that all bids were compliant with GN 223 of 2019. The Respondent further highlights that even Applicant did not set out in its price structure how it proposed to comply with GN 223 of 2019.
8. The Respondent denies paragraph 9 of the Applicant's Statement of Case and avers that RSL Security Services Ltd scored more marks than Applicant in the overall technical and financial evaluations.
9. As regards paragraph 10 of the Applicant's Statement of Case, Respondent denies that Applicant's bid should have been retained for award and reiterates the averments made at paragraph 7 above. The Respondent further avers that the Applicant has misconstrued the meaning of "responsive" as defined in section 2 of the Public Procurement Act.





10. As regards paragraph 12 of the Applicant's Statement of Case, the Respondent further avers that in relation to the present applicant, the Applicant has not even met the required threshold to request the Independent Review Panel to recommend a re-evaluation of the bids pursuant to section 45 (10) (c) of the Public Procurement Act. Respondent, therefore, avers that the present application is devoid of merit and moves that it be set aside."

## H. The Hearing

Hearing was held on 08 July, 2020.

The Applicant was represented by Mr N. Ramburn, Senior Counsel instructed by Mr A.O. Jaunkee, Attorney at Law.

The Respondent was represented by Mr. D. Reetoo, Principal State Counsel together with Counsel V. Sunkur, State Counsel.

Me. S. Chuong represented successful bidder RSL Security Services.


Me. Hossany, Counsel for successful bidder Quick Security Services.

## I. Findings

Counsel for Respondent has moved that he will no longer insist on the points *in limine*.

Counsel for Applicant also moves to submit only one ground which reads as follows:-

"8. The Applicant avers that in awarding the bids, the Respondent failed to ensure that the successful bidders had complied with provisions regarding remuneration and other conditions of work for their employees, as required by Directive 37 issued by the Procurement Policy Office pursuant to section 7(b) of the Act. These provisions include, *inter alia*, the **Private Security Services Employees (Remuneration) Regulations 2019 (GN 223 of 2019)**. The Applicant on the other hand, at all times was compliant with provisions regarding remuneration and other conditions of work for their employees."





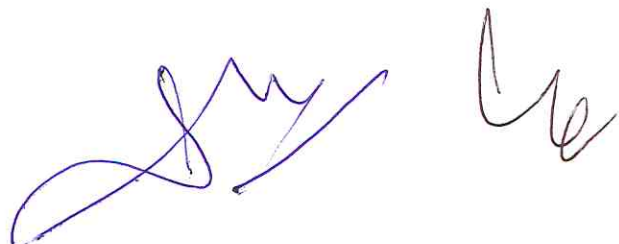
Directive No. 37 of the Procurement Policy Office issued pursuant to the Public Procurement Act 2006 ensures that the general conditions of contents for works and non-consultancy services under the Public Procurement Act 2006 requires the suppliers to comply with the provisions regarding remuneration. Thus, the rates of remuneration shall not be less favourable than those established for work of the same character in the trade concerned by Remuneration Regulations made under the Employment Relations Act 2008 and as amended.

The Panel's primary concern is to see to it that the existing Remuneration Orders are strictly respected by the Public Body through its Bid Evaluation Committee. 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.

The Panel notes with concern that neither the bidders nor the Respondent had produced a detailed price breakdown. Furthermore, had the Respondent prepared a detailed calculation as per the Remuneration Order, it would have been helpful for the Panel to make a proper determination.

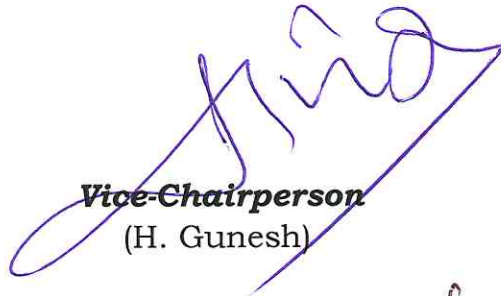
The Panel is of the view that for a bidder to be able to perform the Contract, as per conditions imposed in the Bidding Documents, a bidder should provide a detailed price breakdown of all items of costs pertaining to remunerations which are likely to be incurred in the performance of the contract.

The Panel has had the opportunity to have a look at previous Independent Review Panel decisions on this issue and has come up with observations that Public Bodies should ensure that Bidders should provide details of costing (Price Breakdown Sheet) as per Remuneration Order but this has never been complied with. It is highly recommended that in such cases the Bidding document should include a schedule providing a Price break down Sheet instead of a one line item for each site.

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**J. Conclusion**

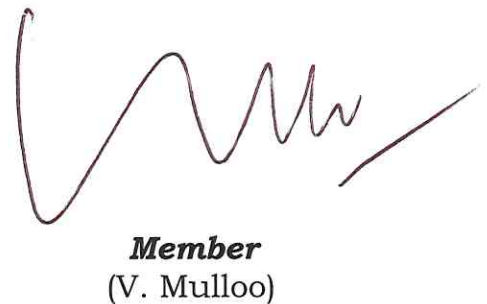
In the light of the above observations, the Panel therefore orders that a fresh financial evaluation of the bids be carried out.



**Vice-Chairperson**  
(H. Gunesh)



**Member**  
(A. Gathani)



**Member**  
(V. Mulloo)

**Dated: 13 July 2020**

