



Independent Review Panel

Decision No. 11/20

In the matter of:

Security and Property Protection Agency Co. Ltd.

(Applicant)

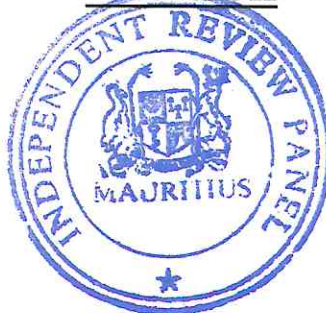
v/s

Mauritius Ports Authority

(Respondent)

(Cause No. 16/20/IRP)

Decision



A. History of the case

On 6 September 2019, the Mauritius Ports Authority (hereinafter referred to as “the MPA”) launched an Open International Bidding for the Design, Supply, Installation and Commissioning of Centralised Access Control and CCTV Systems for Port Area surveillance. The Procurement Reference No: Contract MPA is 422/2019.

There were two optional items in the list of goods and services to be provided. They were the full maintenance cover after the two years warranty period (bearing BOQ No.6) and the price for the DR site (Active-Active).

The closing date initially scheduled for 11 February 2020 was extended twice to 13 March 2020. Eight (8 Nos.) bids, including one from the Applicant were received at the public opening held on the same day at the Central Procurement Board (CPB).

The CPB forwarded the bids to the Mauritius Ports Authority (Public Body and Respondent) for evaluation and eventual award of contract.

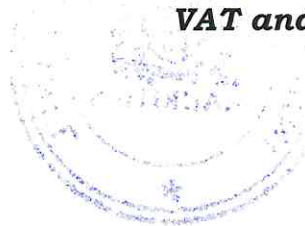

B. Evaluation

The Respondent (“Public Body”) constituted a six member Bid Evaluation Committee (BEC) for evaluation of the Bids.

C. Notification of Award

On 23 October 2020, the Mauritius Ports Authority (“Public Body”) in response to the Invitation for Bids for contract MPA 422/2019 – Design, Supply, Installation and Commissioning of Centralised Access Control and CCTV Systems for Port Area Surveillance, informed the Applicant, that an evaluation of the bids received had been carried out and the particulars of the successful bidder are as mentioned below;

“Name : **Brinks (Mauritius) Ltd**
Address : **Industrial Zone, Solitude, Triolet**
Corrected Contract Price : **Rs 107,202,457.80 (Inclusive of VAT and Contingency)”**


D. The Challenge

On 28 October 2020, the Applicant challenged the procurement proceedings on the following grounds:

- “1. Security and Property Protection Agency Co Ltd submitted a bid which was technically responsive.
2. Security and Property Protection Agency Co Ltd qualifies as a bidder to submit a proposal.
3. Security and Property Protection Agency Co Ltd submitted an offer which was at a lower price than the awarded supplier.”

E. The Reply to Challenge

On 3 November 2020, the Public Body made the following reply to the challenge and stated that:

“It has been assessed that the bid price for Security and Property Protection Agency Co Ltd – Caudan Security Ltd, as per the Bill Summary and the Bid Submission Form, did not include BoQ No.6 (Full maintenance cover after the 2 years’ warranty period) and Price for Disaster Recovery (DR) site (Active-Active)), amounting to Rs 25,338,730.13. The total amount of all items in the Bill Summary of the bidding document should have been computed and carried forward to the Bid Submission Form.

Furthermore, an arithmetic error of Rs. 199,999.95 was noted at the sub-total of BoQ No.1 of the bid from Security and Property Protection Agency Co Ltd – Caudan Security Ltd. The corrected amount for BoQ No.1 is Rs 46,526,302.48 instead of Rs 46,326,302.53.

Pursuant to Section I- ITB 32.3(a) of the Bidding Document, the above amounts were corrected and the total corrected bid price of Security and Property Protection Agency Co Ltd – Caudan Security Services was computed at Rs 114,142,999.66 (Excl. VAT), including BoQ No.6 (Full maintenance cover after the 2 years’ warranty period) and Price for Disaster Recovery (DR) site (Active-Active).

On the other hand, the read out price of the successful bidder at the time of opening of bids, included all the items of the Bill of Quantities. Arithmetical corrections were also effected on the bid price of the successful bidder in accordance with Section I – ITB 32.3 (a) of the Bidding Document. The corrected bid price amounts to Rs 99,950,406.38 (Excl. VAT), including BoQ No.6 (Full maintenance cover after the 2 years’ warranty period) and Price for Disaster Recovery (DR)





site (Active-Active). The successful bidder indicated 0% VAT on BOQ No.1 – Main CCTV System and BOQ No.2- Separate camera system for MPA buildings, leading to an award price of Rs107,202,457.80 (Inclusive of VAT and Contingency).

Accordingly, the total corrected bid price of Security and Property Protection Agency Co Ltd – Caudan Security Services is higher than the lowest substantially responsive bid from the successful bidder.

We wish to inform you that the procurement procedures have been made in all fairness, transparency and in line with the Public Procurement Act 2006.”

F. Grounds for Review

On 9 November 2020, the Applicant seized the Independent Review Panel for review on the following grounds:

“9. The grounds for Review are as follows:

Ground 1

10. SPPA was not notified that an arithmetical error in its bid had been corrected, in breach of Section 37 (5) of the Procurement Act.

Ground 2

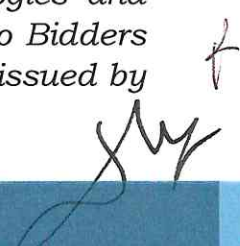
11. SPPA was not informed of the reasons for which its bid had not been retained.

Ground 3

12. The Public Body wrongly evaluated the bid inasmuch as it took into account the optional item of full maintenance cover under BOQ No.6 for the financial evaluation of the bid, contrary to Clause 37 of the Instructions to Bidders and contrary to the Bid Data Sheet of the Bidding Documents.

Ground 4

13. The Appellant legitimately expected the Public Body to evaluate SPPA’s bid in accordance with the factors, methodologies and criteria as prescribed in Clause 37 of the Instructions to Bidders and of the Data Sheet and to follow circular 12 of 2012 issued by the Ministry of Finance.”

G. Statement of Case of Applicant

“The Background facts

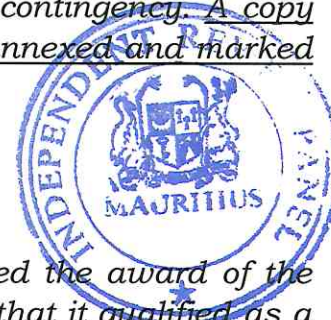
1. *In December 2019, the Mauritius Ports Authority (hereinafter referred to as “the MPA”) launched an Open International Bidding for the Design, Supply, Installation and Commissioning of Centralised Access Control and CCTV Systems for Port Area surveillance. The Procurement Reference No: Contract MPA is 422/2019.*
2. *There were two optional items in the list of goods and services to be provided. They were the full maintenance cover after the two years warranty period (bearing BOQ No.6) and the price for the DR site (Active-Active).*
3. *SPPA submitted its bid on the 13th of March 2020. It quoted for the two optional items but did not add them to its bid price.*
4. *At the opening of the Bid, Brinks (Mauritius) Ltd (hereinafter referred to as “Brinks”) was the 6th bidder in line. A copy of the Bid Price of all bidders on the opening of the Bid is annexed and marked as “Document 1”.*
5. *It was the first time that SPPA bid for procurement with the MPA for Centralised Access Control and CCTV systems.*

Notification to Unsuccessful bidder

6. *On the 23rd of October 2020, the MPA sent a notification to Unsuccessful bidder to SPPA, informing it that it has decided to award the contract to Brinks for the corrected contract price of **Rs.107,202,457.80.**, inclusive of VAT and contingency. A copy of the Notification to Unsuccessful bidder is annexed and marked as “Document 2.”*

The Challenge

7. *On the 28th of October 2020, SPPA challenged the award of the contract. The reasons for the challenge were that it qualified as a bidder, that its bid was technically responsive and that its bid was lower than that of Brinks. A copy of the challenge is annexed and marked as “Document 3”.*
8. *On the 3rd of November 2020, the MPA replied to SPPA’s challenge. A copy of the reply is annexed and marked as “Document 4”. In its reply, the MPA stated that:-*



- 8.1 SPPA did not include BOQ No. 6 in its Bid Submission Form;
- 8.2 The total amount of all items in the Bill Summary of the Bidding Documents should have been computed and carried forward to the Bid Submission Form;
- 8.3 There was an arithmetical error of Rs.199,999.95 on the sub-total of Boq No.1 of the bid of SPPA. The corrected amount for BOQ No.1 was Rs.46,526,302.48. instead of Rs. 46,326,302.53.
- 8.4 Pursuant to Section 1- ITB 32.3 (a) of the Bidding Document, the above amounts were corrected and the total corrected bid price of SPPA was computed at Rs.114,142,999.66 (Exclusive of VAT), including BOQ No.6 (Full maintenance cover after the 2 years' warranty period) and Price for Disaster Recovery (DR) site (Active-Active);
- 8.5 Arithmetical corrections were also effected on the bid price of Brinks;
- 8.6 The corrected bid price of Rs.99,950,406.38 (excluding VAT) of Brinks included the BOQ No.6 (Full maintenance cover after the 2 years' warranty period) and price for Disaster Recovery (DR) site (Active-Active);
- 8.7 Brinks indicated 0% VAT on BOQ No. 1 –Main CCTV system and BOQ No.2 – Separate camera for MPA buildings, leading to an award price of Rs.107,202,457.80 (inclusive of VAT and contingency); and
- 8.8 SPPA'S corrected bid price was higher than that of Brinks."

H. Statement of Reply of Respondent

"1. Respondent admits paragraph 1 of the Statement of Case and avers that:-

- (a) on 6 December 2019, the Respondent launched an Open International Bidding for the Design, Supply, Installation and Commissioning of Centralised Access Control and CCTV systems for port area surveillance (Procurement Reference no: Contract MPA 422/2-19);

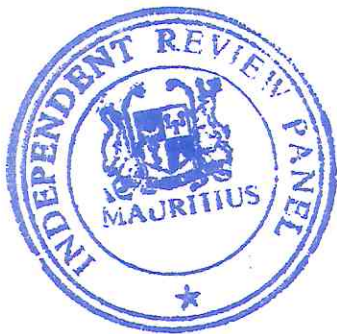



- (b) 8 bids were received as at the closing date for the submission of bids;
- (c) an evaluation of the bids was carried out and Brinks (Mauritius) Ltd was found to be the lowest substantially responsive bidder;
- (d) by letter dated 23 October 2020, the Applicant was inter alia informed that the successful bidder was Brinks (Mauritius) Ltd for the corrected contract price of Rs 107, 202, 457.80/- (inclusive of VAT and Contingency).

2. Respondent admits paragraph 2 of the Statement of Case.

3. As regards paragraph 3 of the Statement of Case, Respondent avers that-

- (a) on 13 March 2020, the Applicant submitted its bid;
- (b) at the time of the bid opening, the bid price for Applicant as per the Bill Summary and the Bid Submission Form, which did not include the Bill of Quantities (BoQ) No. 6 (full maintenance cover after the 2 years' warranty period) and Price for Disaster Recovery (DR) site (Active-Active) amounted to Rs 88, 604, 283.52/- (excluding VAT);
- (c) during evaluation, it was also noted that there was an arithmetic error of Rs 199,999.95 in respect of the sub-total of BoQ No.1 of the Applicant's bid and the corrected amount of BoQ No.1 is Rs 46, 526, 302.48 instead of Rs 46, 326, 302.53/-;
- (d) pursuant to section 1-ITB 32.3 (b) of the bidding document, the above amounts were corrected and the total corrected bid price of Applicant was computed at Rs 114, 142, 999.66 (excluding VAT), including BoQ No.6 (full maintenance cover after the 2 years' warranty period) and Price for Disaster Recovery (DR) site (Active-Active);
- (e) on the other hand, the read-out price of the successful bidder at the time of opening of bids, included all the items of the Bill of Quantities;
- (f) arithmetical corrections were also effected on the bid of the successful bidder in accordance with section 1- ITB 32.3 (b) of the bidding document and the corrected bid price amounts to Rs 99, 950, 406.38 (excluding VAT), including the BoQ No.6 (full maintenance cover after the 2 years'



warranty period) and Price for Disaster Recovery (DR) site (Active-Active);

- (g) the successful bidder indicated 0% VAT on BOQ No.1- Main CCTV system and BOQ No.2- Separate camera system for the Respondent's buildings;
- (h) Brinks (Mauritius) Ltd was assessed to be the lowest substantially responsive bidder for the amount of Rs 107, 202, 457.80/- (inclusive of VAT and contingency).
4. In reply to paragraph 4 of the Statement of Case, Respondent observes that the bid from Brinks (Mauritius) Ltd was the second bid opened. Furthermore, the ranking of bids in terms of price quoted cannot be undertaken without a detailed assessment.
5. Respondent takes note of paragraph 5 of the Statement of Case without making any admission thereto.
6. Respondent admits paragraphs 6 to 8 of the Statement of Case.
7. Respondent makes no admission to paragraph 10 of the Statement of Case and avers that-
- (a) in the letter dated 3 November 2020, the Applicant was inter alia informed of an arithmetic error in its bid which has been corrected.
- (b) a comparative table showing the Bill Summary of the Applicant and the successful bidder is as follows:-

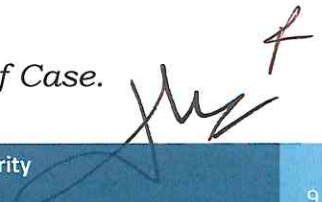
Comparative Table showing Bill Summary from Successful Bidder and Applicant		
Description of Goods and related services	Brinks (Mauritius) Ltd	Applicant
Financial Evaluation		
BOQ No.1 – Main CCTV System	50,659,476.68	46,526,302.48
BOQ No.2 – Separate camera system for MPA buildings	943,920.04	713,390.62
BOQ NO.3 – Access Control System	10,309,018.58	9,171,628.46
BOQ NO.4 – Access Control System indie MPA buildings	767,455.16	702,660.98
BOQ NO.5 – Half-height turnstiles inside MPA buildings	3,067,451.52	2,755,336.99
BOQ NO.7 – DUCTING and/or TRENCHING WORKS	10,020,071.90	23,934,950.00
Contingency Amount to be expended in part or in whole, as and where advised	5,000,000.00	5,000,000.00

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<i>by the project manager under the terms of the contract</i>		
Sub Total (Without Options) EXCL. VAT)	80,767,393.88	88,804,269.53
Bid Price as per Bid Submission (Excl. VAT) without Options (BOQ NO.6 and DR Site)	80,813,269.46	88,604,283.52
Corrections	(46,185.69)	199,999.95
OPTIONAL ITEMS		
<i>BOQ No.6 – Full maintenance cover after the 2 years warranty period (Optional)</i>	18,548,012.40	22,500,000.00
<i>Price for DR site (Active-Active) (Optional)</i>	635,000.10	2,838,730.13
SUB TOTAL AMOUNT (EXCL. VAT)	99,950,406.38	114,142,999.66

- (c) *as per the table above, amongst the two technically responsive bids, the bid price of Applicant was higher by around Rs 8 million without the optional items (BoQ No. 6 – Full maintenance Cover and Price for DR Site);*
- (d) *the correction made to the bid price of the Applicant has no impact on the ranking of the bidders and therefore, no prejudice was caused to the Applicant;*
- (e) *the Applicant misrepresented the total bid price as per the Amended Bill Summary, issued under Addendum No.4 requiring that the total of Bill Summary should be brought forward to the Bid Submission Form. However, the Applicant has not been penalised for not including the optional items in the total of the bill summary brought forward to the bid submission form.*

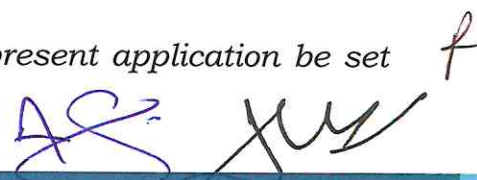
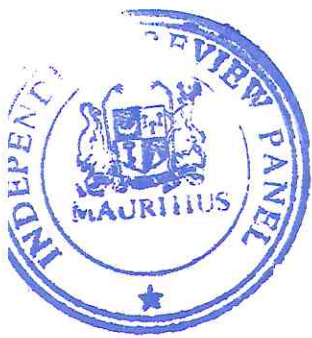
8. *As regards paragraph 11 of the Statement of Case, Respondent avers that Applicant was inter alia notified that its bid had not been retained in accordance with the provisions of the law. Respondent further avers that in its letter dated 3 November 2020, the Applicant was inter alia informed that its bid was higher than the lowest substantially responsive bid of the successful bidder.*
9. *Respondent denies paragraph 12 of the Statement of Case and avers that the bids were evaluated in accordance with the provisions of the bid document.*
10. *As regards paragraph 13 of the Statement of Case, Respondent reiterates paragraph 9 above.*
11. *Respondent admits paragraph 14 of the Statement of Case.*

12. Respondent makes no admission to paragraph 15 of the Statement of Case and reiterates paragraph 7 above.
13. As regards paragraph 16 of the Statement of Case, Respondent reiterates paragraph 8 above.
14. Respondent admits paragraphs 17.1 to 17.3 of the Statement of Case and avers that the Respondent has complied with clause 37 of the Instructions to Bidders.
15. As regards paragraph 17.4 of the Statement of Case, Respondent avers that the evaluation of the bids was carried out in line with section 37.3 (a) of the Instructions to Bidders.
16. Respondent denies paragraphs 17.5 and 17.6 of the Statement of Case and avers that –
 - (a) ITB 37.3 (d) provides for “adjustments due to the application of the evaluation criteria specified in the BDS from amongst those set out in Section III, Evaluation and Qualification Criteria;
 - (b) section II of the Bid Data Sheet provides, as regards ITB 37.3 (d), for no adjustments for the projected operating, maintenance costs during the life of the equipment;
 - (c) section III – Evaluation and Qualification Criteria confirms that the projected operating and maintenance costs during the life of the equipment is not applicable;
 - (d) no adjustment to take into account the operating and maintenance costs of the system during its lifetime has been added to the bid price;
 - (e) the whole system includes not only the centralized Access Control System, CCTV system and associated civil works but also the warranty period, maintenance period and the disaster recovery site as mentioned in Section V-Schedule of Requirements;
 - (f) the optional items were included and so designated in the bill of quantities are expected to be spent in whole or in part at the discretion of Respondent. In the event the quoted price for the optional items would have been excessive, the Respondent reserved the right not to retain any of the two or both optional items.



17. Respondent denies paragraph 17.7 of the Statement of Case and avers that the bid of the Applicant is technically responsive. However, the financial offer of the Applicant is higher than the bid of the successful bidder in both scenarios, with or without optional items.
18. Respondent denies paragraphs 18. 1, 18.2 and 18.3 of the Statement of Case and avers that according to ITB 8.1 of the bidding document, the Applicant had the opportunity to seek clarifications in respect of the bidding documents. However, no clarifications were sought by the Applicant on that aspect.
19. As regards paragraph 18.4 of the Statement of Case, Respondent refers the Applicant to ITB 34.2 which provides that “The Purchaser shall evaluate the technical aspects of the Bid submitted in accordance with ITB clause 19, to confirm that all requirements specified in Section V, Schedule of Requirements of the Bidding Documents have been met without any material deviation or reservation”. Respondent further avers that the evaluation of the bids was carried out in accordance with the Instructions to Bidders of the bidding document.
20. As regards paragraph 18.5 of the Statement of Case, Respondent reiterates paragraph 18 above.
21. Respondent takes note of paragraphs 19.1 and 19.2 of the Statement of Case.
22. Respondent denies paragraph 19.3 of the Statement of Case and avers that the Applicant has not been penalised for this omission.
23. As regards paragraph 19.4 of the Statement of Case, Respondent avers that it has complied with the Instructions to Bidders.
24. Respondent denies paragraph 19.5 of the Statement of Case and avers that –
 - (a) the Circular No. 12 of 2012 refers to technical requirements and any additional conditions of contract or evaluation methodology;
 - (b) section V – Schedule of Requirements of the bidding document does not contain any additional conditions of contract or evaluation methodology.
25. Respondent, therefore, moves that the present application be set aside.”

I. The Hearing

The Hearings were held on 25 November 2020 and 30 November 2020. There was on record a Statement of Case and a Statement of Reply, by Applicant and Respondent respectively.

The Applicant was represented by Mr. Patrice De Speville, Senior Counsel together with Mr. Ravi Bhookun, Barrister at Law whereas the Respondent was represented by Mr. N. Reddy, Acting Assistant Parliamentary Counsel.

The Successful Bidder was in attendance.

J. Findings

On 25th November 2020, the applicant called one Mr S. Mootoosamy, Regional Sales Manager of the applicant company. The latter certified as to the contents of the Statement of Case and deponed on the four grounds that has been submitted before this Panel for review. The Witness was thereafter cross examined by Counsel appearing for the Public Body.

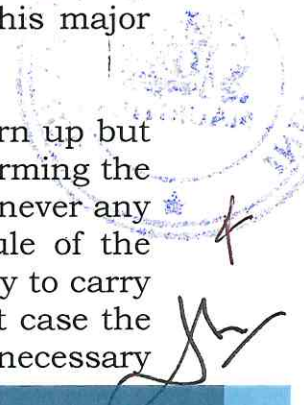
The Respondent (Public Body) called Mr N. Tacouri, Manager Planning and Development who deponed on the statement of reply and was cross examined.

At the end of the hearing, the Panel wished some clarifications from the Public Body on the issue of CPB referring the Bids to the Public Body for carrying out the Bid Evaluation exercise. The witness confirmed that the project was a major contract but could not explain why after the opening of the Bids by the Central Procurement Board, the bid exercise was referred to the Public Body.

The Panel postponed the hearing to the 30th day of November 2020 for the representative of the Central Procurement Body to attend the hearing and to clarify on the issue of referring the bids of this major contract to the Public Body for bid evaluation.

On 30th November 2020, the representative of CPB did not turn up but addressed a letter to the panel dated 26th November 2020 informing the panel that it has always been the Policy of the Board that whenever any bid received is below the prescribed amount as per schedule of the Public Procurement Act 2006, it refers same to the Public Body to carry out the exercise. The CPB also mentioned that in this present case the Public Body was requested to revert to the CPB with all necessary

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documents for consideration and decision of the Board if it turned out that the contract value of the selected bidder exceed the prescribed amount of 100 million rupees.

The Panel has noted that in this particular case, all bidders had not bid below the prescribed amount. There were two out of eight who had quoted above the prescribed amount, still the CPB referred the matter to the Public Body.

During the hearing it came out that there is no such provisions in our law where the CPB can refer a major contract to be evaluated by the Public Body when some of the bidders are below the prescribed amount.

Section 2 of the Public Procurement Act provides for the definition of Major Contract as a contract for the procurement of goods or services or the execution of works (a) to which a public body is or proposes to be a party and (b) the estimate of the fair and reasonable value of which exceeds the prescribed amount. In this particular case the prescribed amount is 100 million rupees exclusive of VAT.

The Panel reads from Section 11 of the Public Procurement Act, which provides for the function of the Board as follows:


“The Board shall, in respect of major contracts-

- (a) *establish appropriate internal procedures for the operations of the Board and ensure compliance with them;*
- (b) *vet bidding documents and notes submitted to it by public bodies;*
- (c) *receive and publicly open bids;*
- (d) *select persons from a list of qualified evaluators maintained by it to act as members of a bid evaluation committee and oversee the examination and evaluation of bids; and*
- (e) *review the recommendations of a bid evaluation committee and –*
- (f) *approve the variation or amendment proposed;*
- (g) *require the evaluation committee to make a fresh or further evaluation on specified grounds; and –*
- (h) *review the recommendations of a public body with respect to an amendment that increases the contract value pursuant to section 25(2)(c) or (d) or 46(3), or a variation pursuant to section 46(4) and –*



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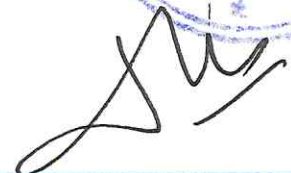
- (i) approve the variation or amendment proposed;*
- (ii) require the public body to make a fresh recommendation; or*
- (iii) reject the variation or amendment proposed.”*

Now, the Panel has observed that the CPB has complied with Section 11 (1) (a), 11(1) (b) and 11(1) (c) of the Act. However, the CPB after receiving and opening the bids decided to refer the bids to the Public Body instead of setting up of its own bid evaluation committee as provided by Section 11 (1) (d) of the Act. However, in its letter dated 26th November 2020, the CPB has advanced to the Panel that it did so, given that six bidders out of eight, as per bid prices announced at the public openings of bids on 13th March 2020 quoted below the prescribed amount of Rs.100 M and the Board cannot approve award of contracts below that limit.

The Panel is of different view. In fact the Panel is of opinion that the CPB was duty bound as per the provisions of the law to set up the Bid Evaluation Committee and to carry out the bid evaluation exercise for the following reasons, viz:

- (a) It is undisputed that this is a major contract and so is in the opinion of the Panel;
- (b) There is no such provision in the law that when one or more bidders quote below the prescribed amount in major contract the CPB can refer the bids to the Public Body for Bid Evaluation;
- (c) Policy adopted by the CPB is not consistent with the ACT and is therefore flawed;

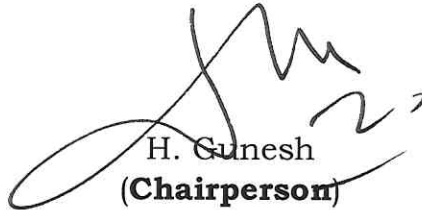
In the light of the above findings, the Panel will not address all other issues raised during the hearing.




L. CONCLUSION

The Panel therefore recommends a re-evaluation of the bids by a Bid Evaluation Committee to be set up by the Central Procurement Board and the whole procurement proceedings be dealt with as a major contract.

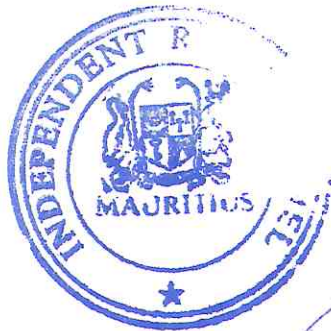
The Applicant had moved that the whole procurement proceedings be annulled. However, we do not believe that we have the power, under Section 45 of the Act, to completely annul procurement proceedings as opposed to a specific act found to be unauthorised. To restart the process is within the remit of Public Bodies. Even if we did have such a power, we find that, in the circumstances, justice will be adequately served by our recommendation for re-evaluation by the CPB.



H. Gunesh
(Chairperson)



R. Mungra
(Member)



A. Gathani
(Member)

Dated: 8 December 2020

