Independent Review Panel

Decision No. 07/21

In the matter of:

Rapid Security Services Ltd

(Applicant)

v/s

Ministry of Health and Wellness

(Respondent)

(Cause No. 07/21/IRP)

INDEPENDENT REVIEW PANEL MAURITIUS

Decision

A. History of the case

This is the second chapter in the story of this procurement exercise. In October 2020, RSL Security Services Ltd **("RSL")**, then an aggrieved bidder, had challenged the proposed award to Rapid Security Services Ltd **("RSS", the "Applicant" or the "Applicant Company")** before the Panel. In its judgment dated 6th November 2020, the Panel focused on two main points: 1) that RSL Ltd had established that RSS, with its abnormally low bid, could be in breach of remuneration orders applicable to watchmen and, more importantly to the Panel, 2) that there was very much a doubt as to whether RSS could even be qualified for award since it had, in a 2020 procurement exercise, submitted financial statements and average turnover figures for years 2015 to 2018 when the Bidding Documents required statements for the 'last three years'. The Panel thus ordered a re-evaluation which, as per the CPB and PPO rules, would be carried out by a differently-constituted bid evaluation committee **(the "New BEC")**.

The procurement proceedings had begun on 17th June 2020 when the Respondent (Ministry of Health and Wellness) launched an open national bidding for procurement of security services for all Hospitals and other Health Institutions – CPB Ref No: CPB/76/2019 – Procurement Ref No: MHPQ/NP/WKS&S/Security/2019-2020/Q67.

B. Evaluation

The New BEC issued its report, the Bid Evaluation Report, on 2nd March 2021.

There were six bidders and four of them had been retained for further evaluation by the time the procurement proceedings reached the financial evaluation stage. These were the Applicant and the successful bidders.

C. Notification of Award

On 24th March 2021, the Public Body in response to the Invitation for Bids informed the Applicant, that an evaluation of the bids received has been carried out and the particulars of the successful bidder are as mentioned below:

Region	Name of bidder	Address	Contract Price (Rs) exclusive of VAT
1	RSL Security Services Ltd	24, Saint Georges Street, Port Louis	45,819,226.80
2			19,780,094.04
3			21,340,707.24
4	Top Security Services Ltd	4th Floor, Jade Court, Jummah Mosque Street, Port Louis	29,244,000.00
5	Edmond Security Services Ltd	4th Floor, Golivia Court, St Jean	41,160,000.00

		Road, Quatre Bornes	
Other Health Institutions	**Rapid Security Services Ltd**	**5, Boucherville Street, Port Louis**	**12,693,600.00**

We note that the New BEC's conclusions were substantially different from those of its predecessor. This has given rise to the present matter before us.

D. The Challenge

On 29th March 2021, the Applicant challenged the procurement proceedings on the following grounds:

"1 Because the bid evaluation committee of the CPB has failed to give due consideration to:

a) the Audited Financial Statement for the year ended 30th June 2019

b) the explanation/ computation regarding the breakdown of the amount quoted by RSS Ltd as per its price mechanism in the Price Activities Schedule, taking into consideration the remuneration rates quoted, inclusive of basic wages and salaries, transport cost, day and night shift payment, overtime payment, bonus, leaves, office expenses, overhead and other related expenses such as uniforms and protective items, time off for meal and tea break etc

c) the undertaking of RSS Ltd for the timely acquisition or arrangements of additional resources and logistics in case the contract or part thereof is awarded.

2. Because both the bid evaluation committee of the CPB and the Ministry of Health and Wellness have acted in breach of the rules of natural justice and have failed to give a hearing to RSS Ltd pursuant to Section 10(8) of the Constitution.

3. Because the decision of both the bid evaluation committee of the CPB and the Ministry of Health and Wellness, to reject the bid of RSS Ltd and to award same to the highest bidders, is Wednesbury's unreasonable."

E. The Reply to Challenge

On 2nd April 2021, the Public Body made the following reply to the challenge and stated that:

"2. Kindly not that your challenge has been forwarded to the Central Procurement Board for consideration and a reply will be made in due course."

F. Grounds for Review

On 9th April 2021, the Applicant seized the Independent Review Panel for review on the following grounds:

"1 Because the bid evaluation committee of the CPB has failed to give due consideration to:

a) the Audited Financial Statement for the year ended 30th June 2019

b) the explanation/ computation regarding the breakdown of the amount quoted by RSS Ltd as per its price mechanism in the Price Activities Schedule, taking into consideration the remuneration rates quoted, inclusive of basic wages and salaries, transport cost, day and night shift payment, overtime payment, bonus, leaves, office expenses, overhead and other related expenses such as uniforms and protective items, time off for meal and tea break etc

c) the undertaking of RSS Ltd for the timely acquisition or arrangements of additional resources and logistics in case the contract or part thereof is awarded.

2. Because both the bid evaluation committee of the CPB and the Ministry of Health and Wellness have acted in breach of the rules of natural justice and have failed to give a hearing to RSS Ltd pursuant to Section 10(8) of the Constitution.

3. Because the decision of both the bid evaluation committee of the CPB and the Ministry of Health and Wellness, to reject the bid of RSS Ltd and to award same to the highest bidders, is Wednesbury's unreasonable."

G. The Hearing

Hearings were held on 27th and 30th April 2021.

Mr K. Teeluckdharry appeared for the Applicant. Mr G. Glover SC for RSL Ltd, Mr N. Ramburn SC for Top Security Services Ltd and Ms A. Peeroo for Edmond Security Services Ltd, the three successful bidders spread over Regions 1 to 5.

Mr R. Baungally, Assistant Solicitor-General appeared for the Ministry of Health and Wellness.

H. Preliminary issues

This case has had its fair share of preliminary objections. We shall deal with them sequentially.

Hearing of 27th April 2021

At the outset, on the day of the first hearing, on 27th April 2021, Mr Glover, appearing for RSL, raised two points as preliminary objections – even though, some of the parties, in their written submissions on those initial preliminary objections, broke them down into three points.

The two points raised were:

1) The application for review is wrong and cannot be entertained inasmuch as the application for review was not signed by an authorised representative of the Applicant but by Counsel.

2) The grounds for review numbers 2 and 3 are not within the jurisdiction of the Panel and are procedurally wrong in that it does not specify the specific act or omission of the public body giving rise to the application.

After attempting to respond to these submissions by suggesting that he, as Counsel, had a *mandat ad litem*, Mr Teeluckdharry moved for time, initially for a few hours and then for a few days.

The Panel directed the parties to submit written submissions by Wednesday 28th April 2021 on those two points and that the hearing of the case was then to proceed on the morning of 30th April 2021. Understandably, due to the torrential rains, the three successful bidders and the Respondent submitted their written submissions late, that is, on the 29th April 2021; the Applicant only did so on the morning of the hearing of 30th April.

We have taken good note of the extensive submissions of Counsel. We agree that this is an important issue, that of the very representation of a corporate entity before a judicial body. As it were, these submissions have been helpful for the more thorough analysis that will arise on one of the objections raised at the hearing of 30th April 2021. Nevertheless, we feel that the suggestion that a barrister has a *mandat ad litem* is a weak one. Astute translation from the French language and analogy with the American jargon and the words 'attorney' and 'lawyer' are of no avail. In Mauritius, there are three well-demarcated types of law practitioners: notaries, attorneys and barristers. In France, there is the 'avocat' only and in the US, the 'attorney'. In Mauritius, attorneys have a *mandat ad litem* on behalf of their clients that allows them to sign and lodge plaints and proecipes before the Courts, amongst many other things; barristers have no such *mandats ad litem*. They can, however, be a *mandataire* and have a *mandat* like any other person to act on behalf of another person, the *mandant.*

We, therefore, do not believe we need to delve into the debate about counsel's ability or tendency to sign papers on behalf of their clients nor about whether it was of any relevance that the Secretary of the Independent Review Panel 'accepted' the document signed by Mr Teeluckdharry at the time of lodging of the Application for Review – it is not the duty of our Secretary to check whether any natural person is mandated to sign a document.

Thus, in absolute fairness to the Applicant, its Counsel has stated before us that he signed the Application for Review as counsel. We feel he may have been so mandated, if he actually was mandated, as any other *mandataire* would have been. He also stated that he had been instructed verbally, over the phone, by someone from the Applicant company to indeed sign and lodge the Application for Review on the 9th of April 2021.

Since Mr Teeluckdharry, admittedly, had no direct authorisation or mandate from the Applicant Company itself, we believe that the real issue then becomes whether the authorisation given to Mr Teeluckdharry emanated from a person that was himself, or herself, properly authorised and/or mandated by the Company to request Mr Teeluckdharry to sign the document.

It goes without saying that we expected evidence to be ushered in before making a final determination on this point.

On the second preliminary point raised by Mr Glover, that is, that the Grounds for Review Nos 2 and 3 are not within our jurisdiction and/or untenable for lack of form and substance, we do agree that the least that can be said about those grounds is that they are not felicitously drafted.

Ground 2 complains of the lack of a hearing given to the applicant and section 10(8) of the Constitution is invoked while Ground 3 is, to all intents and purposes, an umbrella ground, or catch-all, as described by Mr Glover. It is to the effect that the decisions – we are not told which ones – of the public bodies involved were unreasonable in the *Wednesbury* sense.

This Panel is prepared to give a generous interpretation to Ground 3 and connect it with the rest of the Statement of Case because a fair reading of that ground is that the Applicant essentially complains of all decisions taken against it and in favour of the successful bidders. It can also, therefore, be read together with Ground 1.

In respect of Ground 2, we do subscribe with the submissions of Counsel and we note that the procurement laws, including the Public Procurement Act 2006 **("PPA")** do not require a hearing to be given to bidders by the public bodies and we instead have the challenge and review mechanisms before the Panel.

With that in mind, we were not ready to exercise any discretion that we may have under Regulation 56 of the Public Procurement Regulations 2008 **("PPR")** to dismiss the Application for Review outright inasmuch as Ground 1 is an arguable one and Ground 3 is also arguable when read together with Ground 1 as well as with the Statement of Case, on the whole.

We pause here to, again, comment on an issue this Panel has had to pronounce itself on many occasions in the past – an issue raised by one of the successful bidders in the present matter. The grounds for review under section 45 of the PPA may not necessarily be the same as the grounds for challenge under section 43 of the PPA. However, once the grounds for review are settled and filed, the Panel will go according to them. Of the countless reasons one may think of in terms of justification, the more obvious one is that new things may arise following the reply by the chief executives of public bodies in their response to the challenge under section 43. The legislator cannot have intended that an applicant would, in all possible situations, be bound by the words and grounds he had used in his challenge under section 43.

We, thus, allowed the case to proceed after giving our ruling on the above points on the morning of 30th April 2021. In arriving to our conclusion, we relied on the long-standing principle derived from the famous *dictum* by the then Lord Justice Bowen in **Cropper v Smith (1884) 26 Ch. D. 700 (CA)**:

"Now, I think it is a well-established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Speaking for myself, and in conformity with what I have heard laid down by the other division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace."

Hearing of 30th April 2021

Mr Teeluckdharry called one Mr Rambojun, the Manager and Compliance Officer of the Applicant Company. Almost immediately, Mr Ramburn appearing for Top Security Ltd took issue in that the said Mr Rambojun had not filed a witness statement together with the Applicant's Application for Review and was acting in breach of section 45(2) (ba) of the PPA. The Panel observed that it has been the practice that statements of case were deemed mandatory while witness statements *'if any'* were optional.

Section 45(2) (ba) of the PPA reads:

"(2) An application for review under subsection (1) shall -

(a) be in writing;

(b) specify the precise reasons for making the application;

(ba) be accompanied by a statement of case and a witness statement, if any; and

(c) be made within such time as may be prescribed."

Mr Ramburn's reading was a different one. In essence, he submitted that an Applicant's representative may give evidence but a witness (who is not a representative) must have filed a witness statement beforehand so that the Respondent and the successful bidders are not ambushed. He drew a parallel with civil proceedings before the normal courts: a plaintiff is expected to depone in line with and in support of his plaint or proecipe while the identity of witnesses must be made known beforehand. His submissions were supported by Mr Baungally and Counsel for the other two successful bidders.

Even though we may not feel it appropriate to set down any hard and fast rule, we consider the submissions of Mr Ramburn to be well-founded in the present matter. A fair reading of section 45(2) (ba) of the PPA, especially the use of the words 'if any' in between commas following the words 'witness statement' do indicate some form of flexibility. This flexibility, of course, must make way for any prejudice opposing parties may suffer and these have to be balanced. This is the underlying principle: to protect the other parties from being ambushed by any ill-intended applicant.

As such, one cannot doubt that a safer approach for applicant companies, if they intend to have witnesses other than their representative, would be to file witness statements by those witnesses at the time of application. The same goes for a natural person who applies for review but then instruct another person to represent him during the proceedings before the Panel.

However, one should also consider that the legislator may not have intended that applicants were to rush and secure the testimony of witnesses and reduce it in writing within the very short time-limit of 7 days they have to lodge their application for review.

We feel the issue, ultimately, turns on how thorough the statements of case are and whether they are sufficient enough for the other parties to know the case they have to meet – a central tenet of natural justice.

Since witness statement(s) of an applicant have to be filed together with his application for review, it goes without saying that Mr Teeluckdharry misses the point when he submits that a letter signed by Mr Rambojun himself recounting the circumstances of how he instructed Counsel (which letter was produced on the day of the second hearing) was a good enough witness statement and Mr Rambojun's testimony was 'abruptly interrupted'. It was already far too late.

Be that as it may, we queried from Mr Teeluckdharry whether a representative of the Applicant was present and the Panel was informed that one Mr Paupiah, a director, was present.

Messrs Ramburn and Glover then objected to Mr Paupiah representing the Applicant since he could not submit a board resolution authorising him to do so.

It would not have escaped those within the legal field that the year 2020 has seen a sea change in how the Courts would act when a director of a company purports to represent his corporation before the Courts.

In **Meaders Feeds Ltd v Parboteeah 2020 SCJ 317**, Mrs Justice Jugessur-Manna held:

"It is a matter of concern in the present case to note that Counsel for the plaintiff did not consider it relevant to procure a copy of the board resolution prior to calling Mr Lacide to represent the plaintiff and to depose on its behalf on 06 March 2020 when the said board resolution was available and the date of trial was scheduled since 24 June 2019 that is 9 months in advance. I disagree with Mr Proag's submission that it is common for the representative of a company to appear in Court without a written mandate. It is expected from legal advisers who appear for a company in Court to ascertain that the person who represents the company in Court is duly mandated to do so. It is equally important for the person representing a company in Court that documentary evidence in support thereof is produced to show that he had been duly mandated to represent the company."

In **Chemin Grenier Industries Limited v Peter Both Property Development & Co Ltd 2020 SCJ 88**, Mr Justice Bellepeau sitting in Chambers, provided a thorough and useful analysis of the rule in the 19th Century leading case of **Royal British Bank v Turquand (1856) 6 E&B 327**, which would, in short, forgive third parties for dealing with a company through a person portraying himself as having lawful authority to deal on behalf of a company on the subject. However, His Lordship expressed the view that this could not extend to appearance before a court.

"12. The Rule in Turquand's case, however, as plainly illustrated by the extracts relied upon by Mr Duval, is meant to "protect persons dealing with the company who can in some way be said to have been misled by the company into believing that the company's agent had a greater authority than he actually had"6. The "rule, which is based on a general presumption of law, is eminently practical, for business could not be carried on if a person dealing with the apparent agents of a company was compelled to call for evidence that all internal regulations had been duly observed."

13. The rationale behind the rule, as correctly put forward by learned counsel for the respondent, is in effect meant to protect unsuspecting third parties dealing with a company in situations where the company might attempt to default on a contract on the basis that the agreement was entered into without sufficient authority having been given to its representative.

14. Mr Duval in fact concedes at page 3 of his second set of written submissions that the rule in Turquand "was devised to protect innocent third parties dealing with corporate bodies, in that it restricts the application of the Constructive Notice by providing that unless a 3rd party should have suspected some irregularity it cannot be expected to inquire into the internal affairs of a company."

15. Bearing in mind the protective nature of the rule, I am of the view that it cannot be expanded to such an extent that it can dispense a company from satisfying a Court that its apparent representative and agent has the necessary authority to initiate an action and represent the company in Court proceedings, especially when such authority is challenged by the company's opponent in the same proceedings. The presumption of regularity can therefore only operate in specific circumstances in

order to protect third parties where the company might attempt to escape contractual obligations by raising irregularities in its representation at the time that the contract was entered into."

The Supreme Court seems to have embarked on a new direction on the question of representation of companies before the courts in civil matters and we will not depart from that even though proceedings before us are of an administrative nature, a special subset of civil proceedings with its idiosyncrasies. However, one must not lose sight of the very tight deadlines applicants have to meet while respondents have far more leeway when it comes to statements and evidence. Strict adherence to those rules and time-limits which underpin the smooth running of the whole process is absolutely essential because of the nature of the activity involved. Executive action cannot be delayed when there are urgent public interests and considerations on the line. That is why a systematic but firm system of challenging those decisions has been provided and applicants are expected to observe those rules.

The stark reality is that some organisations may be so large that a board meeting for every matter may take time while others may be so small and run as what is commonly termed a quasi-partnership where no board meetings are held beforehand, with many decisions being ratified by the board of directors later on. One must not forget, either, that the mischief targeted by those rules and principles is to avoid unauthorised individuals from acting on behalf of a company and the corporate legislations have a number of sanctions a company may impose on such individual employees or directors, or ways for the company to seeking redress before the Courts. Yet, however harsh it may seem, the approach taken by the Supreme Court is a laudable one and unless overturned, should prevail. Companies, therefore, would do well to ensure that the people they send to represent them before judicial bodies, including the Panel, are properly mandated or authorised. Mrs Justice Manna has provided a number of ways of doing so in *Meaders Feeds Ltd.*

Nevertheless, courts have a discretion to excuse the non-production of a board resolution in the interests of justice and will do so in meritorious cases. Incidentally, Mrs Justice Jugessur-Manna relied on the same 1884 judgment of *Cropper*, as we did above, to allow the case to proceed in *Meaders Feeds Ltd* and we, too, believe such discretion is to be exercised sparsely, and on a case-to-case basis. The present matter is, in our view, one such case. RSS has two directors only, Mr Paupiah being one of them. Mr Paupiah filed the challenge under section 43 of the PPA and was present at the IRP and lodged, even though he did not sign, the application for review. He also testified how decisions are taken jointly by him and the other director even though they may not hold meetings for every matter. It is not as if he caused this Application for Review to be lodged in the back of his fellow director. To deny him the opportunity of representing the Applicant Company would run, in our humble view, against the interests of justice.

In those exceptional circumstances, we allowed Mr Paupiah to represent the Applicant Company and to depone.

Mr Paupiah's evidence

Mr Paupiah, for some reason, chose to limit his evidence to the circumstances in which he instructed his staff to seek the services of a law practitioner to assist in the present proceedings. He confirmed the contents of a 'writing', the letter, produced before the Panel under the signature of Mr Rambojun where the latter described, amongst other things, how, on the last day to file the Application for Review, he happened to meet Mr Teeluckdharry on the streets of Port Louis and how the latter volunteered to assist in these proceedings. We also note, and Mr Glover was quick to allude to this, that Mr Paupiah had signed the Challenge under section 43 of the PPA and had left it to Mr Teeluckdharry to sign the Application for Review under section 45 of the PPA, for some reason. We cannot not relate something that caught our attention during the testimony of Mr Paupiah – Mr Paupiah, a director of a company, accompanied his Manager and Compliance Officer, Mr Rambojun, to deliver the Application for Review at the Independent Review Panel, which application document was signed by counsel; a matter which, as we have seen, gave rise to the barrage of objections under which this case labours. The Panel has had ample opportunity in the past to comment on the conduct of cases by this particular applicant and we do not propose to say anymore on the matter.

Mr Teeluckdharry then attempted to call Mr Rambojun anew, presumably to testify on the financials and calculations. Mr Ramburn promptly reiterated his previous objection about the lack of a witness statement. We have already set out our views on the matter above and we ruled that this is a fit case to uphold such objection: The Statement of Case is vague and to allow a previously unidentified witness to depone at the last minute on matters not clearly arising out or expatiated in the Statement of Case would likely prejudice, if not ambush, the other parties before us.

I. Findings

On the merits, true it is that no testimonial evidence has been ushered in during the hearing of 30th April 2021 by Mr Rambojun. However, the Panel recently had the opportunity to remind litigants, in **Ducray Lenoir v Ministry of Health and Wellness Decision 06/21** (handed down during the recent lockdown), a hearing with testimonial evidence and oral submission is, in fact, discretionary and must be requested by applicants (see Reg 57(1) of the PPR). All parties have provided written submissions on all issues and the Applicant has filed (and later circulated to the other parties) a series of annexes to its Statement of Case in support of its case. Those annexes, which we were told were supposed to be part of the Statement of Case, were made available to Members of the Panel, only on 30th April 2021 at the end of the hearing. From a thorough reading of those annexes, which we understand Mr Rambojun was meant to 'explain' and formally produce, we note that they sufficiently put forward the 'financial' argument of the Applicant. Afterwards, Mr Teeluckdharry has also set out in his final written submissions, in quite some detail, the case of the Applicant on those financial considerations.

We have perused the Application for Review itself, the Statement of Case of the Applicant together with the annexes submitted in support, the Respondent's Statement

of Reply, the Bid Evaluation Report and the Bidding Documents and have considered the testimony on record and submissions made.

Ground 1

Firstly, we are satisfied that the New BEC has fully taken on board the comments and observations made by the Panel in the first review exercise in the case, following which we recommended a re-evaluation of the bids.

The New BEC was fully alive to the issue of abnormally low bids and states that it has applied Directive No.52 (the updated one that came about and superseded Directive No.46) issued by the Procurement Policy Office **("PPO")**. It appears that the New BEC has chosen to use the 15% benchmark (previously used in Directive No.46) together with various other factors specifically addressed in Directive No.52's section D *'Other services*. In Directive No.52, the 15% benchmark is mandatory for Works' contract, the Mean Bid Price minus the Standard Deviation of bid prices is mandatory for Goods contract, and the PPO has left it to public bodies (and bid evaluation committees) to decide the most appropriate method for consultancy services contracts and 'other services' procurement. We deem using the 15% of cost estimates method – very likely to be the most stringent one – was a more than appropriate approach and protects against the mischief of 'abnormally low bids.

The New BEC then sought all clarifications it needed to come to an informed decision on the pricing.

We also note that the CPB and the New BEC have been very fair in allowing the Applicant to file its 2019 financials. The Panel had, in the previous judgment of November last, expressed doubts as to whether that RSS could even be qualified after failing to provide the required financials to enable the then bid evaluation committee to compare its figures with the other bidders. To the presently-constituted Panel, the CPB would, in our view, have been perfectly entitled to reject RSS's bid outright but, to its credit, it did not.

One of the main issues in the Applicant's case before us, we surmise, is that the prices it quoted were not abnormally low. Evident from the Statement of Case of the Applicant, the latter's complaint was the fact that the prices quoted by the company were lower than its competitors but not abnormally low.

We note that the New BEC properly deemed many of the bids to be in abnormally low risk zone– some more than others – and those bids were thoroughly scrutinised, as expected by the law and the PPO Directives.

Clarifications sought by the CPB, on behalf of the New BEC, involved, *inter alia*, all three items listed under Ground 1 by the Applicant, namely:

a) The Audited Financial Statements for the Year ended 30th June 2019
b) The explanation/ computation regarding the breakdown of the amount quoted by RSS Ltd as per its price mechanism in the Price Activities Schedule
c) The undertaking of RSS Ltd for the timely acquisition or arrangements of additional resources and logistics in case the contract or part thereof is awarded.

All the submitted information was duly considered and analysed by the New BEC and was found to be unsatisfactory in some respects.

As alluded to above, one of the Qualification Criteria of Contract, as per ITB 1.7 of the Bidding Documents, bidders were to list and provide copies of Financial Reports for the last three years. The Applicant had provided Financial Reports for the Years 2016 to 2018 only and did not submit for 2019, initially. The information was requested through clarification and same was submitted.

We also note that ITB 5.2(d) specifies as "another minimum qualifying'' criterion the following:

"(d) an undertaking from the Bidder that the salaries and wages to be paid in respect of this bid are compliant with the relevant laws, Remuneration Order and Award and also to PPO Directive No. 37 where applicable and that it will abide to the sub-clause 4.6 of the General Conditions of Contract, if it is awarded the contract or part thereof;"

The Central Procurement Board also sought clarification from bidders as follows:

"A breakdown of the bidder's amount quoted according to their price mechanism applied in the Price Activities Schedule, taking into consideration the remuneration rates quoted, inclusive of basic wages and salaries, transport cost, day and night shift payment, overtime payment, bonus, leaves, office expenses, overhead and other related expenses such as uniforms and protective items, time off for meal and tea break etc."

The price mechanism of the respective bidders was then extensively examined in order to rank the lowest offers for each region. In addition to various elements derived from Directive No.52, the PPA and the PPR, the New BEC also considered the following:

(a) Computation of the wages and salaries, in accordance with the Remuneration Regulations 2019 (ITB 5.2(d));

(b) The average annual financial amount of security services provided over the last three years which should represent at least half of the annual contract value or part thereof for which the Bidder is selected for award (ITB 5.2(a)).

The price mechanism submitted by the Applicant was, without a shadow of a doubt, properly analysed by the New BEC and given due consideration. The New BEC found that the price quoted by the Applicant generally do not conform to the Remuneration Regulations 2019. It was found that only the quote for Region *"Other Health Institutions*" satisfied the BEC that the bid price of the Applicant complied with the Private Security Services Employees (Remuneration) Regulations.

With regard to Ground 1(b), as stipulated at ITB 5.2(a) of the Bidding Documents, the average annual financial amount of security services provided over the last three years should represent at least half of the annual contract value or part thereof for which the bidder is selected for award.

The BEC considered the average for each bidder. In the case of the Applicant, the BEC found that the above requirement was fulfilled only in relation to Region *"Other Health Institutions"*. Due consideration was given to all the clarifications it had provided and to its initial bid and the additional documents it provided, including its later financial statements for the year 2019, and we see no compelling reason to interfere with those findings of fact made by the New BEC.

Ground 3

This Panel found no act or omission on the part of the Respondent as would warrant the intervention of this Panel. On the contrary, the laws and procedural rules have been followed. This being the case, there could really be no unreasonableness in the decision reached in the *Wednesbury* sense nor can it be said that the findings of fact and markings by the New BEC were 'manifestly perverse'.

Ground 2

As stated above, Ground 2 has no basis in light of the challenge and review mechanisms to be found in our enabling pieces of legislation.

J. Conclusion

In light of the above, we do not find any merit in the grounds for review and we set aside the Application for Review.

INDEPENDENT REVIEW PANEL MAURITIUS

J. Ramano
(Chairperson)

A. K. Namdarkhan
(Member)

A. Gathani
(Member)

Dated: 7th May 2021