



# Independent Review Panel

Decision No. 20/21

In the matter of:

**Rapid Security Services Ltd**

(Applicant)

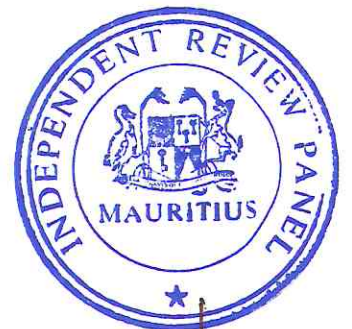
v/s

**The Municipal City Council of Port Louis**

(Respondent)

(Cause No. 23/21/IRP)

**Decision**



### A. History of the case

On 15<sup>th</sup> April 2021, the Respondent, the Municipal City Council of Port Louis (the “City Council”) had launched an online e-tendering for the **Procurement of Security Services for Municipal Sites and Locations throughout Port Louis** bearing Procurement Reference No. **e-ONB/02/2020, CPB Reference No. CPB/42/2020**.

The Applicant, Rapid Security Services Ltd (“**Rapid Security**”) was one of the **five** bidders. The bid submission date had been extended to 19<sup>th</sup> May 2021.

This is, sequentially, the second Application for Review lodged before the Panel in respect of this procurement exercise. The other, bearing **Cause Number 21/21/IRP**, has been entered by **RSL Security Services Ltd**.

### B. Evaluation

This being a major contract for the City Council, the procurement was handled, and a Bid Evaluation Committee set up, by the Central Procurement Board (“CPB”). The Bid Evaluation Report was submitted on 22<sup>nd</sup> September 2021.

### C. Notification of Award

On 1<sup>st</sup> October 2021, the Public Body, in response to the Invitation for Bids, informed the Applicant, that an evaluation of the bids received had been carried out and the particulars of the selected bidder were as mentioned below:

<i>SN</i>	<i>Description of Works</i>	<i>Name of Bidder</i>	<i>Address</i>	<i>Total Amount Exclusive of VAT (Rs)</i>
1.	<i>Security Services for Municipal Sites and Locations throughout Port Louis</i>	<i>Top Security Service Ltd</i>	<i>4<sup>th</sup> Floor, Jade Court Jhummah Mosque Street Port Louis</i>	47,458,800.00





## D. Challenge

On 6<sup>th</sup> October 2021, the Applicant challenged the procurement proceedings on the following grounds:

*“That the Public body failed to:*

- (i) ensure that the successful bidder will comply with the provisions of the law and specifically with respect to the Workers’ Right Act as*
- (ii) act in accordance with established decisions and practice.*
- (iii) to ensure that the selection process was done in a fair & transparent manner in connection to the bid and that proper workout and clear breakdown was carried out in order to determine the selection.”*

## E. Reply to Challenge

On 12<sup>th</sup> October 2021, the Respondent in reply to the Challenge by the Applicant, stated that:

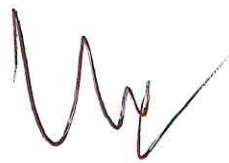
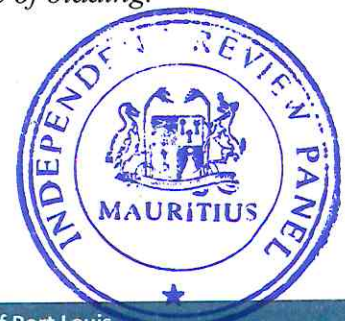
*“I wish to inform you that your challenge with reference to the above procurement exercise has been received and has been forwarded to the Central Procurement Board. A reply will shortly be submitted to you regarding the challenge.”*

## F. Reply to Challenge from Central Procurement Board

On 15<sup>th</sup> October 2021, the Central Procurement in reply to the Challenge of the Applicant, stated that:

- “(i) Your bid has not been retained because you did not meet the requirements of the bid document – ITB 13.1 regarding number of security guards; and*
- (ii) According to information obtained from the Commissioner of Police, you do not have one hundred registered security guards at the time of bidding.”*



## **G. Grounds for Review**

On 18<sup>th</sup> October 2021, the Applicant seized the Independent Review Panel for review on the following grounds:

*“That the public body failed to:*

- (i) Ensure that the successful bidder will comply with the provisions of the law and specifically with respect to the Workers’ Right Act.*
- (ii) Act in accordance with established decisions and practice.*
- (iii) to ensure that the selection process was done in a fair & transparent manner in connection with the bid and that proper detailed breakdown was carried out in order to determine the selection.”*

## **H. The Hearing**

The case was heard on the merits on 3<sup>rd</sup> November 2021.

The Applicant was represented by Mrs R. Jadoo-Jaunbocus, Barrister, whereas the Respondent was represented by Mr G. Wong, Barrister.

The Successful Bidder, Top Security Service Ltd, was assisted by Mr Ramburn SC and Mr A. Inder, Barrister.

## **I. Findings**

The thrust of the Application for Review challenges the correctness of the financial evaluation carried by the Bid Evaluation Committee (“BEC”) in respect of the Successful Bidder’s bid. This is, incidentally, an argument made in more detail by RSL Security Services Ltd in the other case. Rapid Security also takes issue with the fact that the BEC found its bid to be unresponsive.

At the hearing of this case, it became abundantly clear that the central issue of this Application for Review is the requirement, contained in ITB 13.1 of the Bidding Documents, of having 100 security guards in employment.

Before we move on to address this issue, we feel it necessary to make some observations. First, the City Council’s response to the Challenge under section 43 of the

Public Procurement Act 2006 (“PPA”), dated 12<sup>th</sup> October 2021 was hardly a response at all. Public bodies are to be reminded that they have to respond to challenges within 7 days. They must ensure that, when the CPB is involved, they forward challenges received in good time for the Board to be able to formulate or advise on responses to be issued within seven days. Here, the City Council wrote to Rapid Security on the 7<sup>th</sup> day, the very last day, simply to acknowledge receipt and to inform Rapid Security that the CPB will issue a response ‘shortly’. The City Council should have seen to it that the proper response was issued in due time. Public bodies cannot expect litigants to adhere to strict deadlines set down in the PPA, and so often enforced by this Panel, while at the same time being complacent themselves. We expect better.

Secondly, a different division of the Panel has recently had the opportunity, in the case of Top Security Service Ltd v Wastewater Management Authority Decision 18/21 to comment on the argument, repeated *ad nauseam*, that the public bodies and the CPB should ask for clarifications when information or documents are lacking. The Panel held:

*“It would be good for bidders to remember that they are salespersons pitching a sale to the public body, their client. The situation in a public procurement is not the same as that of a window-shopper who goes around asking about products he or she might be interested in. Clarifications are a discretionary tool that public bodies are allowed to use in specific circumstances. Some, such as price adjustments are found in the law while others are provided for in the PPO’s directives and circulars. It is a trait of requests for clarifications that they carry a potential for unfairness and may impact bidders differently thereby jeopardising the integrity of the whole process. Bidders who fail to be diligent enough in providing information, unlike their competitors, and then choose to wait, on a wing and a prayer, for the public body to come knocking and help them save their bids through ‘clarification’ ought to have rather a long wait, indeed.”*

#### ITB 13.1(a) of the Bidding Documents

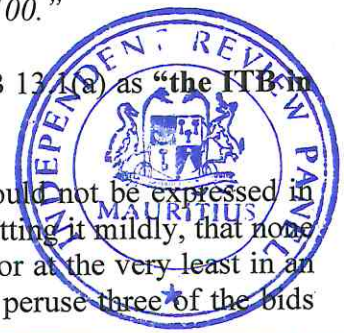
ITB 13.1(a) is titled: “**Company Profile and Experience**” and contains three requirements set out in three paragraphs. The first paragraph deals with the firm’s experience and requires three years of uninterrupted presence in the security services industry. The third paragraph is a requirement to furnish proof that the firm has been providing security services to organisations comparable in size to the City Council and for at least 30 sites at a time.

The second paragraph, which is the one relevant for present purposes, states as follows:

*“The minimum number of security guards employed should be 100.”*

For convenience, we will refer to that second paragraph of ITB 13.1(a) as “**the ITB in issue**”.

We hold that the requirement expressed in the ITB in issue could not be expressed in clearer terms. The Panel is, therefore, astonished, and that is putting it mildly, that none of the bidders provided this information along with their bids, or at the very least in an adequate and proper manner. We have had the opportunity to peruse three of the bids


submitted to us by the City Council; those of the two challengers (RSL and Rapid Security) and that of the successful bidder. The BEC was of the view that only RSL provided sufficient information while other bidders provided only a few registration cards of the security guards they employ. We must say that we still harbour doubts as to whether even the information submitted by RSL was adequate, but this, at the end of the day, will be only academic.

The ITB in issue being under the heading of profile and experience, admittedly, indicates that it is an item intended to establish that the bidder is a reasonably sized organisation and, consequently, in part, the ability of the bidder to handle the proposed procurement (including replacement staff, *inter alia*) while maintaining its services for any other customers it might have.

Before us, Rapid Security's representative sought to prove that it had 100 security guards in employment. The witness, Mr Rambojun, also stated that the Mauritius Police Force (or the Commissioner of Police) had a considerable backlog for the issue of registration cards and that had been on-going since the pandemic began. He later conceded that this ought to affect all bidders equally.

He also challenged the existence of this requirement of 100 guards when the procurement required substantially fewer guards than 100. The latter argument, we find, is completely besides the point since the ITB in issue is not directly linked to the sites that need to be manned but to the company profile instead. In any event, if Rapid Security felt aggrieved by the inclusion of this ITB, it should preferably have challenged at 'invitation to bid' stage or shortly after the bid opening as per section 43 of PPA. It is very late in the day to press such a point and we would be more inclined to believe, based on the evidence before us, that Rapid Security, much like its fellow bidders, simply did not care at all about the ITB in issue and did not give it a second thought. In fact, one answer has remained in our minds while delivering this decision. When asked why the Applicant had submitted only a few registration cards in its bid, we heard that it was done simply by way of example, or words to that effect. This is most certainly not the way to attempt compliance with ITBs.

Crucially, an important, and hardly disputed fact, came to light during the evidence of Mr Rambojun: security guards must have a police-issued registration card to work, except trainees. This should lay to rest any issue of interpretation between the notion of guards employed and that of guards registered.

Ultimately, to queries the Panel put to him, he stated that he did not provide, along with the bids, information or even an indication of verifiable information (such as a list of employees) that would show Rapid Security had 100 security guards employed. Again, for reasons to be set out below, this issue shall not be relevant to our Decision.

Coming back to the evaluation process, Mr Neergheen, the Team Leader chairing the BEC, ably testified in support of his findings, and with much clarity.

At the end of his evidence, the Panel queried him on a number of issues including ITB 13.1(a). We wanted to be enlightened as to his view of whether a breach of that requirement would amount to a major omission or a minor one that can be cured. He



felt that, in his view, it was a major one but the BEC had proceeded to treat it as somewhat minor as will be seen below.

It was not strictly deemed a minor omission as defined by Directive No.3 issued by the Procurement Policy Office, on the “**Determination of Responsiveness of bids (as amended)**.” That directive is the core document used by the countless bid evaluation committees carrying out their essential functions in order to ensure fairness, consistency and the optimum outcome in the public interest. Paragraph (v) of the Guidelines for the determination of responsiveness of bids of the Directive reads as follows:

*“The following shall be considered as **minor omissions**: (i) non-submission of documents related to qualifications, experience and eligibility; (ii) accreditation certificates, licenses and permit to conduct business; (iii) list of equipments to be mobilized, (iv) Financial statements or Audited Accounts as applicable, (v) information regarding litigation, (vi) total monetary value of works performed in the past, and (vi) details of type of works, etc....”* (the underlining is ours, the **bold** text is the PPO’s).

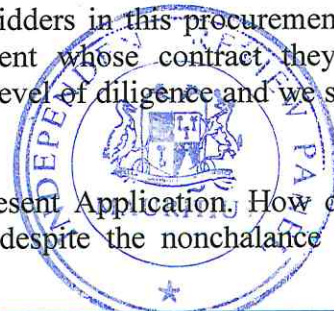
At first glance, item (i) of the above quote when read with ITB 13.1(a) as a whole seems to allow a bid evaluation committee to seek missing information, usually by way of clarifications.

However, we strongly emphasise that it is our reading of the policy, that it ought to apply only to documents existing, or at least establishing a fact that existed, at the time of the submission of bids or when the documents should have been submitted. By way of illustration, let us assume a tender where a consultancy firm is bidding on a public project and an ITB requires that it employs a person holding an MBA. The consultancy firm, as happens on too many occasions, omits to upload the MBA certificate of the person named in its bid as the MBA holder. Directive No.3 would allow the requesting of the document from the consultancy. However, the Directive is not to be read as enabling the consultancy firm to name someone yet to graduate or sitting for the MBA examinations at the time of bid submission and then allow the firm time to provide the certificate later!

Regretfully, this is what the Applicant and the other hopeful bidders seem to have done in the present procurement, perhaps holding the mistaken belief that since many of them are ‘known’ in the business, the BEC would have been allowed to assume that they have 100 or more security guards on their payroll. The Applicant went further, through its challenge, and tried to establish before this Panel, on 3<sup>rd</sup> November 2021, that it was compliant with the requirement of 100 but, with respect, it was the BEC that had to be given sufficient information to that effect and on 19<sup>th</sup> May 2021. Though hardly relevant, receipts of applications for registration issued by the Police Prosecutions Office to Rapid Security on 26<sup>th</sup> October 2021 have even been put before us.

All in all, we must say that virtually, if not, all the bidders in this procurement have shown an appalling lack of consideration to a client whose contract they were competing for. This Panel has rarely seen such a poor level of diligence and we suspect that the CPB has not, either.

This brings us to the central consideration of the present Application. How did the CPB-appointed BEC try to see the project through despite the nonchalance of the bidders?



The BEC sought to expand the scope of the verification they usually carry out about information they are provided from bidders. The Panel must say that, more often than not, we have been impressed at the level of diligence evaluation committee members show when cross-verifying what bidders' claim or what they provide in terms of information. This procurement is no exception.

However, in this particular exercise, the BEC has had to stretch the verification task beyond the intended purpose because of the acts of the bidders. Verification is one thing, extending queries until a 'satisfactory' or adequate result is arrived at is something completely different.

We shall now set out, in summary, the sequence of the verification carried out. When evaluation began in earnest, in early June 2021, the failures of the bidders under the ITB in issue became apparent. It was decided, and we agree based on the evidence that came to light during the proceedings before us, that police-issued registration cards could be used to verify how many security guards each bidder still in the running had in its employment. This provided an independent source to confirm the claims of bidders, as rightly put forward by Mr Neergheen.

Accordingly, a letter was issued by the Chief Executive of the CPB on **9<sup>th</sup> June 2021** addressed to the Commissioner of Police seeking *'the current status regarding registration of security guards', 'the exact number of licensed security guards employed', or 'licenses currently under process'*. Four bidders' names are then set out, together with their licence numbers (the companies' licence numbers).

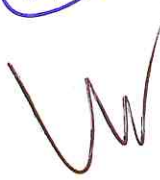
A reply was prayed for by the CPB by 14<sup>th</sup> June 2021. On behalf of the Commissioner of Police a reply was given on **25<sup>th</sup> June 2021**. The queries of the CPB are met with a table intended to set out the *'number of certificates of registration as Security Guard received at the Police Prosecution Office (PPO) for processing'* and *'the number of certificates issued to them and currently under process at the PPO for period 2020 to date (24.06.2021)'*.

It is apparent from the table that none of the bidders had 100 employees licensed under their company names. It is of note that the successful bidder had applied for a number far lower than 100 and had, by then, been issued that number already, and had none pending.

Only one bidder, having submitted what may be described as a bulk of registration requests and which were pending, had a chance of breaching the 100 minimum.

One bidder was in a similar position as the successful bidder but had half the already meagre number. Finally, the Applicant fell short and had not enough requests pending to even reach 100.

The Chief Executive of the CPB wrote to the Commissioner of Police on **7<sup>th</sup> July 2021**. Referring to a conversation between a Board Member of the CPB and a police officer of the relevant department, the query was made even clearer: to provide the *'number of license of security guards for the period of 01 July 2020 to 31 June 2021'* (sic) [**bold text is our emphasis**].




The Police Force's reply came on **21<sup>st</sup> July 2021** and a simpler table provided. It sets out the number of certificates issued to the four bidders for:

*'the period 01 January 2020 to 20 July 2021'*. [bold text is ours]

That was the table used by the BEC in its evaluation exercise.

Two bidders passed the 100-guard threshold, one bidder somehow had two fewer certificates for the period 1<sup>st</sup> January 2020 to 20<sup>th</sup> July 2021 than at 24<sup>th</sup> June 2021, and the Applicant's 'score' rose substantially.

Another letter from the Force ensued, on 4<sup>th</sup> August 2021. The part relevant to Rapid Security is that, "From **01.07.2021 to 10.01.2021**" [bold text is ours], 13 certificates were issued. The BEC generously read that as being in addition to the previous table and added the 13 to the previous number indicated for Rapid Security but it still fell short of the 100.

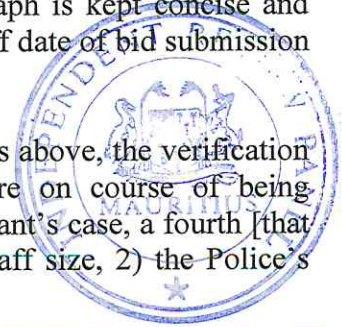
The Panel finds it patently clear that the confusing responses obtained from the Police would have been sufficient, on the facts and without more, to order a re-evaluation since a table gathered and put together using information having the potential of being conflicting should not be used to determine such an important 'eligibility' criterion that leads to outright rejection of bids.

Nevertheless, we also find the approach taken by the BEC untenable in law. Again, we must express our sympathy to the BEC and the CPB for having had to be as creative as can be because of the sheer carelessness of bidders but many issues arise in the direction that was taken.

First, the final table used by the BEC is based on a query to the Police that was supposed to cover the period 1<sup>st</sup> July 2020 to 30<sup>th</sup> June 2021 but, in fact, covered the period 1<sup>st</sup> January 2020 to 20<sup>th</sup> July 2021. Notwithstanding the miscommunication or confusion in those two letters, the idea behind a 'period' itself is flawed. The ITB in issue, as couched, does not imply a period.

A legally proper, if not logical, reading would be that the 100-guard requirement was to apply at the date of submission of bids, that is, the common cut-off point in procurement. The Panel does see the intent behind this approach expressed by the Board Member of the CPB, especially from the bidder's experience angle. Nevertheless, the ITB in issue should then have been drafted differently: 'employed for the preceding 12 months' or 'over the last three years', for example. Besides, we can observe that specific geographical and temporal elements are requested, in bold, in the other two paragraphs of ITB 13.1(a) while the second paragraph is kept concise and more 'standard' which, in our view, should mean that the cut-off date of bid submission applies.

Secondly, and this joins the comments made about clarifications above, the verification process has, inadvertently, led to unfairness. Bids that were on course of being disqualified were given a second, third chance, or in the Applicant's case, a fourth [that is, 1) the failure to provide adequate information about the staff size, 2) the Police's


reply of 25<sup>th</sup> June 2021, 3) that of 21<sup>st</sup> July 2021, and 4) the response of 4<sup>th</sup> August 2021].

In the case of the successful bidder, its bid was, to all intents and purposes, revived by the letter of 21<sup>st</sup> July 2021.

Fairness, equality of opportunity and procedural integrity always risk becoming collateral victims when public bodies, no matter how well-intentioned, condone or correct breaches to any part of bidding documents. Here, this has been the case. We firmly believe that a dispassionate and faceless framework, often rigid, is the best tool to ensure fairness. In fact, even where discretionary routes are allowed or intended, there are frameworks to guide evaluation officials in applying them, and, finally, further down the line, the administrative law keeps a watchful eye.

The BEC (and CPB) in the present matter have been forced to go through such a process and, we can only surmise, they had to make do with what they had to save time and prevent the waste of resources. They kept the procurement proceedings alive until they had two bidders that could be further evaluated. As we have seen above, that flaw is compounded by the fact that a ‘period’ is used, wrongly.

Then, for completeness, a couple more weeks were given to the other two bidders lagging behind until it became obvious that they would not pass the 100-guard mark.

The often-used legal test, that of the ‘reasonable man’, can easily find its application here. The reasonable person may ask why did the CPB make two requests instead of one? Why not three requests or four, or fifteen? And why were the two requests a month apart and not six months? Why not keep on making requests until the fifth bidder, disqualified for lacking the 3 years of experience as of May 2021, reached that goal post and could have had a fighting chance?

The above may seem outlandish but opening one door invariably begs the question why not open another.

This Panel feels the BEC-CPB should have left it at one request, the original of 9<sup>th</sup> June 2021. The confusing response by the Police might have prompted a more detailed query, such as one indicating a cut-off date but not a modified query as was done in July 2021. We are of the view that the bid submission date is the most proper cut-off date but we leave it to the judgement of the City Council. If as at the chosen cut-off date, no bidder was in compliance with the ITB in issue, then section 39 of the PPA ought to be considered as should have been the case in the first place.

## Conclusion

In light of the above, we annul the decision to award the contract to the successful bidder and issue an order prohibiting the City Council (and evaluation committees for this procurement) from relying, as has been done, on the correspondence dated 21<sup>st</sup> July 2021 and 4<sup>th</sup> August 2021 from (or on behalf of) the Commissioner of Police.

J.  




Accordingly, we also remit the matter back to the City Council for a re-evaluation or for any other action it deems fit in the circumstances.

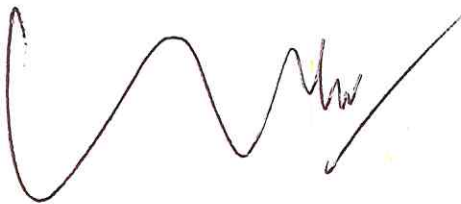
**K. Observations**

In case a re-evaluation is decided, we would also invite the evaluation committee and the Board to consider, for what they are worth, the arguments put forward by the two challengers to the present contract.

On a final note, we feel it necessary to express our appreciation for the hard work done by the BEC members in these procurement proceedings and we acknowledge that they, and the CPB, have done their level best to try and repair the damage flowing from the inconsiderate acts of three or four bidders, acts which have led to a waste of public monies as well as the time and efforts of public official at the Council and the CPB. So much for ‘the client is king.’



J. Ramano (Mrs)  
(Chairperson)



V. Mulloo  
(Member)



A. K. Namdarkhan  
(Member)

**Dated: 12<sup>th</sup> November 2021**

