



# Independent Review Panel

**Decision No. 22/21**

**In the matter of:**

**Very Clean Contracting Service Ltd**

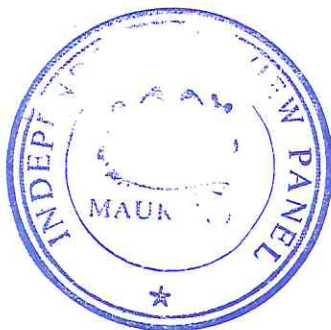
**(Applicant)**

**v/s**

**The Municipal City Council of Port Louis**

**(Respondent)**

**(Cause No. 24/21/IRP)**



**Decision**

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### A. History of the case

The Respondent issued bidding documents for the Procurement of **Cleaning of Sanitary Public Convenience in Municipal Sites** bearing Procurement Reference No.: **e-ONB/01/2021-22 MCCPL/IFB/2021/101**

The Applicant was one of the bidders.

### B. Evaluation

A Bid Evaluation Committee was set up by the Respondent to evaluate the bids received and to identify the lowest evaluated substantially responsive bid.

### C. Notification of Award

On 15 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:

SN	Description of Works	Name of Bidder	Address	Total Amount Inclusive of VAT (Rs)
1.	Cleaning of Sanitary Public Convenience in Municipal Sites	Care Keen Cleaning Ltd	Ruisseau Rose Long Mountain	20,042,664.60

### D. Challenge

On 21 October 2021, the Applicant challenged the procurement proceedings on the following grounds:

- “(a) *The Public Body failed to carry out a proper evaluation and assessment of the bids inasmuch as Care Keen Cleaning Ltd should not have been selected for award as it was not the lowest evaluated substantially responsive bidder.*
- (b) *The Public Body ought to have awarded the contract to Very Clean Contracting Service Ltd, the lowest substantially evaluated responsive bidder.*”

### E. Reply to Challenge

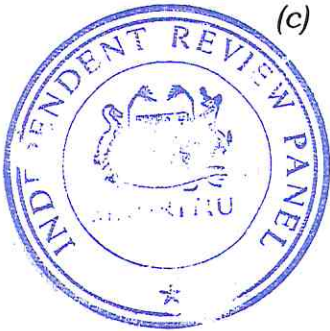
On 25 October 2021, the Respondent in reply to the Challenge by the Applicant, stated that:

*“Your bid despite being lowest was not retained as same was not responsive.”*

### F. Grounds for Review

On 03 November 2021, the Applicant seized the Independent Review Panel for review on the following grounds:

- (a) *The Public Body failed in its duty to carry out a proper evaluation and comparison of the bids when it awarded the contract to the successful bidder, Care Keen Cleaning Ltd for the contract price of Rs. 20,042,664.60 (Inclusive of VAT) inasmuch as it was not the lowest bidder.*
- (b) *The Public Body ought to have awarded the contract to Very Clean Contracting Service Ltd, whose bid was the lowest evaluated substantially responsive bid.*
- (c) *The Applicant avers that in reply to its challenge, by the letter dated 25th October 2021, received by the Applicant on the same day, the Public Body stated that “Your bid despite being lowest was not retained as same was not responsive”. The Applicant states that the Public Body failed to carry out a proper evaluation and assessment of the Applicant’s bid as it failed to provide the detailed particulars of the very reason why the Applicant, whose bid price was lowest, was not selected for award.*
- (d) *The Applicant states that its bid is the lowest evaluated substantially responsive bid.”*



### G. The Hearing

Hearing was held on 19 November 2021. There is on record a Statement of Case filed by Applicant and Statement of Defence filed by the Respondent. A Statement of Reply was subsequently filed by the Applicant.

*AS* *Jh* *F*

The Applicant was represented by Mr Gavin Glover, Senior Counsel together with Miss Sandy Chuong of Counsel whereas the Respondent was represented by Mr Germain Wong Yuenkook, Barrister.

The Successful Bidder, represented by Mr T Punchooa, was in attendance.

## H. Findings

The Respondent in its Statement of Reply had raised a Preliminary Objection which read as follows:

The present application should be set aside inasmuch as the present application for review by the Applicant has been lodged outside the Statutory mandatory delay of 7 days and is in breach of Section 45 of the Public Procurement Act 2006 and Section 48(5) of the Public Procurement Regulations 2006.

The Applicant filed a reply to the preliminary objection maintaining that the application for review has been lodged within the Statutory Delay of 7 days. The applicant has explained that it received the reply to challenge on 25/10/2021 and the last day for review application was 31<sup>st</sup> October 2021 which was a Sunday and the application could not be filed on that day.

In view of the provision of Section 38(1)(a) of the Interpretation and General Clauses Act 1974 which provides that "*the computing time for the purposes of any enactment or document where the time limited for the doing of an act expires or falls on a Saturday or a Public holiday, the act may be done on the following day that is not a public holiday*"

As the 1<sup>st</sup> November 2021 and 2<sup>nd</sup> November 2021 were public holidays, the application for review was filed on 3<sup>rd</sup> day of November 2021.

Counsel for the Respondent, rightly on the day of hearing, did not press on the preliminary objection.

Before proceeding to hear parties on the merits of the application, the Panel raised two issues, viz:

First, The Panel through three letters, all dated 3<sup>rd</sup> November 2021 requested the Respondent –

- (a) Pursuant to Regulation 53 to make available to the Panel all relevant information and documentation in respect of the Procurement;



(b) Forward copy of bids of successful and aggrieved bidders and the evaluation report in respect of Procurement Reference;

(c) Pursuant to Regulation 55 to provide comments in four hard copies

All these information were to be communicated latest by Tuesday 09 November 2021.

The Respondent did not communicate these documents and the Panel could not in the absence of the above mentioned documents make a determination.

The representative of the Respondent could not give any explanation as to why **Regulation 53 of the Public Procurement Regulations** was not been complied with.

Secondly, Regulation 48 of the Public Procurement Regulations provides for Challenge and appeal procedures, and it is provided as follows:

Under regulation 48 (4): *“Unless the challenge is resolved by mutual agreement, the Chief Executive Officer of the public body shall issue a written decision stating his reasons within 7 days of the filing of the application”*. **The underlining is ours.**

The reply letter to the challenge at paragraph 2 reads as follows:

your bid despite being lowest was not retained as same was not responsive.’

The Panel was of opinion that no explicit reasons were given in the reply to the Challenge.

Mr Gavin Glover, Senior Counsel not objecting to, Mr Germain Wong Yuenkook moved that the hearing be maintained for a while as he would seek further instructions from the Chief Executive of the Respondent.

Later, the Deputy Chief Executive of the Respondent Mr S. Bassawon was present and informed the Panel that the Chief Executive of the Respondent has been transferred to the Municipal Council of Beau Bassin/Rose Hill and that he is presently representing the Respondent.

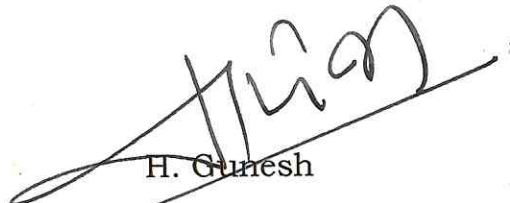
Mr S. Bassawon informed the Panel that the Respondent is now agreeable that it will carry out the re-evaluation exercise anew and has no objection to the prayers of the Applicant that the decision of the Public Body to award the Bid to the Successful Bidder be annulled and that a re-evaluation of the bids, including that of the applicant be carried out by a newly constituted Bid Evaluation Committee.




Mr Gavin Glover, SC, is agreeable to this and further moves that the deposit be refunded.

**I. Conclusion**

In view of the above, the Panel annuls the decision of the Public Body to award the Bid to the Successful Bidder and recommends a re-evaluation of the bids including that of the Applicant and further recommends that the deposit be refunded.



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



R. Mungra  
**(Member)**



A. Gathani  
**(Member)**

**Dated: 23 November 2021**

