



## Independent Review Panel

**Decision No. 23/21**

**In the matter of:**

**BN Safety Ltd**

**(Applicant)**

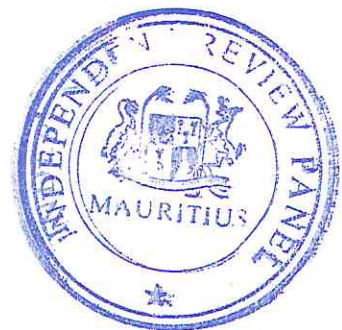
**v/s**

**Ministry of Land Transport and Light Rail**

**(Respondent)**

**(Cause No. 19/21/IRP)**

**Decision**



### A. History of the case

On 24 June 2021, the Ministry of Land Transport and Light Rail (“**The Respondent**”) invited bids for the procurement of Road Traffic Signs, bearing Procurement Reference No.: **LT/eProc/Road Traffic Signs/ONB 15/2020/21**.

On 05 August 2021, bids were received from six bidders. BN Safety Ltd (**The Applicant**) was one of the bidders.

### B. Evaluation

A Bid Evaluation Committee (BEC) was set up by the Respondent to evaluate the bids received and to identify the lowest evaluated substantially responsive bid. The BEC submitted its Bid Evaluation Report on 07 September 2021.

### C. Notification of Award

On 28 September 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 are as mentioned below:

Name of Bidder	Address	Contract Price
Moossun Signs Ltd	72B, Meenatchee Amen Temple Road, Port Louis	Rs 6,923,510.00 Exclusive of VAT

### D. Grounds for Review

On 04 October 2021, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. **The Applicant was the lowest evaluated bidder with the most responsive bid as compared to the preferred bidder namely Moossun Signs Ltd;**
2. **The Applicant was more substantially responsive and should have been determined to be so;**
3. **The Public body failed to appreciate that BN Safety Ltd satisfied the applicable qualification and evaluation criteria set out in the Bidding Documents as well as having considerable experience in this sector;**




**4. The Public body failed to appreciate that BN Safety Ltd satisfied all the Technical Requirements set out in the Bidding Documents.”**

**E. Relief Requested**

In the Application for Review, the Applicant has prayed that the Panel exercises its powers to:

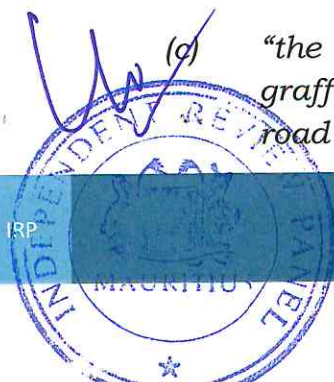
- “(a) Recommend the annulment of the decision of the Public Body in selecting the alleged Successful Bidder’s bid for award and select instead the Applicant’s bid for award as the lowest evaluated substantially responsive bid; or
- (b) Recommend a re-evaluation of the bid or a review of the decision, specifying the grounds for such recommendation; or
- (c) Recommend payment of reasonable costs to the Applicant in the sum of MUR 1 million; and/or
- (d) Any such orders as the Review Panel may deem fit in the circumstances.”

**F. Statements from Applicant and Respondent**

1. In his Statement of Case the Applicant has expanded on his capability and experience, whilst also averring that his Bid and Samples provided satisfy the Technical Specifications and Standards set out in the Bidding Documents. The Applicant further contends having higher turnovers than the Successful Bidder, who, he claims has suffered a loss of MUR 3.8 Million in 2020 and therefore should not have been awarded the contract.

2. In his Statement of Defence, the Respondent acknowledges that:

- “(a) Applicant’s bid was the lowest bid received by Respondent/The Public Body;”, but avers that
- (b) “however, the bid submitted by Applicant was not technically responsive as the sample submitted by Applicant did not meet the mandatory requirement with regard to anti-graffiti sheeting as specified at Section VII of the bidding document;” and moreover,
- (c) “the sample submitted by Applicant was not provided with anti-graffiti sheeting and anti-graffiti sheeting is an important part of a road sign inasmuch as:-



- (i) *the purpose of road signs is to guide road users. They inform road users of the legal status of the roads, such as, speed limits and one-way roads and they warn the road users of any impending hazard along the roads;*
- (ii) *tampering with road signs has been a major issue for many years and it may lead to serious or fatal accidents;*
- (iii) *anti-graffiti sheeting protects the road signs from being scratched and avoid any tampering; and*
- (iv) *a road sign provided with anti-graffiti sheeting may be easily cleaned and maintained at all times.”*

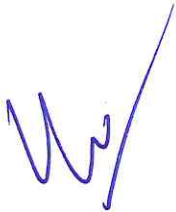
With respect to financial capability, the Respondent avers that:

- (a) *the financial requirement for the bidding exercise was that the bidder should have a minimum turnover of at least Rs 500,000/- for the last year;*
- (b) *the turnover of the successful bidder, that is, Moosun Signs Ltd was MUR 1,205,430 which satisfied this requirement; and*
- (c) *many companies have suffered losses for the year 2020 in view of the Covid-19 Pandemic.*

In his Statement of Reply, the Applicant emphasised that it had sought clarifications from the Respondent through two queries, namely:

- (i) *Query1 To confirm whether Traffic Sign should be on Printed vinyl or Die cut vinyl.*
- (ii) *Query 2 To clarify whether Diamond Grade reflective sheeting should comply as per ASTM D 4956 Type IX sheeting.*

The Reply of the Public Body (given through Clarification No.1, dated 23<sup>rd</sup> July 2021) was as follows:



- (i) *Reply 1 – “Sheets used on traffic signs should not be printed. The use of diamond grade reflectorized sheets should be cut, fixed and pressed on the substrate to avoid any blisters.*

*Moreover, the Ministry will make use of a handheld reflectometer to measure the retroreflection of the road signs to be procured.”*

- (ii) *Reply 2 – “The Diamond Grade reflective sheeting to be used should comply ASTM D4956 Type IX sheeting”.*

The Applicant states that it submitted the sample accordingly.

## **G. The Hearing**

The hearing was held on 19 October 2021 and 22 October 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 also filed by the Applicant.

The Applicant was represented by Mr. A. Sookhoo, Barrister, whereas the Respondent was represented by Mrs. A. Faugoo Boolell, Barrister.

The Successful Bidder, was in attendance.

### 1. Stand of Applicant

On the day of the Hearing on 19<sup>th</sup> October 2021, it came out that the contract had already been awarded on 28<sup>th</sup> September 2021 and accepted the next day by the Successful Bidder. In view thereof, the Applicant informed the Panel that it would be pressing only for prayer at paragraph 30(c) of the Statement of Case which reads *“Recommend payment of reasonable costs to the Applicant in the sum of MUR one million.”*

### 2. Applicant’s Case

Mr N. Nastili, Managing Director at BN Safety Ltd was called in and deposed as witness to refute the Respondent’s contention that the bid submitted by the Applicant was not technically responsive. According



to the BEC, the sample provided by the Applicant did not meet the mandatory requirement with regard to anti-graffiti sheeting as specified at Section VII of the bidding document, as the sample provided by the Applicant was not provided with an anti-graffiti sheeting.

Mr. Nastili expanded on the different points already expressed in the Statement of Case and Statement of Reply of the Applicant, namely with regard to compliance with the Clarification No. 1 issued by the Respondent, but more importantly that the Overlay Films EC 1000 provided by Applicant's supplier Reflomap Co. Ltd is an alternate work used for anti-graffiti sheeting and qualifies as anti-graffiti sheeting.

Mr Nastili further referred to the manufacturing process at BN Safety Ltd workshop at St. Julien D'Hotman namely:

- Step 1 - Installation of GRP Sheeting on router machine
- Step 2 - Cutting GRP sheet to required shape.
- Step 3 - Sticking of Diamond Grad Vinyl on GRP sheet, by electronic hot laminator machine.
- Step 4 - Die cutting of red-overlay Vinyl on Plotter machine and sticking on the Diamond layer.
- Step 5 - Road sign railing fixation.
- Step 6 - STOP sign completion as per Bid Specification requirement

Moreover the representative of the Applicant stated that the sample provided was fitted with a die cut Red Overlay Vinyl Reflomap Glodian EC 1000 having 10 year warranty which is more efficient than a transparent Anti-graffiti sheeting.

Therefore the representative of the Applicant avers that it is fully compliant with all the technical requirements of the Bidding Document.

The representative of the Applicant stated that the material supplied, manufacturing process methodology on sample provided were in line with the above clarification issued therefore technically compliant.

The representative of the Applicant has further averred during the hearing that the Respondent has applied Section 28.4 of the ITB to, an evaluation criteria which was not part of the bidding exercise.

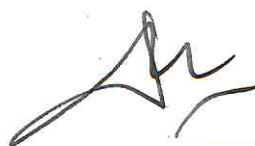
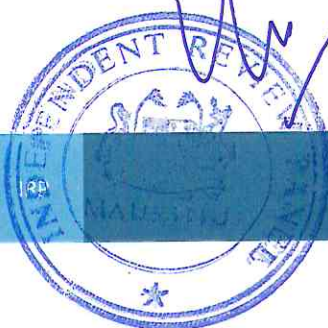
During the hearing, the preposé of the Respondent, Mrs. I. Pudaruth Ruchaia, DPS, and Mr. P. Gooljar, Engineer/Senior Engineer and also Chairperson of the BEC deposed and were cross-examined. The Applicant produced the samples provided by the Successful Bidder (2 Nos) and samples provided by the Applicant with respect to the present contract (1 NO) and also for the previous procurement exercise valued at Rs 96,000 (2 Nos).

The Respondent's preposé, whilst not questioning the quality of different components used in the road sign, as proposed by the Applicant has highlighted the overlay provided covered only part of the road sign sample and no anti-graffiti sheeting covered the whole surface of the road sign. The preposé of the Respondent has further confirmed that Clause 28.4(d) was not applicable and has not been considered by the Bid Evaluation Committee.

The preposé of the Respondent has also explained that there was an Informal Quotation exercise done in August 2021, for procurement of road signs, for goods under Rs 100,000. BN Safety quoted Rs 96,000 and was accepted subject to providing a conforming sample. The first sample provided by BN Safety Ltd (similar to the one proposed in the present contract) was not accepted as there was no anti-graffiti sheeting. Subsequently, BN Safety Ltd accepted and did submit a conforming sample, with anti-graffiti sheeting and at no additional cost. This small contract was consequently confirmed and delivery has been completed.

The preposé of the Respondent stated that in view of the above, the Applicant's claim that it should also be awarded the present contract, does not stand.

## H. Findings



Based on the different documents filed, the samples produced, and the testimony and submissions made by the Applicant and the Respondent, the Panel finds as follows:

(1) The present Bid for Road Signs (an Open National Bidding Exercise), estimated at Rs 8 million was issued on 24 June 2021 and opened on 5 August 2021. This is a formal Bidding Exercise, where samples have to accompany the Bids.

(2) A request for quotation for Road Signs, with the ~~sample~~ Technical Specifications, for goods valued at less than Rs 100,000 was issued on 11 August 2021, Bidding period - 1 week and delivery 10 days from placing of order. The quote of BN Safety Ltd being lowest and under Rs 100,000 was retained and a sample was requested. A first sample was provided but not accepted as, it did not have the anti-graffiti sheeting.

BN Safety subsequently provided a sample with anti-graffiti sheets, without additional cost. The order was confirmed and the goods were delivered.

(3) The Panel notes here that under Item 10 (Photometrics) of the Technical Specification it is stated that *“All diamond grade traffic signs should be provided with protective anti-graffiti sheeting”*.

(4) After consulting the methodology proposed by the Applicant and the sample provided by the Applicant, the Panel finds that the primary purpose of the overlay (which is available in different colours) is to provide for the necessary features of the Road Sign (in conjunction with the substrate and the reflective sheeting). Even if the overlay also has anti-graffiti properties, it covers only part of the Road Sign surface and cannot be the equivalent of anti-graffiti sheeting which covers the whole surface of the Road Sign. Even the methodology proposed does not make provision for an anti-graffiti sheeting to cover the whole surface of the Road Signs.

(5) The Panel therefore finds that the Bid of BN Safety was not in conformity with the Bidding Conditions. Moreover, the same bidding conditions do not allow such deficiency to be corrected contrary to the flexibility allowed in the Informal Quotation Exercise.

(6) Further, the Panel finds that the Respondent did not apply non-existent criteria to disqualify the Applicant.

(7) As regards the two samples provided by the Successful Bidder, the Panel finds that the Bid Document calls for samples, but does not

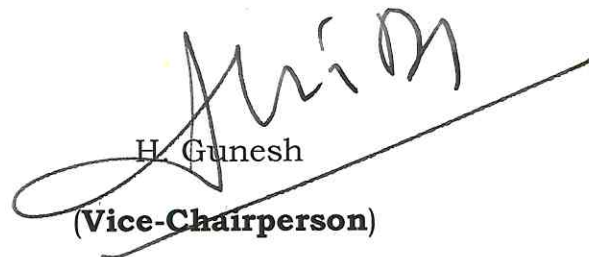


specify further. The Panel considers that through the samples submitted, the successful bidder has given samples of the different components, fixtures and how the anti-graffiti sheeting is fixed on the Road Sign surface.

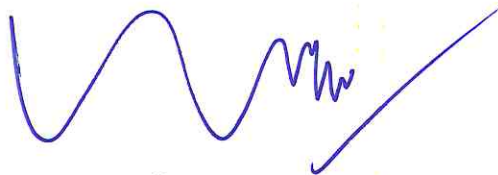
(8) Finally the Panel finds that the turnover of the Successful Bidder is responsive to the minimum value specified. The fact that it has made a loss in 2020 on its own, cannot be used to demonstrate its inability to execute the contract.

**I. Conclusion**

In view of the above, the Panel finds no merit on the Application for Review and therefore dismisses the same.



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



V. Mulloo  
**(Member)**



R. Mungra  
**(Member)**

**Dated: 24 November 2021**



