



Independent Review Panel

Decision No. 02/25

In the matter of:

UMCL Ltd.

(Applicant)

v/s

**Commission for Public Infrastructure, Transport and Water Resources
Rodrigues Regional Assembly**

(Respondent)

(Cause No. 01/25/IRP)

Decision



A. History of the case

On 23rd January 2025, the Respondent (also, the “Commision”) invited bids for the “**Procurement for the supply, delivery and Commissioning of Water Tanker**”, bearing Procurement Reference Number: **RRA/DCCO/PID/ONB/G/28 of 2024-2025- Commission for Public Infrastructure, Transport and Water Resources, Rodrigues Regional Assembly.**

The closing date for submission of bids was 24th of February 2025. Five (5) bids were received and UMCL Ltd (Applicant) was one of the bidders.

B. Evaluation

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

C. Notification

On 20th March, 2025, the Respondent informed the Applicant that an evaluation of the bids received had been carried out and its bid had not been retained for award.

The particulars of the Successful Bidder are as given hereunder:-

Item code	Name of Bidder	Address	Contract Price (Rs) Exclusive of VAT
1	Paragon Motors Ltd.	Branch Road, Les Guibies, Port Louis	19,047,180.00

D. Challenge

On 21st March 2025, the Applicant challenged the procurement proceedings on the following grounds:

1. With reference to the Bid exercise **RRA/DCCO/PID/ONB/G/28 of 2024-2025**, kindly note that UMCL LTD was the lowest Bidder and Complied on all the requirements for this tender. We are writing this challenge, as per Regulation 48 of the Public Procurement Regulations 2008, to inquire under which criteria our Bid proposal was not awarded, taking into consideration that We, UMCL LTD are compliant to all the criteria of the Technical Specifications requested and the UMCL Ltd is the lowest Bidder.



E. Reply to Challenge

On 26th March 2025, the Respondent, in reply to the Challenge by the Applicant, stated that:

- (i) During technical evaluation of your offer, the Bid Evaluation Committee observed that your submission (Annex A 2) did not comply with the requirement for Ground Clearance. Ground Clearance of 207.97 mm has been provided in your submission in lieu of 240mm -300 mm.

F. Grounds for Review

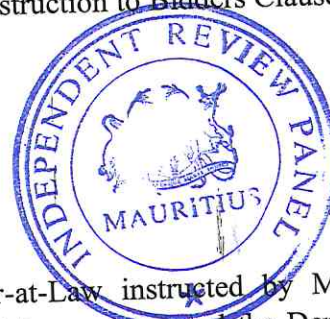
On 28th March 2025, the Applicant seized the Independent Review Panel for review on the following grounds:-

1. The Public Body has failed to award the bid to the Bidder which was the lowest bidder, with a Bid price of MUR 18,839310, excluding VAT and was substantially responsive as there was no material deviation in the Bidder's proposal.
2. The Public Body wrongfully awarded the bid to the successful bidder whose price is MUR 207,870, excluding VAT more than that offered by the Bidder.
3. The Public body failed to consider that the Bidder was the lowest bidder and substantially responsive to all requirements set out in the bidding documents, including the applicable evaluation criteria and technical requirements.
4. The Public Body failed in its interpretation of the blueprint model provided as illustration where it is in unequivocal terms mentioned that **"This blueprint Model is supplied as model and final product will be modified as per requirements of the tender specifications"**. Blueprint may include optional equipment." (underlining and bold ours).
5. The Public Body failed to adopt a proactive approach in order to seek clarification in accordance with Section 37(1) of Public Procurement Act 2006 and the Instruction to Bidders Clause 25(1) of the tender document pertaining to the Water Truck blueprint.

G. The Hearing

The hearing took place on 16th April 2025.

The Applicant was represented by Mr Sheren Govinden, Barrister-at-Law instructed by Mr Nessen Canjamalay, Attorney-at-Law whilst Mr Chetan Baboolall, Barrister-at-Law represented the Deputy Chief Commissioner's Office, Rodrigues Regional Assembly. Representatives of the successful bidder were also in attendance.



H. Findings

The case before us turns on one single issue namely, whether has the Applicant satisfied the requirement to be found at item 2.5 (Ground Clearance) (the “Item”) of the “TECHNICAL RESPONSIVENESS CHECKLIST_GOODS (VER. 1.0)”, which can be loosely described as a ‘compliance sheet’, a wording used in testimony before us by both the Applicant’s and the Commission’s representatives.

Bidders were expected to respond to the above requirement on the e-Procurement System. The serial number was 2.5, the description “Ground Clearance”, and the Evaluation criteria “240-300 mm (higher ground clearance). Two fields were left empty and were for the bidders to fill in namely, “Compliance response” and “Details of non-compliance, if applicable”. The Applicant wrote “Comply Annex A 0 and Annex A 2” in the response, and nothing was written in respect of non-compliance.

The Applicant’s case, in a gist, is that its obligation towards the client Commission was to indicate that it complied with the requirement, and it was then for the Commission to verify compliance and seek clarifications from the Applicant. Moreover, it provided what it views to be only optional documentation as evidence of compliance and considers that it was not expected to do so.

The Respondent Commission’s stance is that it has properly carried out the evaluation, and has made an adequate assessment of the documents provided by the Applicant, generally and in respect of the Item. Its witness, the Chairperson of the Bid Evaluation Committee, added that the committee felt there was no need to seek clarifications from the Applicant since the documents the latter provided, on the face of it, established the non-compliance to the criterion of ground clearance.

We have gone through the documents submitted by the parties, the bids, and the testimonies of the two witnesses, and we set out our decision below.

First and foremost, the Panel forms the view that the Item was of a mandatory nature. It was hardly disputed that a higher ground clearance is warranted for Rodrigues’ rockier and more slopy terrain. We did make an observation to the representative of the Commission, during the hearing, that it would have been more in line with good practice had the bidders been informed more clearly of this requirement perhaps in what became section VII of the Bidding Documents (that is, the technical specifications). In the Bidding Documents, that section VII, as issued by the Commission, was a loosely adapted (if adapted at all) version of the template published by the central procurement entities (the Procurement Policy Office and the Central Procurement Board).

Be that as it may, we find that the interaction between the relevant ITB (mostly ITB 11) and corresponding BDS (11.1 (h) and (i)), combined with the clear wording of the compliance sheet, and the consensus of all parties around the need for a higher ground clearance, and the fact that such item does not, by any stretch, fall within the numerous categories of minor deviations/omissions prescribed by the Procurement Policy Office in its Directive No.3, altogether form a strong basis for us to deem the Item a mandatory one – not complying to it would be a major deviation/omission and would lead to a legitimate rejection of a bidder’s bid.



Independent Review Panel – Decision No. 02/25

Secondly, and with an added focus on the Applicant's conduct and approach, we assess the documents it has produced purportedly in support of its compliance to the Item, that is, Annex A 0 and Annex A 2. We find, and the Applicant has conceded before us, that Annex A 0 does not provide any element at all regarding ground clearance and we shall, thus, disregard that document. One may legitimately ask why it was submitted by the Applicant ostensibly to establish compliance to the Item when it set out nothing related to the very matter it sought to prove or explain.

Annex A 2 (also, the "Annex"), is a blueprint model of the truck proposed and has been the subject of much controversy during the hearing before the Panel, and is indeed central to the determination of the present case. The copy circulated by the Applicant to the parties and to the Panel was a black and white photocopy, in which one can with some difficulty make out the figure 207.9X mm in somewhat faded font.

The relevant part of the Applicant's case and evidence regarding the Annex, we find, can be usefully summarised as follows:

- The Annex does not contain any reference or indication as to the ground clearance;
- The Annex contains a qualification or caveat to the effect that the document is merely a blueprint thus leaving the door open to modification of the proposed truck as per the needs of the client Commission;
- The 207.97 mm which the Commission deemed to be the ground clearance of the truck on offer is actually the radius of the rear differential; and
- Lengths and dimensions are invariably marked with arrows in the design world.

The Respondent Commission submitted to us the colour version of the Annex in issue (which we, in turn, annex to this judgment). The Panel is very grateful for this has gone a long way to assist us in the determination of this case, in that the faded text we have referred to above becomes more apparent and one can observe a strikingly apparent red arrow between two red horizontal lines located just below the rear differential of the truck, and next to the figure 207.97 mm (possibly, we find, 207.91 or 207.94 mm). The side view of the proposed truck shows the height from the ground to the bottom edge of some device or part of the body work hanging below the main frame of the truck (again with red arrows and lines) being 440.70 mm, and that side view also shows a clearance of about 442 mm at the front bumper of the truck.

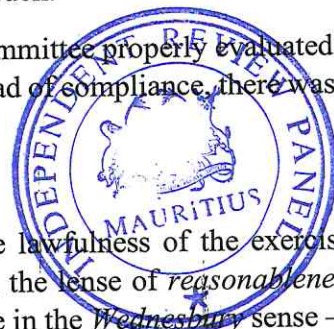
The Respondent's case regarding the Annex is that the Bid Evaluation Committee properly evaluated the bids and, given that the document established non-compliance to the Item instead of compliance, there was no need to seek any clarification from the Applicant.

The law

It is trite law that review proceedings such as this one, founded on the lawfulness of the exercise of the Executive's discretion to assess and evaluate, is to be looked at through the *lens of reasonableness*, more precisely, whether the decision reached by the public body was reasonable in the *Wednesbury* sense – was the decision so unreasonable that no reasonable authority in the same position and presented with the same information and matters would not have reached that conclusion.

In turn, the factual findings made in respect of the Item and the annex A 2 submitted by the Applicant ought to be scrutinised in a manner akin to the 'manifestly perverse finding of fact' test that obtains in appellate proceedings before the courts of law.

This Panel is also mindful and bound by the current state of the law in respect of the assessment of deviations in procurement laws as set out by the Supreme Court in **SECURICLEAN (MAURITIUS) LTD V THE MINISTRY OF LOCAL GOVERNMENT & OUTER ISLANDS & ORS 2015 SCJ 327** which essentially



bars the Panel from revisit the characterisation and assessment, and findings leading up to such assessment major deviations.

Notwithstanding the above prohibition from caselaw, with fairness in mind, we propose to make observations on the reasonableness of the evaluation, confining ourselves to the Item and the blueprint Annex.

Reasonableness of the evaluation of Item 2.5

On balance, we find that the Respondent's Commission findings cannot be disturbed. The Applicant wrote 'Comply' and proceeded to annex two documents that do not establish compliance.

True it is, the Annex (marked A 2) is a blueprint and highlights, literally, the fact that the final product would be modified so as to comply. In essence, the Annex did not add anything to the Applicant mere statement that it complied, in the compliance sheet.

It was suggested by the Applicant's witness that the Commission should have verified on the net, on Google. In fairness, the Panel did and information about ground clearance could not readily be sourced from the manufacturer's official websites. In fact, the product on offer from the Applicant was a very specialised truck, not part of the normal catalogue of Shacman trucks. Besides, ground clearance information that could be actually obtained are for other models and model variations (of L3000) and exceed the 300 mm limit required by the Commission, and that is on 20-inch wheels instead of the 22-inch purportedly proposed by the Applicant.

All in all, we must remark that it was not the duty of the Commission to seek a very specific (and crucial) piece of information about a very specialised truck; rather, it was for the Applicant seeking to sell to the client Commission to provide adequate information that could help establish compliance.

As we have seen above, it instead provided a non-binding blueprint that established non-compliance, without providing even an explanation as to what modifications would be brought and how, or even the ground clearance proposed; only at the very end of its case before us, upon being prompted by the Panel, did the Applicant state that the proposed ground clearance would have been 270 mm.

Moreover, the red arrow and lines below the rear differential (the bulky disc-shaped metallic object located between the rear wheels that anyone who has been driven alongside or behind trucks has observed, and often the lowest point of the underside of any such vehicle) do indicate a clearance of only 208 mm or so.

Admittedly, one may safely conclude that the reading of the Annex and conclusions reached by the Bid Evaluation Committee were not on the facts, objectively, offensive enough to reason that they would warrant interference from a reviewing body. As such, even if the Panel were not bound by the caselaw handed down by the Supreme Court, we would, most likely, have declined to recommended a re-evaluation of the bids.

I. Conclusion

The present Application for Review being devoid of merit, it is accordingly set aside.



Observations

In its case, the Applicant relied on an extract from the decision of the previous Panel in **Scomat Ltée v Mauritius Cane Industry Authority Decision No. 09/17**, no doubt since its witness and representative was previously involved in procurement processes at Scomat Ltée. We feel that this extract bears reproduction and is set out below.

A Bid Evaluation Committee is constituted for the purpose of evaluating bids. The said Committee is constituted with a specific mandate of looking at the bid documents and to make sure that all the specifications are being met and more importantly to cross check and verify all information provided by bidders. If a Bid evaluation Committee is to open a seal envelop and to just check tick boxes of "yes" and "no" then such a committee would not be needed. It is worth to note here that the representative of the Respondent stated during this hearing that *"We don't always check...we rely on what bidders said...we check if we have doubts ...but we don't always check..."*.

Not only does this Panel subscribe to the views expressed by its predecessors but we have gone further, in a series of judgment, enjoining upon officers involved in procurement to be proactive and verify claims of compliance by bidders. Indeed, and in contradiction to the Applicant's witness evidence, this Panel has militated towards procurement officers going beyond the mere 'Comply' their counterparts working for bidders seem to believe to be sufficient proof of compliance, and we have many times reminded bidders that it is for them to provide as much information and details as possible to assist the public bodies' evaluators.

However, a line must necessarily be drawn and a balance certainly struck between verification (especially the direct communication with a bidder through the seeking of 'clarifications') and the duty to act fairly, oft-repeated in the public procurement legislation and directives, and the more specific the duty not to distort the competitive bidding process by giving an undue advantage or showing undue leniency towards a bidder.


H. Gunesh
(Vice Chairperson)


A. K. Namdarkhan
(Member)

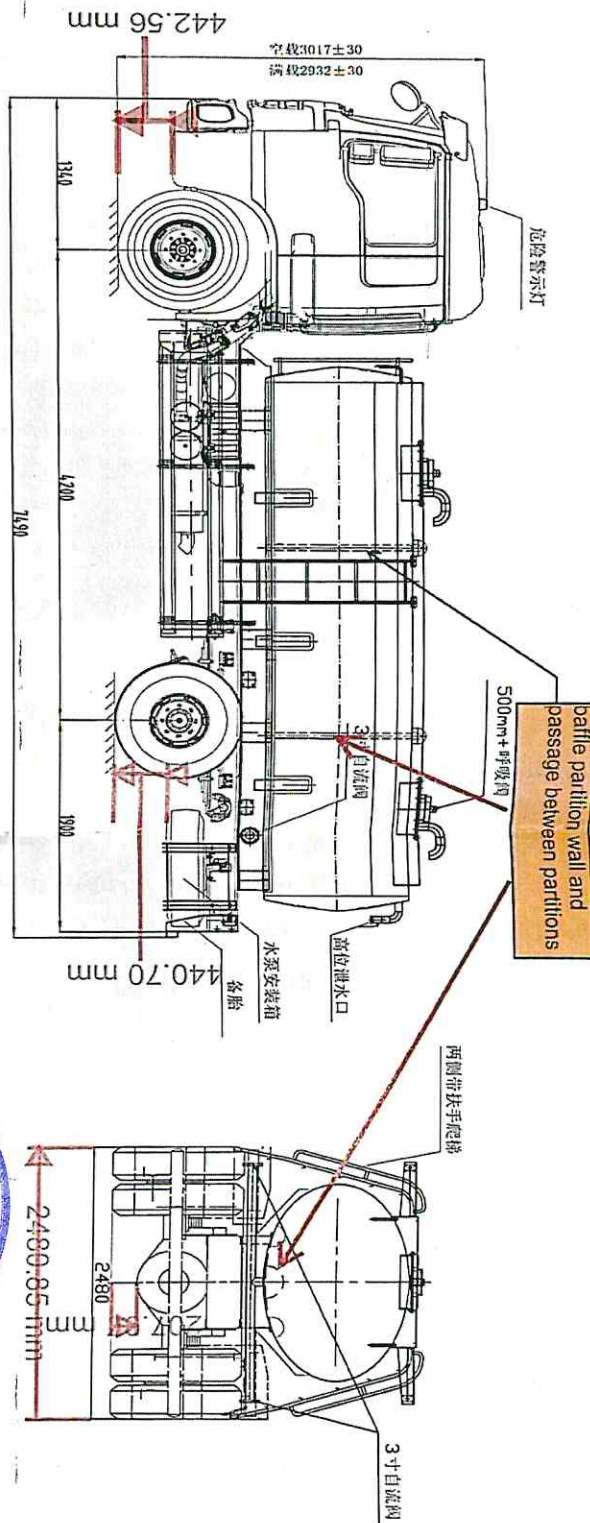

R. Mungra
(Member)



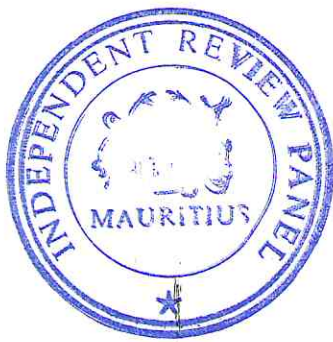
Dated: 28th April 2025

Water truck Blueprint - 7000Lts Model Blueprint for tender Ref: RRAPID_IFB_2025_116

Note:
This blueprint model is supplied as model and final product will be modified as per requirements of the tender specifications.
*Blueprint may include optional equipment.



Note:
Document produced by Respondent during the hearing-16/4/25



[Signature]

[Signature]

[Signature]

Doc G

Annex A2