



Independent Review Panel

Decision No. 05/25

In the matter of:

IBL Ltd

(Applicant)

v/s

Ministry of Health & Wellness

(Respondent)

(Cause No. 07/25/IRP)

Decision



**A. History of the case**

The Ministry of Health and Wellness (“Respondent” or “Ministry”) launched its bid Procurement Ref. No: MHPQ/MDSP/2024-2025/Q3 OIB/CPB/42/2024 – Procurement of Dialysis Consumables Kits for years 2025-2027. Three bids were received, of which the Applicant (“IBL”) was one of them.

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 13th June 2025, the Respondent informed all the bidders that an evaluation of the bids received had been carried out and the particulars of the successful bidder are as given below:

Item No.	Description	Quantity	Name of Bidder	Address	Total Amount (Excluding VAT) (USD)
I	Dialysis consumables kits, for 550,000 Dialysis Sessions	550,000 Kits	Atlantic Biomedical PVT Ltd.	101, Business Point 349 Western Express Highway Mumbai, India	5,940,000
(i)	One hollow fibre dialyzer of Synthetic Membrane Surface areas, to be as follows: (a) 1.3 m2 or 1.4 m2 - 60,000 units (b) 1.5 m2 or 1.6 m2 - 130,000 units (c) 1.7 m2 or 1.8 m2 - 225,000 units (d) 1.9 m2 or 2.0 m2 - 120,000 units Coefficient of ultra-filtration for items (a) to (d) to be between 13-20 KUF, (e) 2.0 or 2.1 m2 - 15,000 units Coefficient of ultra-filtration for items (e), maximum up to 25 KUF	550,000 units			
(ii)	One Arterial Blood Line	550,000 unit			
(iii)	One Venous Blood Line set	550,000 unit			
(iv)	One infusion set	550,000 unit			
(v)	A.V Fistula needles one pair (color coded) (of size G-16 and G 17)	550,000 pairs			
(vi)	One pack of Normal saline 0.9% i.v solution, of 1.0 litre in collapsible plastic bags	550,000 plastic bags			
(viii)	Sodium Bicarbonate solution or in powder Or granules equivalent to 84.0 gm for 1000 ml solution, (8.4%) after dilution, packets of 840 gm for each 10 litres solution after dilution.	275,000 packs			
(a)					

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(vii) (b)	Acid Concentrate in 10 litres cans Composition: (After dilution through dialysis machines at the ratio of 1:34) Sodium : 138 mmol/litre Potassium : 2.0 mmol/litre Calcium : 1.5 mmol/litre Magnesium : between 0.50 to 0.75 mmol/litre HCO ₃ : 35 mmol/litre Chloride : 110 mmol/litre Glucose : 1 gm/litre	275,000 cans			
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D. Challenge

On 19th June 2025, the Applicant challenged the procurement proceedings on the following ground:

Bidder's grounds of challenge:

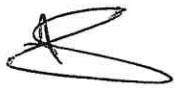
As per clause ITB 15.6 (b) (i), (ii), IBL LTD being a local supplier, we quoted under the Delivered Duty Paid (DDP) and the successful bidder being an overseas supplier quoted under CIF/CIP. Same confirmed in the bid opening report. Under Section "Instruction to bidders", clause 37.4 (a) (ii), (iii), the evaluation of a bid in the case that Goods being offered are from outside of Mauritius, Custom Duties shall be applicable in & payable on the goods. In case, the contract is awarded to the Bidder, the Transport & other costs for the goods to reach its final destination should be included in the price quoted. In light of the above, we strongly believe that we submitted the cheapest offer (which included goods transport & other costs).

E. Reply to Challenge

The Respondent, in reply to the Challenge by the Applicant, stated that:

Challenge Under Section 43 of the Public Procurement Act 2006		
S/N	Specific Act or Omission in relation to the procurement:	Reply
1.	Our bid is technically responsive & cheapest offer. We quoted Delivery Duty Paid and the successful bidder quoted CIF/CIP as per bid opening report.	Your bid was not retained as it did not meet the mandatory technical requirement listed under section III – Evaluation and Qualification criteria of bidding document, viz: (a) Non-submission of statement from Manufacturers to have at least 3 years experience in manufacturing of dialysis consumables types of goods (b) Non-submission of Documentary evidence with regards to trading experience



		(c) Non compliance to technical criteria such as: 1. Shelf life has not been mentioned for Hollow Fibre Dialyzer of synthetic membranes 2. You did not mention that you will undertake to interchange the quantity in different sizes of Hollow Fibre Dialyzer 3. CE standard specified on catalogue but not on sample for Items 2 to 5. 4. No valid COPP for Sodium Chloride and Sodium Bicarbonate.
2.	<u>Bidder's grounds for challenge:</u>	<u>Reply</u>
	As per clause ITB 15.6(b) (i), (ii), IBL Ltd being a local supplier, we quoted under the Delivered Duty Paid (DDP) and the successful bidder being an overseas supplier quoted under CIF/CIP. Same confirmed in the bid opening report. Under Section "Instruction to bidders" clause 37.4(a) (ii), (iii) the evaluation of a bid in the case that Goods being offered are from outside of Mauritius, Custom Duties shall be applicable in & payable on the goods. In case, the contract is awarded to the Bidder, the Transport & other costs for the goods to reach its final destination should be included in the price quoted. In light of the above, we strongly believe that we submitted the cheapest	Only Bids determined to be technically responsive are considered for financial evaluation. Subsequently, as your bid was not technically responsive, your financial offer was not evaluated. Had your bid been found technically responsive, then, in accordance with ITB clause 37, necessary adjustment would have been made to CIF prices for bid financial comparison. The successful bidder was the lowest evaluated substantially responsive bidder. 




	(which included goods transport & other costs).	
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F. Grounds for Review

On 1st July 2025, the Applicant seized the Independent Review Panel for review on the following grounds:-

Applicant's Grounds for Review:

1. The Ministry of Health and Wellness is wrong to have rejected the Applicant's bid, because such bid was and is technically responsive, and was, and is the lowest financial bid as well.
2. The Ministry of Health and Wellness is wrong to have found that the Applicant's bid did not meet the mandatory technical requirement listed under section III – Evaluation and Qualification criteria of bidding document. None of the alleged grounds put forward in paragraph S/N 1 of the reply to the challenge dated 25 July 2025 in support of the contentions of the Ministry of Health and Wellness that the tender of IBL Ltd does not meet the technical specifications is valid and warranted. Detailed reasons for same appear in the Statement of Case and in the Witness Statement attached.
3. The tender of IBL meeting the mandatory technical requirements listed under section III-Evaluation and Qualification criteria of bidding document, the reasons put forward in S/N 2 of the letter dated 25 June 2025 are equally wrong and incorrect. IBL Ltd's bid was technically responsive and should have been considered for financial evaluation.
4. A financial evaluation would have found that IBL Ltd was the lowest technically responsive bidder.

G. The Hearing

Hearings were held on 18th July 2025 and 25th July 2025.

The Applicant was assisted by Mr A.Oozeer while Mr S.Bhoyroo, Principal State Counsel and Ms N.Maghooa, State Counsel appeared for the Ministry.

H. Findings

Admittedly, the central issue in this case, so far as the basis of rejection of IBL's bid is concerned, is the question as to whether a Certificate of Pharmaceutical Product ("COPP") was required and mandatory for sodium chloride and sodium bicarbonate. Indeed, IBL's bid rests or falls on the basis of that requirement.

We shall, therefore, address this issue in the first instance.

COPP

The present procurement proceedings are for dialysis consumables kits, which kits are made up of a number of components. Of those, we have medical solutions such as sodium bicarbonate and sodium chloride.

About such items, within the consumables kits, there has indeed been a heated debate as to their classification (and by whom?) and as to the relevant documentation that ought to be supplied.



Reference has been made, by counsel on both sides, to our domestic Pharmacy Act from 1983 and to our Clinical Trials Act in their endeavour to aid this Panel in categorising the applicable items. However, we propose to approach the issue using a slightly different angle.

To us, it matters less whatever categorisation Mauritius or a particular country (or union of nations) may place on any given product than what the bidding documents and its drafters gave to it – although we would admit that this, as has been the case in the present application, may lead to difficulties to obtain some paperwork. Such an approach, we believe, creates more consistency and, for lack of a better word, streamlines the whole process.

Taking sodium bicarbonate as a very helpful illustration, it has been submitted (and testified to) before us that a growing number of countries consider it as a medical device instead of a pharmaceutical product or grant it a dual-classification as both.

Those countries that classify that medical solution as a 'medical device' may, thus, not provide COPP certification to it, or, at the very least, the manufacturer may not feel the need to obtain a COPP for commercialisation in its targeted markets.

Our focus, therefore, must remain on what has been requested in the Bidding Documents themselves.

Having gone through the technical requirements to be found at Section IV of the Bidding Documents, we find that items (vi) [saline] and (vii) [sodium bicarbonate and acid concentrate] were clearly stated to be pharmaceutical products. At Page 69 of the Bidding Documents, which seems to be a set of general notes applicable to different items, we read, at Note (4):

*"(4) * All Pharmaceutical products, that is for items (vi) and (vii) should be either of U.S.P, E.P or of B.P standard (United State Pharmacopeia, European Pharmacopeia, or British Pharmacopeia standard).*

Valid certificates of Pharmaceutical Products (COPP), and WHO-GMP (Good manufacturing Practice)

COPP and GMP certificates for pharmaceutical items, are not required for items from PIC countries.

Appropriate and valid certificates for the items concerned should be submitted for evaluation purposes."

IBL then sought clarifications in the form of queries from the Ministry which, as per practice and the law, issued the authoritative clarification document on 6th January 2025. The query of IBL was as follows:

"We refer to the above tender and refer to item vii : Sodium Bicarbonate and Acid Concentrate (a) and (b) and wish to inform you that the descriptions for both items are as per previous tender, however, one of the specification lines i.e. WHO-GMP/COPP does not apply if dialysis concentrate originates from a country that classifies the items as a medical device instead of pharmaceutical products? Is omitted in both items. (For your info, the above specification appears in your previous tender)

With the omission of the above, the specification is strictly restrictive. For fairness, we would appreciate if MOH can consider re-insertion of the above specification to enable more bidders to participate.

Kindly note that as per WHO's recommendations, in European countries, dialysis concentrates is classified as medical devices (see attached annex A)"

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The reply of the Ministry was thus:

“The bidder has to submit the following documents:

- a) Valid WHO-GMP certificate*
- b) COPP (Certificate of Pharmaceutical Product)*

However, if the product is sourced from a PIC country the above documents may not be required.

This, therefore, does not limit the chance of any country or company to submit an offer.”

It is clear, and in that respect we fully agree with Learned Counsel for IBL, that the reply of the Ministry in the January Clarification (Clarification No.1) did not squarely address the query of IBL. In fact, it was established during the proceedings before us that IBL’s proposition in respect of a ‘medical device’ categorisation to be adopted rested on a previous tender exercise where the same ministry had set technical requirements that would allow bidder to submit their offering without a COPP.

The Ministry’s reply was, however, in line with the Bidding Documents and the requirements of the present exercise; although we may point out that it does have a limiting effect, contrary to what is stated, in that products sourced from non-PIC countries that classify sodium bicarbonate as a medical device would not qualify.

It is obvious to all that the Ministry has now gone back to the older set of requirements with the added gateway of PIC country classification, that is, items sourced from countries that have acceded to PIC need not provide a COPP and Government considers accession to PIC to be a benchmark of appropriate level. The gist of the reply of the Ministry in Clarification No.1 seems to go that way.

Before us, the member of the Bid Evaluation Committee explained to us the importance of submitting a COPP in the present tender exercise – and we do not feel this is much in dispute.

IBL, faced with the reply of the Ministry in Clarification, chose to proceed on the basis that what it was offering to supply was a medical device and, thus, need not carry a COPP.

We do agree that the officers of the Ministry could have been more forceful and committing in their reply and addressed the suggestion to do away with the reintroduced requirement for a COPP, which clearer response might have led IBL to revisit its position.

However, one may legitimately ask, could the Ministry, in the guise of clarifications, substantially modify its technical requirements. The answer, we find, can only be in the negative and we enjoin public bodies to never go beyond what is necessary and expedient to aid and guide bidders.

In this exercise, the items (vi) and (vii) were to be treated as pharmaceutical products as clearly set out in the Bidding Documents.

Learned Counsel for the Ministry has cited, in his written submissions, has cited the case of **Securiclean (Mauritius) Ltd v The Ministry of Local Government & Outer Islands & Anor 2015 SCJ 327** in support of his submissions in reply to another ground, or item, for review. We consider this binding judgment from the Supreme Court handed down a decade ago to be confined to cases in which it is objectively clear, after a thorough assessment by evaluators and this Panel, that there is indeed a deviation or omission. In the present case, the only clear and admitted departure from the express wording of the bid documents turns around COPP and we, therefore, find that the Supreme Court’s judgment binds this Panel, and we must refrain from determining whether the deviation is a salvageable one.



Nevertheless, on the facts, we would likely not have found in favour of IBL. Absent clear and permissive language in the Ministry's reply (in Clarification No.1) to its request for the latter to reconsider adding the 'medical device' exception, it was not open to IBL to proceed as it did. Had such permissive language been used, other consideration would likely have arisen because of too wide a departure of the requirements of the Bidding Documents.

As such, we find that the items were to be treated as pharmaceutical products and ought to have been certified through a COPP. IBL ought to have either sought COPP certificates for all applicable items (we are told that it indeed provided a COPP for one item) or should have sourced the relevant item or items from another manufacturer or country.

Observations

Given our findings on the COPP issue, we have not had to proceed further. However, we would like to make some observations on the other aspects of the evaluation process, and we are most grateful to learned counsel on both sides for the thorough conduct of their respective cases and the depth of their written submissions supplied to us within a short delay.

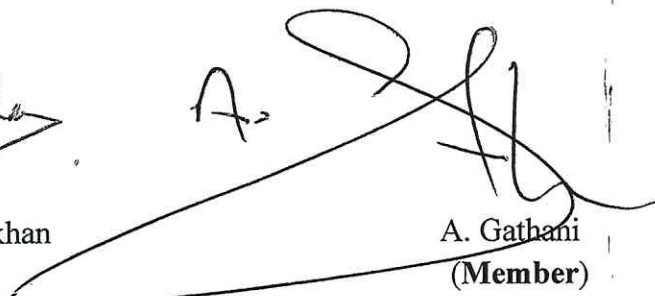
We have found the members of the Bid Evaluation Committee's evaluation process on the other items in issue to be very high-handed, indeed. Evaluators should refrain from such overly strict interpretation of bidding requirements, which leaves the door open, as has been the case here, to unconsciously reading into the Bidding Documents requirements that are not clearly spelt out, or to applying requirements for an item to another item.

I. Conclusion

The Application for Review is accordingly set aside.


H. Gunesh
(Vice Chairperson)


A. K. Namdarkhan
(Member)


A. Gathani
(Member)



Dated: 30th July 2025