



Independent Review Panel

Decision No. 04/25

In the matter of:

MUA Life Ltd

(Applicant)

v/s

Central Electricity Board

(Respondent)

(Cause No. 04/25/IRP)



Decision

History of the Case

On 19 February 2025, the Central Electricity Board (Respondent) invited bids for the Provision of Group Life and Permanent Disability – Insurance for CEB Personnel Ref. OAB-FIN-2025-7911 (IFB 9157) – e-Procurement ref.: CEB/IFB/2025/9157

As at closing date of 24 March 2025, three Bidders responded, the Applicant being one of them.

A. Evaluation

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

B. Notification of Award

On **05 June 2025**, the Respondent 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 Successful Bidders were as mentioned below:

Name and address of selected bidder	Total Premium for 24 Months (MUR)
State Insurance Company of Mauritius Ltd, Sir Celicourt Antelme Street, Port Louis	41,600,000.00

C. Challenge

On **06 June 2025**, the Applicant challenged the procurement proceedings on the following grounds:

Bidder's Ground for Challenge

- (1) This Insurance Scheme was previously held with MUA Life Ltd from May 2020 to June 2023, with no service issue and a very competitive premium. We were not awarded the previous tender because of an issue on the e-procurement platform. We were looking forward for the current tender which we quoted a very competitive premium versus SICOM (approx. -Rs 2.5M), in all fairness and based on this tender should have been awarded to MUA Life Ltd.



D. Reply to Challenge

On **09 June 2025**, the Respondent, in reply to the Challenge by the Applicant, stated that:

You may wish to note that your offer deviates from ITB 18.1 of the Bidding Data Sheet and Section E of the bid submission form of the e-procurement system. Your proposed bid validity starts from 01 July 2025 in lieu of the date of closing of bid submission, i.e., 24 March 2025.

We trust having clarified the matter.

E. Grounds for Review

On 16 June 2025, the Applicant seized the Independent Review Panel for review on the following grounds:

“An unintended oversight occurred during the preparation of our bid, whereby the bid-validity period was mistaken with the period of insurance. Considering this clerical error and given that our proposal is significantly less onerous than that of the current awardee we respectfully request that the discrepancy be disregarded and that the authority considers awarding the tender to MUA Life Ltd in the best interests of the project. Moreover, we have maintained our offer of Rs 39,140,906 to the Public body and this will improve in the net Financial Statement.”

The Statement of Case reads partly as follows:

C. Issue for Determination

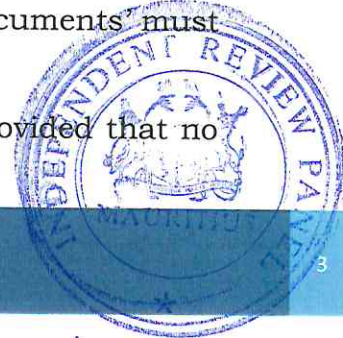
Whether the wording of Form E constitutes a “quantifiable, non-material deviation” within the meaning of regulation 37(8)(b) – such that CEB was empowered, and indeed obliged, to treat the discrepancy as a minor informality capable of being clarified or waived under ITB 28-30.

D. Legal Framework

Regulation 37(8)(b) directs the public body to regard “a deviation which can be quantified precisely and the value of which is calculable as minor” and to correct it without rejecting the bid.

ITB 29.2-29.3 mirror that rule, providing that only “substantial deviations” render a bid non-responsive, whereas minor deviations “that do not materially depart from the terms of the bidding documents” must be waived.

ITB 30.1 empowers CEB to seek written clarification, provided that no change in price or substance results.



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D. Applicant's Submissions

i. Deviation is Quantifiable and Non-Material

Whether one calculates the 90-day period from (i) the E-PS upload (21 Mar), (ii) the bid-closing deadline (24 Mar) or (iii) the Form E reference date (1 Jul), the bid remains valid until at least 19 June 2025, comfortably covering the evaluation and award timeline. The variance therefore enhances, not diminishes, protection for CEB.

Any risk can be expressed arithmetically at zero rupees: no additional cost flows from allowing the longer validity; conversely, rejecting the lowest bid imposes a MRU 2.46 million premium on the public purse.

ii. CEB Had a Duty to Seek Clarification

ITB 30.1 envisages precisely the sort of *single-sentence confirmation* that could have reconciled Form E with ITB 18.1 without altering price, scope or ranking.

By refusing to exercise this power, CEB acted ultra vires Regulation 37(8)(b) and failed to give effect to the overall intent of the Act.

F. The Hearing

The Hearing was held on 09 July 2025. There is on record a Statement of Case filed by Applicant and a Statement of Defence filed by the Respondent.

The Applicant was represented by Mr L Gunpath, of Counsel, whereas the Respondent was represented by Mr Feroze Mohamud of Counsel.

Mr Hans Printemps deposed on behalf of the Applicant and Mrs Aumeer, Chairperson of the Bid Evaluation Committee (the BED) was witness for the Respondent

G. Findings

The one single issue that arises in this application is whether the Respondent acted lawfully in declaring the Applicant's bid non-responsive on the sole ground that the bid validity therein commenced on 1 July 2025 instead of the bid closing date, namely 24 March 2024. The Respondent submitted the bid validity was a mandatory requirement and this requirement to maintain bid validity for 90 days from the closing date is clearly and expressly mandated by ITB 18.1. Hence the



Applicant's bid was not valid during the crucial period in which all bids were being examined.

ITB (Instruction to Bidders) 18.1 provides;

*"The period of bid validity **shall** be 90 days **from the date of closing of the bid** on the e-procurement System."*

It is not disputed that the Applicant submitted in Form E of its bid the following:

*"This bid shall remain valid for 90 days **from 01 July 2025.**"*

The closing date for the present bid was 24 March 2025.

It is clear too that the Applicant's bid was rejected for non-responsiveness right at the preliminary stage of the evaluation process as it was in breach of the requirement of ITB 18.1.

Importantly, too, S. 34(1) of the Public Procurement Act 2006 provides:

*"Every bid **SHALL** remain valid for the period of time indicated in the bidding documents which **SHALL NOT** be more 180 days."*

The Applicant's witness, Mr Printemps, Assistant Manager at MUA who was personally involved in the preparation and submission of the bid and familiar with the procurement process, himself admitted that the bid validity date is a fundamental condition in public procurement and failure to comply with such a requirement could affect the legal enforceability of the bid. He knew that the bid validity period was a mandatory requirement. He even agreed that waiving the deviation would result in a preferential treatment to the prejudice of other bidders who complied.. The witness went as far as agreeing that the CEB does not request clarification on a mandatory requirement.

Mrs Aumeer, the Respondent's witness was adamant in maintaining that the bid validity was a mandatory requirement both per ITB 18.1 and the bid validity must commence from the bid closing date. Referring to Directive 3 of the Procurement Policy Office, she maintained that failure to abide by this mandatory requirement constitutes a major deviation that does not warrant clarifications. She maintained that the discrepancy in the Applicant's Form E constitutes a major deviation.

Indeed, the following relevant rules also apply.



ITB 29: Examination of Bids and Determination of Responsiveness

ITB 29.1: *Prior to detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 5; (b) is accompanied by the required securities; and (c) is substantially responsive to the requirements of the bidding documents.*

ITB 29.2: *A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation, is one (a) which affects in any substantial way the scope, quality, or performance of the services; (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive bids.*

ITB 29.3: *If a bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.*

It is also clear from the evidence of Mrs Aumeer that clarification can only be sought on minor deviations.

Directive No. 3 PPO**Determination of Responsiveness**

ITB 29.1: The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.

ITB 29.2: A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or



- (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

Mrs Aumeer also confirmed that any rectification would affect unfairly the competitive position of other bidders. Granting the application would compromise fairness and undermine the equal treatment principle under the PPA.

We have duly considered the forceful and legitimate submissions of Counsel for the Applicant, especially in the seemingly unfortunate circumstances of this case.

Witness Printemps maintained in evidence throughout that the date 1 July 2025 in Form E of MUA's bid was a genuine and inadvertent error. We have no reason to doubt his word. It does seem unintentional. True it is that a bidder who knows the procurement rules would not intentionally breach it, knowing that it would disqualify him from bidding for a much-desired contract.

Counsel for the Applicant submitted since the Act and Regulations, were according to him, silent on whether any mistake or genuine error in the bid validity period should outright render any bid non-responsive and taking into consideration the difference in value between different bids, each case should be decided on its own facts and circumstances, the more so when public funds are involved. The Respondent should have ensured that clarifications were asked from the Applicant as a matter of good faith inasmuch as:

- (a) The Applicant had quoted the lowest bid and there was a difference of MUR 2,459,094 between the Applicant's bid and that of the successful bidder, SICOM who had quoted the sum of MUR 41,600,000;
- (b) The sum of MUR 2,459,094 represents non-negligible public funds ought not to have rejected the Applicant's bid based on a technical and inadvertent error without having at least ascertained from the Applicant its bid validity period.

Counsel also relied on ITB 28.1 to submit that the Respondent Public Body had a discretion to ask for clarifications, coupled with the fact that the Respondent had a duty to ensure that it was getting value for money or to ensure that maximum value of public expenditure is achieved. He emphasised the importance of Section 50(2) (a) of the PPA which provides:



“Every public body shall –

(a) Engage in procurement planning with a view to achieving maximum value for public expenditure and the other objectives of this Act.”

Counsel submitted that the CEB failed to give any consideration to the above section.

However, we are of the view that there was indeed a material departure from a fundamental requirement and clear non-compliance with an express and mandatory requirement of the bidding documents. As rightly submitted by Counsel for the Respondent, a bid that is not valid during the period immediately following the bid closing date undermines the legal enforceability of the bid and the ability of the public body to rely on it during evaluation and award. Under ITB 29.2 and 29.3 referred to above, as the bid was not valid during the evaluation phase, the CEB was duty-bound to treat the bid as non-responsive.

Counsel for the Respondent rightly submitted that bid validity is not a matter of pricing or arithmetic. It is a legal compliance criterion. It cannot be “corrected” or “quantified” in monetary terms. It is clear that ITB 31.1, pressed upon by the Applicant, permits correction of arithmetical errors only. It does not allow a public body to retroactively fix legal deviations or waive non-compliance with mandatory instructions. Indeed, the Public Body was not empowered under ITB 30.1 or any other provision to request clarification or correction of a mandatory requirement such as bid validity. The Applicant’s witness himself agreed to being aware that ITB 30.1 refers exclusively to arithmetical errors not compliance issues.

We are of the view that even if it were correct to assume that the Public Body retained a discretion to request for clarifications in, what seemed to be the unfortunate circumstances, of the present case, the Public Body would have still been bound to weigh against the public interest of getting “value for money”, the equally important interest of integrity and fairness of the procurement process. Allowing the Applicant to amend or clarify its non-compliant bid would have been contrary to the principles of equal treatment, transparency and procedural fairness equally enshrined in PPA. It is evident that other bidders strictly complied with the bid validity requirement. To waive a fundamental defect for the Applicant alone would indeed give an undue advantage to one bidder and invalidate the procurement process. The rules highlighted above, namely S. 34 of the PPA and ITB 18.1 are to protect the integrity and fairness of the procurement process. Fairness is a cardinal principle.



H. Conclusion

In the light of all the above, we set aside the present application.



Ms J. Ramano
(Chairperson)



R. Mungra
(Member)



S. Ragoobar
(Member)

Dated: 15 July 2025

