



Independent Review Panel

Decision No. 04/26

In the matter of:

GIBB (Mauritius) Ltd

(Applicant)

v/s

Central Water Authority

(Respondent)

(Cause No. 22/25/IRP)



Decision

A. History of the case

On 27 May 2025, the Respondent (Central Water Authority) launched invitation for Proposals through Open Advertised Bidding for Selection of Consultant (Lump Sum Contract) Contract Ref CWA/C2021/11-IFB Reference No: CWA/IFB/2025/2751.

B. Notification

On 19 November 2025, the Respondent informed GIBB (Mauritius) Ltd (Applicant) that its proposal of 17 July 2025, that it submitted in response to the Request for Proposal for the Contract CWA/C2021/11, has been considered as non-responsive to the RFP following Technical Evaluation that has been carried out.

C. Challenge

On 24 November 2025, the Applicant challenged the procurement proceedings on the following grounds: -

Bidder's grounds for challenge:

1. The Public Body ought to have considered the technical proposal of GIBB (Mauritius) Ltd, whose proposal was technically responsive and responsive to the Request for Proposals and TOR.
2. The technical proposal of GIBB (Mauritius) Ltd satisfies all the requirements of the Request for Proposals and TOR, and meets the minimum qualifying technical criteria, and GIBB (Mauritius) Ltd ought to have been allowed to participate in the public opening of the Financial Proposals.
3. GIBB (Mauritius) Ltd is fully eligible to participate in the procurement of the Consultancy Services for Supervision of Upgrading and Rehabilitation at Mont Blanc Treatment Plant inasmuch as GIBB (Mauritius) Ltd's proposal was technically responsive, satisfies all the requirements of the Request for Proposals and meets the minimum qualifying technical criteria.

D. Grounds for Review

On 05 December 2025, the Applicant, since the Public Body failed to issue its written decision within 7 days of the filing of its challenge dated 24 November 2025, seized the Independent Review Panel for review on the following grounds:

1. The Public Body failed to carry out a proper evaluation and assessment of the Technical Proposal of GIBB (Mauritius) Ltd when the Public Body considered GIBB proposal to be non-responsive to the Request for Proposals.

2. Failure to consider the technical proposal of GIBB (Mauritius) Ltd as responsive to the RFP inasmuch as its technical proposal is responsive, satisfies all the requirements of the Request for Proposals and TOR and meets the minimum qualifying technical criteria.
3. The technical proposal of GIBB (Mauritius) Ltd satisfies all the requirements of the Request for Proposals and TOR and meets the minimum qualifying technical criteria, and GIBB (Mauritius) Ltd ought to have been allowed to participate in the public opening of the Financial Proposals.
4. GIBB (Mauritius) Ltd is fully eligible to participate in the procurement of the Consultancy Services for Supervision of Upgrading and Rehabilitation at Mont Blanc Treatment Plant inasmuch as GIBB (Mauritius) Ltd's proposal was technically responsive, satisfies all the requirements of the Request for Proposals and meets the minimum qualifying technical criteria.
5. Failure to provide any reasons for having considered the technical proposal of GIBB (Mauritius) as non-responsive to the RFP and failure to reply to the challenge dated 24th November 2025.

E. The Hearing

The Hearing was held on 19 December 2025, 24 December 2025 and 21 January, 2026. There is on record a Statement of Case and CWA's reply to GIBB's Statement of Case filed by the Applicant and Respondent, respectively.

The Applicant was represented by Mr. M. Hassamal, Counsel, whilst Mr. R. Unnuth represented the Respondent.

F. Findings

This case, which involves a procurement for consultancy services, reaches us at an intermediate stage of the evaluation process, the technical evaluation having been completed and the financial assessment set to begin after we hand down our decision.

Preliminary objection

Mr Unnuth raises a sound objection in law as regards to the deadline for filing of the Application for Review before us applicable to the circumstances of this case.



The relevant sub-paragraph of the Public Procurement Regulations 2008 (48(5)) reads as follows:

"Where the Chief Executive Officer of the public body fails to issue a decision within 7 days or if the bidder is not satisfied with his decision, the bidder may submit an application for review to the Review Panel, provided that the application is filed within 7 days of receipt of the decision of the public body or the time when that decision should have been received."

GIBB lodged its application on 5th December 2025: no doubt placing reliance on the wording of the CWA's Attorney's letter dated 25th November 2025.

Public bodies, in particular, their chief executives, are expected to reply to challenges and when they do, the time starts to run for challengers to bring proceedings before this Panel. The law goes further and caters for situations in which chief executives, in a manner we have often described as reproachable, do not reply.

When submitted to more adequate scrutiny, the present case somehow rides on a grey area. The CWA informs the challenger that it will not reply for reasons set out in its attorney's letter, but qualifies the said letter by reserving its rights to make further replies.

In view of our determination on the more pressing matters in this case, and given the fact that setting aside the application on the basis of an untimely filing would only delay the determination of the merits to a future hypothetical application by GIBB at notification of award stage, we will not propose to make a binding determination.

We pause, however, to suggest that public bodies should always endeavour to give adequate reasons for their decisions, and when they feel that, or are legally advised, not to reply for such and such reason, they should still seek to substantiate their impugned decision. On the facts, here, the CWA formed the view, or was advised, that since the financial evaluation was not yet completed and no successful bidder identified, GIBB's challenge was premature. That was an incorrect reading of the law having regard to the statutory two-stage process that obtains in consultancy contracts with two bid 'openings' opening the door to an additional avenue for challenge as compared to other contracts. In brief, in consultancy contracts above Rs 15 million of estimated cost, challenges can be heard 5 days from invitation to bid, 5 days from each bid opening, and 7 days from notification of award.

Equally, we enjoin on public bodies to abide by the law strictly in that challenges are to be replied to by their chief executives, and to avoid 'qualifications or reservations' or similar legalese wording that belong instead to judicial and extra-judicial notices and correspondence. The 'reservation of rights' in the present case worked only to confuse the Applicant which then, understandably, can be taken to have proceeded to await that 'further' reply. When none was forthcoming, the Applicant reckoned the time-limit to enter its application before us from the last day a reply could have been given by the CWA.

Merits

We, now, turn to the crux of the present matter: Conflict of interests. The relevant statutory provisions are to be found at paragraph 73 of the Public Procurement Regulations 2008, which provides as follows:

“73. Avoidance of conflicts of interest in consultant services”

- (1) A consultant shall provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests.*
- (2) No consultant shall be hired for any assignment that would, by its nature, be in conflict with their prior or current obligations to other clients, or that may place him in a position of not being able to carry out the assignment in the best interest of the public body.*
- (3) Without limitation on the generality as provided for in paragraphs (1) and (2), a consultant shall not be hired under the following circumstances -*
 - (a) a firm which has been engaged by the public body to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project;*
 - (b) a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment, other than in the case when, subject to satisfactory performance of the initial assignment, it is essential for continuity that there be a continuation of the firm's earlier consulting services for the same project.*
- (4) Paragraph (3) shall not apply to firms (consultants, contractors, or suppliers) that together are performing the supplier's obligations under a turnkey or design-and-build contract.” (underlining is ours)*

Other than the more standard situations of conflict, such as when the service provider is wearing two or more hats advising different stakeholders in one bidding exercise, subparagraph 3(b) of the regulation targets a specific set of circumstances. A plain reading of these provisions leads to the conclusion that the legislator intends that a service provider who has previously worked in preparation or implementation of a project is to be disqualified from further bidding related to that initial task unless his continued services are essential.

We must state that this question, and related considerations, have been thoroughly assessed by the CWA in these procurement proceedings and it has done so over an extended period of time; and we must admit that the same question has required much anxious consideration by the Panel itself. Why we say so is because the CWA has disqualified a bidder on the same, or similar, basis which other public bodies regularly elect to seek direct procurement from a previous service provider.

On the facts, the events unfolded as follows: GIBB won a previous contract relating to the project and was tasked to define the requirements to be included in the Bidding Documents and GIBB completed its task satisfactorily. The bid was launched or floated and contractors submitted their bids. Another exercise (the one before us now) was launched for a consultant to assess whether the bids of, or more precisely the designs proposed by, contractors for the 'main' parts of the project were feasible and compliant with the requirements set down by GIBB previously. The CWA initially thought of direct procurement in favour of GIBB and proceeded to seek legal advice from a Senior Attorney and the State Law Office. Both sets of advice, we can safely assume, rested on the reading we have given above on paragraph 73(3) of the Regulations. Indeed, so long as the officers of a public body, here the CWA, do not consider the re-selection of the previous service provider as essential, legal advice and interpretation cannot engage the proviso, or exception contained in that paragraph. The officers forming the view that GIBB's presence was not essential, an open bid method was chosen. The CWA was then advised that it could not prevent GIBB from submitting a bid although it was obvious there and then that it would have to disqualify that bidder by operation of paragraph 73(3) of the Regulations.

In more basic procurement exercises, the procurement officers of the public body set down requirements and independent evaluators assess the bids for compliance to those requirements. It is frowned upon, and in many cases unlawful, for those procurement officers to sit as evaluators – thereby ensuring an added layer of independence. In very technically complex exercises, consultants are enlisted to draft the set of requirements or to help in evaluation or both (as is the case here). One may ask whether extreme complexity makes it preferable that the same service provider carries out both tasks.

The legislator, when passing paragraph 73(3) of the Regulations, seems to us to have gone the other way and has applied to complex biddings the same practical restriction applicable to normal bidding processes by requiring the automatic disqualification of a bidder who has performed a previous assignment in the project *en amont*.

GIBB's argument during the hearing to have a narrow interpretation of the phrase 'related to the initial assignment', although carrying some attractiveness, conflicts with the practical application of the statutory provisions. If anything, that phrase must be given as wide a

definition as possible for it to have a purposeful effect – again, here, we bear in mind what obtains in normal bidding processes.

At the other end, we have, however, attempted to give as broad a meaning to the word 'essential' and we must confess that we have not been able to think of sufficient situations where the dictionary meaning of the word would lead to an application of that piece of legislation as intended by Parliament; the adage that no one is truly essential comes to mind. Parliament and the Procurement Policy Office are invited to look into the matter given the need for consistency (even in this case, GIBB did provide evidence that it had once been retained both to draft bidding documents and to assess bids of bidders).

On the facts of this case, the Panel (much like the Senior Attorney and the State Law Office) is bound to the CWA's officers' statement that GIBB was not essential for the continuity of the project and, unless unlawful in the *Wednesbury* sense, no intervention by the Panel is warranted in respect of that decision.

Since GIBB's continued presence was not essential, direct procurement in its favour was not possible, and, by application of paragraph 73(3) of the Regulations, GIBB must be disqualified.

G. Conclusion

In the light of all the above, we find no merit in the present application. It is, therefore, set aside.



J. Ramano
(Chairperson)



A. K Namdarkhan
(Member)



S. Ragoobar
(Member)

Dated: 23rd February 2026

