



Independent Review Panel

Decision No. 05/26

In the matter of:

Water Research Co. Ltd.

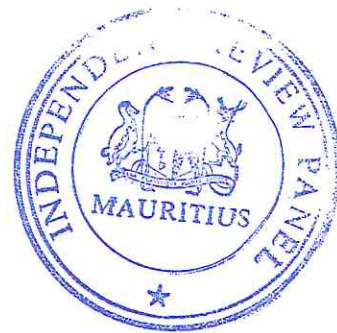
(Applicant)

v/s

Ministry of Energy and Public Utilities

(Respondent)

(Cause No. 04/26/IRP)



Decision

A. History of the case

In November 2025, the Ministry of Energy and Public Utilities (Respondent) invited bids for “Drilling of Boreholes bearing Procurement Ref. No. MEPU/E/ONB/15/25-26.

Bids were invited through Open National Bidding through E-procurement System.

The closing date was on 12th January, 2026.

A sole bid was received from Water Research Co. Ltd (Applicant).

**B. Evaluation**

A Bid Evaluation Committee (BEC) was set up to evaluate the bid, the particulars of which are as follows:-

SNo:	BIDDER NAME	BID VALUE, As Read Out Rs (Exclusive of VAT)
1	Water Research Co. Ltd	22,434,100.00

C. Notification

On 03 February, 2026, the Respondent informed the Applicant (Water Research Co. Ltd.) that an evaluation of its bid has been carried out and that its bid has not been retained for award.

On 05 February, 2026, the Applicant wrote to the Respondent requesting the reasons for the rejection of its bid.

On 06 February, 2026, the Respondent, in reply to the Applicant's letter dated 05 February, 2026 stated the following:-

2. *As per bid requirements, the Site Supervisor shall have at; least five Years experience as Site Agent or Supervisor of works of similar nature and possess at least a Diploma in Civil Engineering.* You have proposed Dr Sebastien Martial as Supervisor who is the holder of PHD in Geology and Hydrogeology, DEA (MSC) Water Sciences, Licence (BSC) Geology, BAC.
3. It is considered that the proposed Supervisor does not meet the requirement in respect of Qualification of Site/Agent. Same has been considered as a major deviation.
4. In addition, it has been observed that the bid documents stipulates that the “*Bidder should possess a Grade Medium 11 or above and class of works: Civil Engineering Construction Works registration certificate with the Construction Industry Authority (CIA)*”. However, you have submitted a certificate of registration with CIA as Grade Medium II for specific works – Geotechnical Investigation Works. Consequently, your firm does not meet the required registration certificate which is also considered as a major deviation.

5. From the above foregoing, your bid is therefore not responsive by virtue of failing to comply with the requirements of the Site Agent/Supervisor and holding a valid registration certificate with CIA as grade Medium II or above and class of works & Civil Engineering Construction Works.

D. Challenge

On 09 February 2026, the Applicant challenged the Respondent's evaluation and the grounds the latter put forward to declare its bid as non-responsive and to reject it.

E. Grounds for Review:

On 20 February, 2026, the Applicant seized the Independent Review Panel for review on the following grounds:-

Applicant's Grounds for Review:

The assessment of the Applicant's bid as presenting a material deviation due to the alleged non-compliance with the requirements of the Site Agent's qualification and the bidder's CIA registration are erroneous and constitute unjustified grounds for the rejection of the Applicant's bid, as morefully detailed in the Statement of Case.

F. The Hearing

The Hearing was held on 13 March, 2026. There is on record a Statement of Case and a Statement of Defence filed by the Applicant and Respondent respectively.

The Applicant was represented by Mrs Natasha Behary Paray and Mr Rouben Mooroongapillay, Counsel, whilst Miss L. Domah, Senior State Counsel, represented the Respondent. Mr Emilio Saldivar, General Manager, deponed as witness for the Applicant, whilst Mr N. Ramsum, Lead Engineer, deponed as witness for the Respondent.

G. Findings

This uncommon case reaches us from an impugned decision by the Ministry of Energy and Public Utilities in procurement proceedings involving a highly specialised field concerning water resources.

The Applicant was the only bidder and held, understandably, a greater expectation to be awarded the contract.

In its essence, the case substantively turns on two matters namely, the fact that the Applicant's Construction Industry Authority ("CIA") registration was not of the appropriate type, and the Applicant's candidate to act as Site Supervisor did not possess the requisite qualifications in terms of the Bidding Documents.

State Counsel for the Ministry also raised a point in law regarding procedural breaches committed by the Applicant in bringing its challenge against the Ministry's decision.

We shall address the issues at play in the above sequence.



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CIA Registration

The question, we find, can be conveniently dealt with by an application of ITB 10(a) of the Bidding Documents.

It reads:

*“valid registration certificate with the CIA under the grade that will enable the contractor to perform the works quoted for, under the following class(es) **Grade Medium II or above and Class of Works: Civil Engineering Construction Works.**”*

We are given to understand that the parts in bold (above) have been added by the Ministry (since a number of years now) thereby modifying the general wording ‘enable the contractor to perform the works quoted for’.

The CIA (formerly the CIDB) registers consultants and contractors under the Construction Industry Authority 2023 under grade and according to class. The classes are to be found in Part II of the Second Schedule to that 2023 Act. It reads as follows:

“PART II – CLASSES OF WORKS OF CONTRACTORS

Building construction works

Civil engineering construction works

Mechanical, electrical and plumbing works

Specific works (works related to any class of works of contractors as the Authority may determine) ”



In the present matter, the Applicant’s CIA registration, and in our view rightly so, was under the ‘Specific Works’ class (**more precisely, for Geotechnical Investigations Works**). The Bid Evaluation Committee, bound as it should by the wording of the Bidding Documents, formed the view that it was not compliant since a registration for the class ‘Civil engineering construction works’ was required. It was deemed to be a major deviation.

Bound as it is by the Supreme Court’s judgment in **SECURICLEAN (MAURITIUS) LTD V THE MINISTRY OF LOCAL GOVERNMENT & OUTER ISLANDS & ORS 2015 SCJ 327** on the assessment of major deviations by public bodies, it is not open to the Panel to interfere with such assessment. However, we may comment and we find, that on the facts of a very limited number of cases, we may question the lawfulness and reasonableness of a requirement *per se*.

In the present matter, the procurement exercise was for drilling of boreholes and it is hardly disputed that the Applicant has the necessary registration (as far as class is concerned) to carry out such geotechnical works.

The Bid Evaluation Committee had to assess the bid as per the criteria set in the Bidding Documents and found as it did purely on that basis. Its chairperson, who testified on behalf of the Ministry, when prompted by the Panel, graciously commented that the requirement in Bidding Documents which he

was bound to apply was not, insofar as the CIA registration is concerned, appropriate and that it, perhaps, should be reviewed in future exercises.

We believe so as well and we may add that the original, general wording we have alluded to above might be more appropriate in such circumstances. Indeed, a quick perusal of the CIA's enabling legislation as passed in 2023 shows that the Authority has the power, and the duty, to devise appropriate classification of contractors and consultants. Other than the three 'headline' classes, we have the undefined 'specific works' which sub-classification rests firmly in the discretion of the Authority.

The circumstances and actors at play can vary widely, and procurement officers cannot be expected to anticipate all the variables while drawing up bidding requirements. One may think of the case of a large company having specialised departments. The large company itself may have one classification at the CIA and the department, had it been a standalone entity, might have been able to secure registration for another class but given that it is only a department, the CIA may or may choose to simply widen its definition, as the regulatory body with full powers to do so, of the large company's own classification to include the specialised or specific class required in any given bidding documents. Similarly, we may think of a specialised company such as the Applicant which has carried on business over generations in Mauritius and has the most appropriate classification but may have its bid rejected by a bid evaluation committee adopting, as it is allowed to do, a literal approach while another committee may adopt a flexible approach. We may comment to say that given the wide discretionary powers of the CIA, perhaps this is one area where flexibility is needed at the level of procurement departments of public bodies.

That flexibility may, perhaps, be reflected by all public bodies in their bidding documents when a CIA classification is necessary, and we may go further and suggest that bid evaluation committees should, in compelling circumstances, engage with the CIA as part of the verification process they ought to carry out when assessing the bid of a bidder.

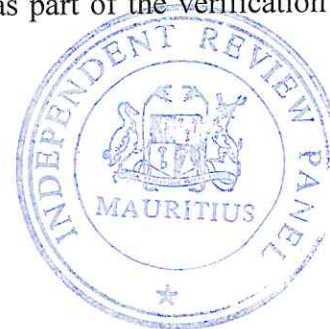
Site Supervisor

This can be expediently dealt with.

At ITB 11(f)(2), a Site Supervisor had to be provided by the bidder for the day-to-day operations. That site supervisor is supposed to have at least a Diploma in Civil Engineering. The employee selected by the Applicant to act as site supervisor possesses the highest level of academic qualifications but in the field of Hydrology.

The Applicant's chief executive, who testified before us, explained that the Company had thought it would have been more suitable to have such a qualified person supervising the site operations instead of one of the many employees it has that hold 'at least' a diploma in Civil Engineering.

We do not doubt that it was an honest mistake and arising from good intentions but, as much as we were prepared to allow for flexibility as with the CIA registration above, we cannot follow the Applicant's argument on the qualifications of the site supervisor proposed. No matter how highly academically qualified a person may be in a field, the requirement was for an employee with basic



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tertiary qualification in civil engineering – to us, the argument seems to be an attempt to fit a round peg in a square hole.

We find that there is no good cause, even if we were empowered so to do, to interfere with the Bid Evaluation Committee's finding that this was a major deviation justifying the rejection of the bid of the Applicant.

Preliminary Point

The Ministry's preliminary point in law is that the Applicant has not complied with the prescribed format set out in the Second Schedule to the Public Procurement Regulations 2008.

We are thankful to counsel on both side for the helpful submissions made on the point.

True it is that the Panel has adopted the *cursus* the Supreme Court and has, sometimes, looked beyond mere procedural flaws by litigants but, we have done so only in strongly deserving cases on their merit.

Conscious of the legal principles in issue and given the fact that such a failure by an applicant is exceedingly rare, if it has happened ever in the past, we are of the opinion that the determination of such a point in law is best left to another day, the moreso that the Applicant's case would not have been successful on its merits.

Bidders are reminded that they must ensure the strictest compliance with the Public Procurement Act 2006 and the Public Procurement Regulations 2008 at both stages of the challenge process, that is, the chief executive of the public body and the Panel.

H. Conclusion

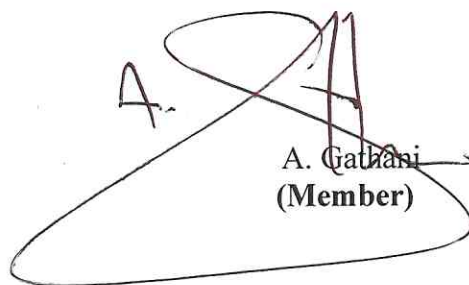
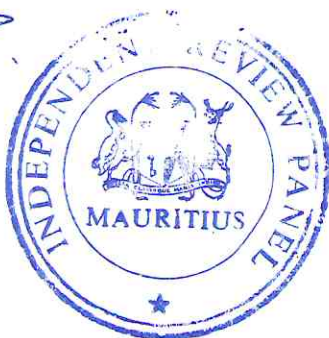
The Application for Review being devoid of merit, we hereby set it aside.



J. Ramano
(Chairperson)



A. K. Namdarkhan
(Member)



A. Gathani
(Member)

Dated: 23 March, 2026