

Independent Review Panel

Decision No. 17/26

In the matter of:

Sotravic Ltée

(Applicant)

v/s

**Ministry of Environment, Solid Waste Management and
Climate Change
(Solid Waste Management Division)**

(Respondent)

(Cause No. 27/26/IRP)



Decision

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A. History of the case

On 23 March 2026, the Ministry of Environment, Solid Waste Management and Climate Change (Solid Waste Management Division) (Respondent) proceeded with an Open National Bidding (Online) for the Operation and Maintenance of La Chaumière Transfer Station and Transportation of Wastes from La Chaumière Transfer Station to Mare Chicose Landfill for a period of five (5) months – Procurement Reference No.: ENV/SWM/PROC/ONB/41/2025-2026 E-Procurement Reference No. SWMD/IFB/2026/212.

The closing date for submission of bids was 17 April 2026.

Three (3) bids were received. The Applicant (Sotravic Limitée) 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 of Award

On 24 July 2026, the Respondent informed the Applicant that an evaluation of the bids received had been carried out and that its bid had not been retained. The particulars of the Successful Bidder are as given hereunder:

Bidder	Address	Contract Price (MUR)
ATICS LTD	Allée des Manguiers, Pâilles	Rs 68,350,000.00 (Rupees Sixty Eight Million and Three Hundred and Fifty Thousand only) excluding VAT and Including Provisional Sum of Rs 2000,000.00 (Two Million Only).

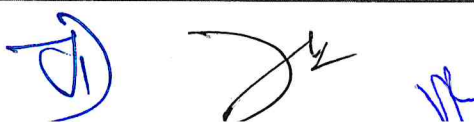
D. Challenge

On 30 July 2026, the Applicant challenged the opening of bids on grounds which are reproduced below:

Bidder's grounds for challenge:

Regarding Act or Omission 1:

1. The principles to be followed for the evaluation of bids are essentially given under ITB 32 [Evaluation and Comparison of Bids] which references ITB 29[Examination of Bids and

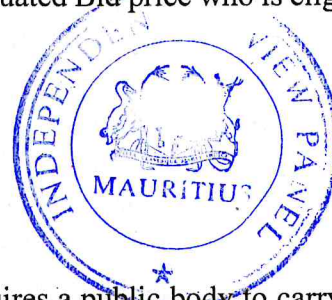


Determination of Responsiveness] ITB 5 [Eligible Bidders]. ITB 6 [Qualification of the Bidder] and ITB 30[Correction of Errors] also detail procedural steps.

2. Sotravic Limitée submitted the lowest Bid Price at MUR 51,799,885 which is less than the bid price of ATICS LTD by MUR 16.6 million. (Annex A refers)
3. In submitting its bid, Sotravic Limitée met the prerequisites for the bid to progress to detailed evaluation as per ITB 29.1, namely Sotravic Limitée meet the eligibility criteria as per ITB 5, the bid included the required security and, Sotravic Limitée having extensive experience in such bids, was a conforming bid.
4. Sotravic Limitée was not requested to confirm the correction of any arithmetical error under ITB30 [Correction of Errors], made no proposal for variation, deviation or alternate offer or extended any discount so that his evaluated bid price as per the provisions of ITB 32 [Evaluation and Comparison of Bids] is its bid Price of MUR 51,799,885 reported at opening.
5. The Notification to Other Bidders dated 24 July 2026 indicates that the evaluated Bid Price of ATICS LTD is same as stated in the opening report, i.e. MUR 68,350,000. (Annex B refers).
6. In furtherance of ITB 32 [Evaluation and Comparison of Bids], it is Sotravic's Bid Price of MUR 51,799,885 which is the lowest evaluated Bid price because the evaluated Bid Price of ATICS LTD is more than MUR 16 M higher than Sotravic's.

Regarding Act or Omission 2:

7. Sotravic Limitée's bid price is the lowest evaluated Bid Price as per paragraph 6 above and it meets the eligibility criteria given in ITB 5 as per paragraph 3 above.
8. Sotravic Limitée is qualified as per the provisions of ITB Clause 6.
9. There is no lawful reason for reasonably exercising the Employer's Right to accept or reject any bid and reject Sotravic Limitée's Bid as given under ITB 35.1.
10. In the application of ITB 34 [Award Criteria], Sotravic Limitée is to be selected as successful bidder to be awarded the Contract considering specifically that ITB Clause 34.1 provides that the Contract will be awarded to the responsive Bidder offering the lowest evaluated Bid price who is eligible and qualified as per ITB 5 and 6 respectively.



Regarding Act or Omission 1:

11. Regulation 34 of the Public Procurement Regulations 2008 requires a public body to carry out the examination and evaluation of bids promptly and in an efficient manner, having regard to the validity period of the bids.
12. Bids were opened on 17 April 2026 (Annex A), yet the Notification to Other Bidders was issued only on 24 July 2026 (Annex A), yet the Notification to Other Bidders was issued only on 24 July 2026 (Annex B), fourteen weeks after bid opening.

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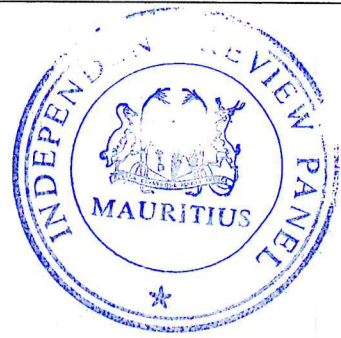
13. The delay was such that the Public Body requested, by letter dated 8 July 2026 (Annex C), that Sotravic Limitée extend the validity of its bid by a further sixty (60) days, the original validity period being due to expire on 16 July 2026.
14. Having regard to the nature of the procurement and the applicable award criterion under ITB 34.1, the examination and evaluation of bids ought reasonably to have been completed within the original validity period. The need to seek an extension of bid validity is itself indicative of a failure to comply with the standard of promptness and efficiency prescribed by Regulation 34.
15. The delay constitutes a breach of Regulation 34 and casts doubt on the diligence and efficiency with which the procurement proceedings were conducted.

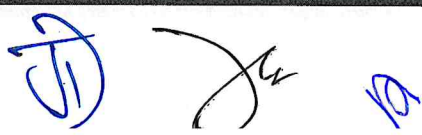
Regarding Act or Omission 4:

16. On a proper evaluation of the bids received, and upon a proper application of the Public Procurement Act 2006 and PPO Directives, the particulars of the successful bidder should have been Sotravic Limitée.
17. In the light of Sotravic's bid MUR 51,799,885, the bid of ATICS LTD MUR 68,350,000 is strikingly overpriced and should have disqualified ATICS LTD from being the proposed successful bidder for the purpose of section 40(3) of the Public Procurement Act.

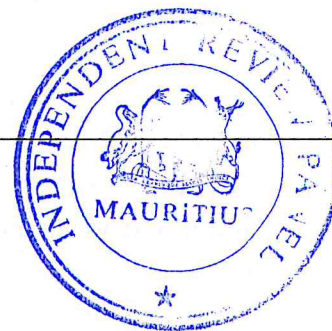
E. Reply to Challenge:

On 05 August 2026, the Respondent, in reply to the challenge of the Applicant, stated that:-

Para	Sotravic Limitée	Comments from Ministry
8	Bidder's grounds for challenge: Regarding Act or Omission 1:	
1	The principles to be followed for the evaluation of bids are essentially given under ITB 32 [Evaluation and Comparison of Bids] which references ITB 29[Examination of Bids and Determination of Responsiveness] ITB 5 [Eligible Bidders]. ITB 6 [Qualification of the Bidder] and ITB 30[Correction of Errors] also detail procedural steps.	Noted 
2	Sotravic Limitée submitted the lowest Bid Price at MUR 51,799,885 which is less than the bid price of ATICS LTD by MUR 16.6 million. (Annex A refers)	Noted – However, commercial offers of substantially responsive bids are compared



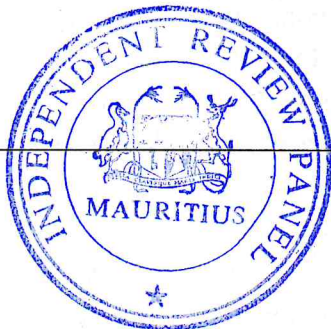
3	In submitting its bid, Sotravic Limitée met the prerequisites for the bid to progress to detailed evaluation as per ITB 29.1, namely Sotravic Limitée meet the eligibility criteria as per ITB 5, the bid included the required security and, Sotravic Limitée having extensive experience in such bids, was a conforming bid.	Noted
4	Sotravic Limitée was not requested to confirm the correction of any arithmetical error under ITB30 [Correction of Errors], made no proposal for variation, deviation or alternate offer or extended any discount so that his evaluated bid price as per the provisions of ITB 32 [Evaluation and Comparison of Bids] is its bid Price of MUR 51,799,885 reported at opening.	No arithmetical error was noted regarding the bid price at opening and during the evaluation exercise.
5	The Notification to Other Bidders dated 24 July 2026 indicates that the evaluated Bid Price of ATICS LTD is same as stated in the opening report, i.e. MUR 68,350,000. (Annex B refers).	Noted
6	In furtherance of ITB 32 [Evaluation and Comparison of Bids], it is Sotravic's Bid Price of MUR 51,799,885 which is the lowest evaluated Bid price because the evaluated Bid Price of ATICS LTD is more than MUR 16 M higher than Sotravic's.	Even though the bid price of Sotravic LTee was lowest, yet the bidder did not satisfy the mandatory requirements of the Bidding Document.
8	Bidder's grounds for challenge: Regarding Act or Omission 2:	
7	Sotravic Limitée's bid price is the lowest evaluated Bid Price as per paragraph 6 above and it meets the eligibility criteria given in ITB 5 as per paragraph 3 above.	Not agreed-The bid was determined to be non-responsive as it did not meet the requirement under ITB 6.5 (c)(I)(a)(ii), particularly submission of a copy of lease agreement with owner or an undertaking from the owner to lease for this tender exercise, which constitutes a qualifying requirement intended to demonstrate the bidder's capacity and resources for the contract performance.
8	Sotrevic Limitée is qualified as per the provisions of ITB Clause 6.	Not agreed-The bid was determined to be non-responsive as it did not meet the requirement under ITB 6.5 (c)(I)(a)(ii), particularly submission of a copy of lease agreement with owner or an undertaking from





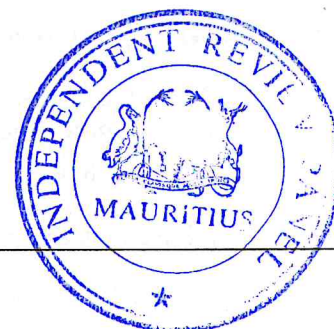


		the owner to lease for this tender exercise, which constitutes a qualifying requirement intended to demonstrate the bidder's capacity and resources for the contract performance.
9	There is no lawful reason for reasonably exercising the Employer's Right to accept or reject any bid and reject Sotravic Limitée's Bid as given under ITB 35.1.	The disqualification of the bid of Sotravic Ltée was based on non-compliance to ITB 6.5 (c)(I)(a)(ii), particularly submission of a copy of lease agreement with owner or an undertaking from the owner to lease for this tender exercise.
10	In the application of ITB 34 [Award Criteria], Sotravic Limitée is to be selected as successful bidder to be awarded the Contract considering specifically that ITB Clause 34.1 provides that the Contract will be awarded to the responsive Bidder offering the lowest evaluated Bid price who is eligible and qualified as per ITB 5 and 6 respectively.	The bid was considered as non-responsive as it did not meet the requirement under ITB 6.5 (c)(I)(a)(ii), particularly submission of a copy of lease agreement with owner or an undertaking from the owner to lease for this tender exercise, constituting a qualifying criteria in line with Directive No. 3 of the PPO.
8	Bidder's grounds for challenge: Regarding Act or Omission 3:	
11	Regulation 34 of the Public Procurement Regulations 2008 requires a public body to carry out the examination and evaluation of bids promptly and in an efficient manner, having regard to the validity period of the bids.	Noted
12	Bids were opened on 17 April 2026 (Annex A), yet the Notification to Other Bidders was issued only on 24 July 2026 (Annex A), yet the Notification to Other Bidders was issued only on 24 July 2026 (Annex B), fourteen weeks after bid opening.	Noted- The bid was closed on 17 April 2026 and opened on 20 April 2026. On 21 April 2026, Atics Ltd made an application for review at the Independent Review Panel (IRP) and the procurement proceedings were suspended on 12 May 2026. The IRP concluded that there was no merit in the application for review made by Atics Ltd since the bids were not evaluated and the applicant could not claim to have suffered any loss or injury. The application was set aside on 27 May 2026 and consequently, the suspension was revoked on 09 June 2026.






13	The delay was such that the Public Body requested, by letter dated 8 July 2026 (Annex C), that Sotravic Limitée extend the validity of its bid by a further sixty (60) days, the original validity period being due to expire on 16 July 2026.	Noted
14	Having regard to the nature of the procurement and the applicable award criterion under ITB 34.1, the examination and evaluation of bids ought reasonably to have been completed within the original validity period. The need to seek an extension of bid validity is itself indicative of a failure to comply with the standard of promptness and efficiency prescribed by Regulation 34.	Not agreed – There was delay induced from statutory disposition i.e suspension of procurement proceedings by the IRP.
15	The delay constitutes a breach of Regulation 34 and casts doubt on the diligence and efficiency with which the procurement proceedings were conducted.	Not agreed – There was delay induced from statutory disposition i.e suspension of procurement proceedings by the IRP.
8	Bidder's grounds for challenge: Regarding Act or Omission 4:	
16	16. On a proper evaluation of the bids received, and upon a proper application of the Public Procurement Act 2006 and PPO Directives, the particulars of the successful bidder should have been Sotravic Limitée.	Not agreed – The bid of Sotravic Ltee was not substantially responsive and was rejected.
17	In the light of Sotravic's bid MUR 51,799,885, the bid of ATICS LTD MUR 68,350,000 is strikingly overpriced and should have disqualified ATICS LTD from being the proposed successful bidder for the purpose of section 40(3) of the Public Procurement Act.	Not agreed



F. Grounds for Review:

On 11 August 2026, the Applicant seized the Independent Review Panel for review on the following grounds:-

Ground 1: The public body confused qualification with responsiveness

The public body erred in law by treating an alleged ITB 6.5(c)(I)(a)(ii) shortcoming as "non responsiveness" while itself describing it as a "qualifying requirement".

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It is the Applicant's case that –

- (a) Responsiveness is distinct from qualification;
- (b) the documentation was adequate (Ground 2) or at most a curable minor omission requiring written clarification under Directive No. 3 and ITB 28 (Grounds 3 and 4) before the lowest bid could be discarded.

Ground 2: Wrong interpretation of ITB 6.5(c) (owned versus hired; "owner")

The public body erred in its construction of ITB 6.5(c), and reached a conclusion no reasonable decision-maker could reach. The Bidding Documents expressly allow trailers to be owned and hired. Of the trailers proposed, the Applicant owns three (3). For the remainder it lodged an undertaking from Convoi de l'Extrême. Any documentary concern as to lease / ownership called for written clarification before excluding the lowest bid, none was sought.

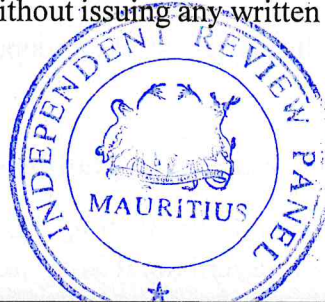
Ground 3: Failure to apply Directive No. 3 and to afford an opportunity to cure

The public body invoked Directive No. 3 to support rejection of the Applicant's bid, yet Directive No. 3 Guideline (v) treats documents related to qualifications and the list of equipment to be mobilised as minor omissions requiring a request for rectification. Having cited Directive No. 3, the public body cannot consistently deny its cure principle for the same class of documentation. No written request was made under Directive No. 3 or ITB 28.

Ground 4: Failure to clarify in writing contrary to ITB 28

It is the Applicant's case that the public body failed to follow the correct procedure. According to the reply from the Public body, the bid was overlooked by reference to ITB 6.5(c)(I)(a)(ii). It is the Applicant's case that –

- (a) Hire is permitted under the Bidding Documents.
- (b) ITB 28.1 requires any clarification request to the Bidder to be in writing via e-mail or facsimile;
- (c) The Ministry reached its conclusion without issuing any written clarification to the Applicant;
- (d) That decision was unlawful.



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Ground 5: Failure to evaluate and identify the successful bidder in accordance with law

The public body acted in breach of sections 37(9) and 40(1) of the Public Procurement Act and ITB 32/ 34.1. Having accepted that the Applicant's price was the lowest, it compared only "substantially responsive" offers after unlawfully and wrongfully reaching the conclusion that the Applicant's bid was nonresponsive.

On a proper evaluation, including any lawful clarification of non-material documentary matters, the Applicant ought to have been identified under section 40(3) of PPA 2006, or such other lawful outcome as follows from proper evaluation under sections 38 and 40(1) of the Public Procurement Act.

Ground 6: Failure to evaluate promptly contrary to Regulation 34

The public body failed to properly consider and apply Regulation 34 of the Public Procurement Regulations.

The suspension order from the IRP which was in force from 12 May to 09 June 2026 cannot explain the post-suspension gap to 24 July 2026, the validity extension of 08 July 2026, or the failure to seek written clarification from the Applicant before overlooking the lowest bid.

Ground 8: Failure to give adequate reasons/ failure to address material grounds

The decision from the Public body dated 05 August 2026 fails to give adequate reasons and fails to address material grounds raised in the Challenge.

Ground 9: Breach of the statutory procurement principles

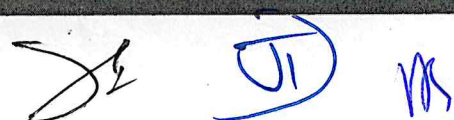
Section 11(2) of the Public Procurement Act requires the highest standards of transparency and equity, taking into account equality of opportunity, fairness of treatment, transparency, and the need to obtain the best value for money in terms of price, quality and delivery, having regard to set specifications.

Identifying ATICS LTD at a price MUR 16,550,115.00 higher, after unlawfully excluding the lowest bidder without written clarification, is irrational, unfair, arbitrary and/or ultra vires, and contrary to those principles, in particular best value for money. Full particulars of each Ground are set out in the Statement of Case accompanying this Application under section 45(2A)(a), which forms part of this Application.



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G. The Hearing

The hearing was held on 02 September 2026. The Applicant, the Respondent and the Successful Bidder were all represented by counsel. Mr D. Dian appeared for the Applicant, whilst Mrs P. Dunpath appeared for the Respondent, instructed by the Senior State Attorney. Mr Sydamah appeared for the Successful Bidder, ATICS LTD.

There were on record the Application for Review, the Applicant's Statement of Case and supporting documents, the Respondent's Statement of Defence and the Applicant's Reply thereto. The Panel also had before it the procurement documents supplied by the Respondent pursuant to its directions.

The Panel notes that the Respondent filed its Statement of Defence outside the period prescribed under Regulation 55(1) of the Public Procurement Regulations 2008. The Applicant raised no objection to the same being considered. In fact, the Applicant filed a substantive Reply thereto. Regulation 53(3) permits the Panel to request or allow additional statements as may be necessary for the fair resolution of an application for review. In these circumstances, and having regard to the opportunity afforded to the Applicant to answer the Respondent's case, the Panel accepted the Statement of Defence in the interests of a fair determination of the application.

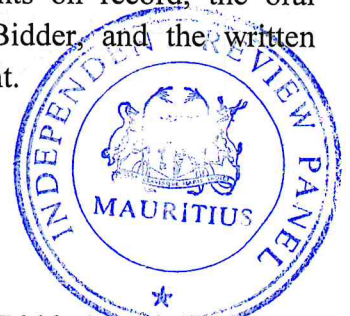
At the outset of the hearing, counsel for the Applicant expressed the view that, in light of the Statement of Defence and the Applicant's Reply, the relevant facts were already before the Panel and it was unnecessary for the Applicant's representative to depone. Counsel for the Respondent agreed that oral evidence was unnecessary, the Panel having already received the documents it had requested. It was accordingly agreed that the application would be determined on the basis of the documentary record and the parties' submissions.

The Applicant elected to rely on written submissions, which were filed at the hearing. The Respondent made oral submissions and provided its speaking notes. With no objection from the Applicant or the Respondent, counsel for the Successful Bidder was also permitted to make submissions confined to questions of law. The parties were afforded an opportunity to file further written submissions in reply by 4 p.m. on 03 September 2026.

In determining the application, the Panel has considered the documents on record, the oral submissions made on behalf of the Respondent and the Successful Bidder, and the written submissions and replies filed on behalf of the Applicant and the Respondent.

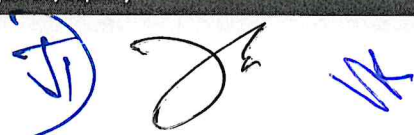
H. Findings

The Applicant's price was MUR 51,799,885.00 and the Successful Bidder's price was MUR 68,350,000.00. The Applicant's price was therefore the lowest, by MUR 16,550,115.00 compared with the Successful Bidder.



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Under ITB 6.5(c)(I)(a)(ii), bidders were required to supply details of the proposed truck trailers, including registration, capacity and current deployment. For hired equipment, the stipulated documents included a copy of a lease agreement with the owner or an undertaking from the owner to lease for this tender exercise. Note (i) specified eight truck trailers as a reference and invited bidders to optimise their resources.

The Applicant submitted an equipment schedule identifying three truck trailers as owned and five further trailers to be hired through a third-party entity, Convoi de l'Extrême. It also submitted registration documents for the vehicles and a letter from Convoi de l'Extrême dated 30 March 2026, identifying the proposed vehicles and expressing agreement to hire them to the Applicant should the latter obtain the contract. Following its evaluation, the BEC was not satisfied that the letter from Convoi de l'Extrême met the requirements of ITB 6.5(c)(I)(a)(ii), and determined the Applicant's bid to be non-responsive.

By notification dated 24 July 2026, ATICS LTD was identified as the proposed Successful Bidder.

Under its eight grounds of review (numbered in the Application as Grounds 1 to 6, 8 and 9), the Applicant advances four propositions that it has usefully set out in its written submissions. The Panel proceeds to address the grounds of review as they arise under these four propositions.

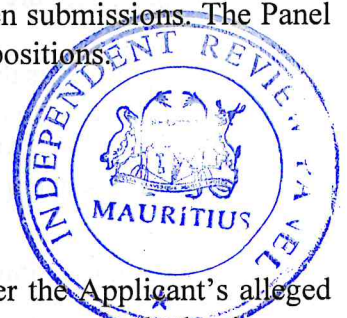
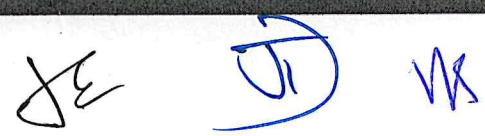
The Applicant's First Proposition

The first proposition, which is advanced under Ground 1, relates to whether the Applicant's alleged shortcoming was a qualification matter or a responsiveness one. The Applicant contends that it was a qualification matter, which may accordingly have been addressed through post-qualification or clarification, and not a responsiveness matter. Accordingly, the Applicant submits that the Respondent confused qualification with responsiveness by describing the requirement under ITB 6.5(c)(I)(a)(ii) both as a qualifying requirement and as a matter of responsiveness. The Respondent maintains that the requirement concerned the Applicant's capacity and resources to perform the contract.

The Panel has examined the Bidding Documents and notes the following:

(i) ITB 10.2 states: *"The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents"*. It then cautions: *"Failure to furnish all information required by the bidding documents or to submit a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid."*

(ii) ITB 6.5(c) begins with the following wording: *"The bidder shall demonstrate the deployment of the following minimum equipment:"* Under *"(I) Vehicles"*, it identifies *"(a) Truck trailers (compulsory)"*. The provision is detailed and expressly requires the submission of information and documents relating to the proposed vehicles, including: *"a copy of lease agreement with owner or an undertaking from the*

owner to lease for this tender exercise.” The requirement is also reproduced under section 3.4 of the Bidding Documents, headed “*Technical Compliance*”.

(iii) ITB 29.1 provides: “*Prior to the 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.*”

(iv) ITB 29.2 provides: “*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.*”

(v) ITB 29.3 provides: “*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.*”

(The underlinings are ours and added for emphasis.)

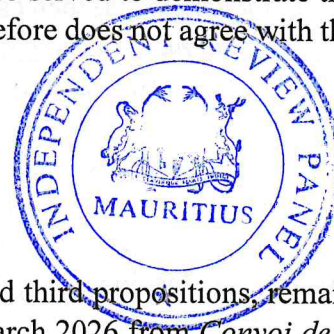
The first question is therefore whether a failure to provide documents expressly required by the Bidding Documents may constitute an issue of responsiveness. Plainly, on the terms of those documents, it can. ITB 29.1 and ITB 29.2 require conformity with the requirements of the Bidding Documents, which include the stipulated documentation concerning the proposed trailers. That approach is consistent with section 37(9) of the Public Procurement Act, which requires bids to be evaluated according to the criteria and methodology set out in the bidding documents.

The fact that the requirement also concerns the bidder’s qualifications does not, by itself, exclude it from the examination of responsiveness. Section 38 provides for the checking of the qualifications of the lowest evaluated substantially responsive bidder where there has been no prequalification procedure. It does not follow that a documentary requirement concerning capacity or resources cannot also bear upon whether the bid is substantially responsive. Indeed, the definition of a responsive bid under section 2 of the Act refers to the basic requirements of a bid regarding the ability to perform and complete on time.

The Panel therefore does not accept that the Respondent necessarily erred by treating the deficiency as an issue of responsiveness merely because the requirement also served to demonstrate the Applicant’s capacity and resources to perform the contract. The Panel therefore does not agree with the Applicant’s first proposition.

The Applicant’s Second and Third Propositions

In any event, as the Applicant itself identifies in its second and third propositions, remain whether the Respondent was wrong to consider that the letter dated 30 March 2026 from *Convoi de l’Extrême* did



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not meet the requirements of ITB 6.5(c)(I)(a)(ii), whether that deficiency rendered the Applicant's bid non-responsive within the meaning of ITB 29.2, and whether the Applicant should have been given an opportunity to clarify or rectify it. These are matters arising under Grounds 2 to 5 and 9. To the extent that Ground 1 also challenges the significance attributed to the missing documentation, it must be considered together with those issues, rather than resolved by terminology alone.

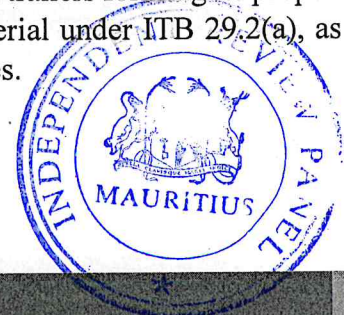
At this juncture, the Panel considers it relevant to refer to the judgment of the Supreme Court in **Securiclean (Mauritius) Ltd v The Ministry of Local Government & Outer Islands & Anor (2015) SCJ 327**. In that case, the prospective bidders were enjoined to submit their quotations in compliance with Clause 6.5(e) of the ITB. Securiclean (Mauritius) Ltd submitted a Bank Testimonial which was taken to be not in conformity with the tender specification. The Applicant sought to argue that its non-compliance with ITB 6.5(e) constituted a minor deviation capable of subsequent rectification. The Supreme Court declined to substitute its assessment for that of the second respondent, stating:

"It was for the second respondent to decide in its discretion whether or not to allow the applicant to rectify its omissions or whether to award the contracts to co-respondent no. 1 by accepting the latter's bid and rejecting that of the applicant. We cannot substitute ourselves for the second respondent whose role is to examine the tenders and decide whether in view of the provision of instruction 6.5(e) non-compliance thereof constituted a minor deviation which could be subsequently rectified, or whether by allowing the applicant to conform with the tender specification any prejudice would have been caused to the other bidders whose bids were retained when the tenders were opened, and against whom the applicant had nothing adverse to say save for the fact that their bids were higher than its own".

The Panel's task therefore is not to undertake afresh the assessment under ITB 29.2 of whether the deficiency constituted a material deviation, or to substitute its own assessment for that of the BEC merely because a different view might have been possible. Its task is to examine whether the BEC assessed the deficiency by reference to the correct test and whether, on the material before it, its conclusion that the deviation was material was one which was open to it.

The documents requested were a copy of a lease agreement with the owner or an undertaking from the owner to lease for this tender exercise. Neither was submitted in respect of the five trailers proposed to be hired through *Convoi de l'Extrême*.

The Respondent submits that the requirement was intended to establish that the proposed equipment could be made available for the contract. In the absence of an agreement or undertaking from the owners, the Applicant had not demonstrated the requisite access to five of the eight trailers forming its proposed fleet. The Respondent accordingly contends that the deficiency was material under ITB 29.2(a), as it affected in a substantial way the performance of the transportation services.



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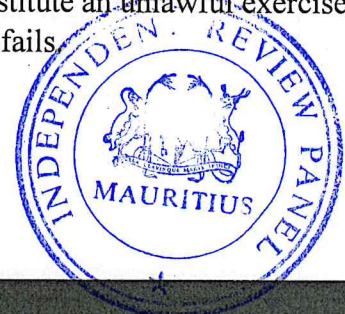
The Applicant maintains that the equipment schedule, registration documents and *Convoi de l'Extrême*'s letter sufficiently established the proposed hiring arrangement. It argues that a hire company may lawfully supply vehicles registered to other persons and that the absence of ownership does not establish an absence of authority to hire them out. Alternatively, it submits that any missing supporting documentation was a minor omission under Directive No. 3 and could have been requested to confirm the existing arrangement, without changing the proposed vehicles, price or substance of its bid.

The difficulty for the Applicant is that the arrangements relied upon must be established rather than presumed. This is precisely what a lease agreement or undertaking would have confirmed. The registration documents identified owners other than *Convoi de l'Extrême* and it did not itself demonstrate that these owners had committed their vehicles. The further difficulty is that the requirement in ITB 6.5(c)(I)(a)(ii) was clear, and if there would have been no real impediment to providing the relevant documentation to meet its requirements, it begs the question why such documentation, which were expressly called for in the Bidding Documents, was not actually provided in the first place.

Bidders need not be reminded that it is their responsibility to acquaint themselves with the requirements of the bidding documents to ensure that their bids comply with them. A bidder who does not attend to that task diligently exposes itself to the risk of rejection of its bid. It cannot proceed on the assumption that the public body is obligated to invite it to remedy any deficiency before reaching its decision. This caution is expressly set out in the Bidding Documents at ITB 10.2, as mentioned above.

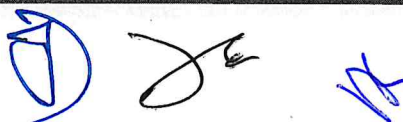
The Panel has accordingly considered the BEC's Report and is satisfied that the BEC approached the question as it ought to have, and that its conclusion was one that was open to it under ITB 29.2. Bearing in mind the caution in **Securiclean (Mauritius) Ltd** (*supra*), the Panel finds no basis to interfere with that determination.

It follows that the Respondent was not under an obligation to afford the Applicant an opportunity to remedy the deficiency. ITB 28.1 confers a discretion on the Employer to seek clarification in writing for the purpose of examining or evaluating a bid. That power does not confer a general right on a bidder to supply, after the closing date, an express document required by the bidding documents where the absence of that document constitutes a material deficiency. ITB 28.1 is consistent with section 37(1) of the Act, which permits clarification but does not authorise a change to the substance of the bid. The Panel does not consider that ITB 28.1 can be used to permit a bidder to repair or complete an essential requirement which had not been satisfied at the time of submission. The failure to invite the Applicant to submit further documentation has therefore not been shown to constitute an unlawful exercise of the Respondent's powers. The Applicant's third proposition accordingly fails.



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The Applicant's Fourth Proposition

Under its fourth proposition, the Applicant contends that the Respondent has not shown that the determination it now defends was the contemporaneous, independent determination of the BEC, rather than a rationalisation constructed after the event for the purposes of the challenge and this review. The material before the Panel shows that the conclusion defended by the Respondent corresponded to the deficiency identified in the bid and to its significance for the Applicant's proposed means of performance. The Respondent's submissions explain the basis of the BEC's determination and do not introduce a new ground of rejection. The Applicant's fourth proposition accordingly fails.

In light of what precedes, the Panel can dispose of Grounds 1 to 5 and 9 briefly.

The Panel finds that Ground 1 has no merit as a failure to provide documents expressly required by the Bidding Documents may constitute an issue of responsiveness.

Under Ground 2, the Respondent did not require lease agreements for the Applicant's own trailers. The deficiency concerned the five trailers that were proposed to be hired, in respect of which the documents submitted did not establish compliance with the owner-document requirement under ITB 6.5(c)(I)(a)(ii). Ground 2 fails.

Grounds 3 and 4 concern the alleged obligation to permit rectification or seek written clarification. For the reasons given in addressing the Applicant's second and third propositions, the Applicant has not established that the deficiency had to be treated as minor or that the Respondent was obliged to invite further documentation before rejecting the bid. Grounds 3 and 4 fail.

Under Ground 5, the Applicant challenges its exclusion from the comparison of bids and the resulting identification of ATICS LTD as the proposed Successful Bidder. That complaint depends upon establishing that its bid was unlawfully rejected. The Panel has not found that premise established. The fact that the Applicant's price was the lowest does not, by itself, entitle it to selection under the applicable award criteria. Ground 5 fails.

The complaint under Ground 9 similarly rests on the alleged unlawfulness of the Applicant's exclusion and the failure to seek clarification. The difference of MUR 16,550,115.00 between the Applicant's price and that of ATICS LTD is substantial. The price difference does not displace the requirements governing responsiveness and qualification. No separate basis for finding a breach of those principles has been established. Ground 9 fails.



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There remain Grounds 6 and 8, concerning the time taken to evaluate the bids and the adequacy of the reasons given in reply to the challenge.

Under Ground 6, the Applicant relies on Regulation 34, which requires the examination and evaluation of bids to be carried out promptly and efficiently, having regard to bid validity. However, the elapsed time and the need to extend validity do not, without more, establish that the examination and evaluation were conducted contrary to the prescribed standard. Ground 6 fails.

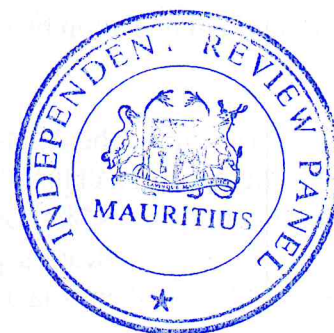
Under Ground 8, the Applicant submits that the decision dated 05 August 2026 failed to give adequate reasons or address material grounds of its challenge. The Panel notes that the decision on the challenge identified ITB 6.5(c)(I)(a)(ii) and stated that the required lease agreement with the owner or undertaking from the owner had not been submitted, and explained that the requirement concerned the bidder's capacity and resources for performance. The determinative basis of rejection was therefore identified. The Panel is accordingly not persuaded that the decision on the challenge failed to give adequate reasons in the circumstances. Ground 8 fails.

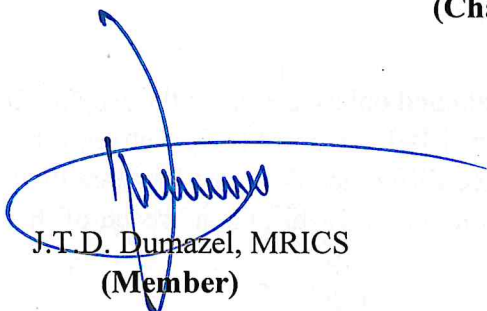
I. Conclusion

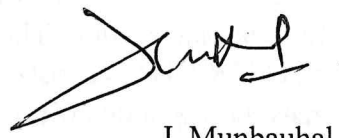
For the reasons set out above, the Panel finds no merit in any of the grounds of review. The Application for Review is accordingly dismissed.

Pursuant to section 45(3)(d) of the Public Procurement Act, 50 per cent of the security deposit paid by the Applicant shall be forfeited. The remaining 50 per cent shall be returned to the Applicant. The processing fee paid under Regulation 51(1)(b) remains non-refundable.


V.J. Reddi
(Chairperson)




J.T.D. Dumazel, MRICS
(Member)


J. Munbauhal
(Member)

Dated: 08 September 2026