



Independent Review Panel

Decision No. 10/20

In the matter of:

Frankipile (Mauritius) International Limited

(Applicant)

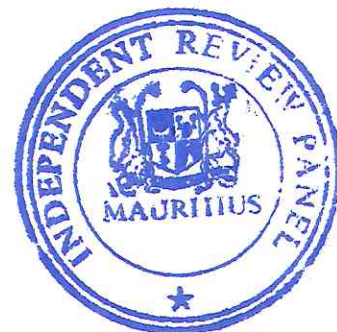
v/s

Road Development Authority

(Respondent)

(Cause No. 14/20/IRP)

Decision



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A. History of the case

The Road Development Authority (RDA) invited Bids from eligible and qualified bidders for the Design-Build/Turnkey for Countermeasure Works to Slope Failure at Batelage, Souillac. (Procurement Reference No: **E/W/RDA/25/02-2020**) on 19th February 2020.

The initial closing date of 8th June 2020 was first extended to 22nd June 2020 and finally to 20th July 2020. Bids were received from the following three bidders:

1. Gamma – Geovert Batelage Slope Stabilisation JV – Rs. 88,046,096
2. Sotravac Limitee – Rs. 83,074,764
3. Frankipile (Mauritius) International Ltd. - Rs. 96,280,300

B. Evaluation

Following opening of the Bids on 22nd July 2020, the Public Body (RDA) constituted a three member Bid Evaluation Committee (BEC) for evaluation of the Bids.

C. Notification of Award

On 6th October 2020, the Public Body in response to the Invitation for Bids informed the Applicant, that an evaluation of the bids received has been carried out and the particulars of the successful bidder are as mentioned below:

<i>Name of Bidder</i>	<i>Address</i>	<i>Price</i>
SOTRAVIC LIMITEE	Industrial Zone La Tour Koenig	MUR 83,074,764.00 (Excl. of VAT)

D. The Challenge

On 12th October 2020, the Applicant challenged the procurement on the following grounds:

“(A) THE BID OF THE SUCCESSFUL BIDDER OUGHT TO HAVE BEEN REJECTED AS ITS BID DOES NOT SATISFY AND MEET MANDATORY REQUIREMENTS AND MINIMUM EXPERIENCE CRITERIA PROVIDED UNDER 2.4.2(a) and 2.4.2(b) OF THE BID DOCUMENT, PARTICULARLY SECTION III. EVALUATION AND QUALIFICATION CRITERIA.

- (i) 2.4.2(a) reads as follows:- *Specific Experience – Participation as Contractor, management contractor, or subcontractor, in at least one contract with the last 10 years, each with a value of at least Rs.15Million, that have been successfully, and substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods/technology or characteristics as described in Section V, Employer’s Requirements*
- (ii) 2.4.2(b)(1) reads as follows :- *for the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities:-*
1. *Slope stabilization works height of at least 10M height involving cutting/re-profiling, protection of slopes, construction of retaining structures and drains, etc.*
- (B) *SOTRAVIC LTEE HAS NOT PERFORMED SIMILAR WORKS AS DESCRIBED IN PART 2 – EMPLOYER’S REQUIREMENTS – PART A Introduction and Definitions – 1.3 Project Description – Earthworks/Re-profiling works (if needed) provision of earth retaining structures/rehabilitation/retrofitting/strengthening of existing retaining structures; Stabilisation of approximately 280 M stretch of the escarpment as per location shown in drawings.*
- (C) *THE BID OF THE SUCCESSFUL BIDDER OUGHT NOT HAVE BEEN CONSIDERED INASMUCH AS IT DOES NOT MEET THE ABOVE MANDATORY REQUIREMENTS.*
- (D) *FRANKIPILE (MAURITIUS) INTERNATIONAL LIMITED OUGHT TO HAVE BEEN SELECTED FOR AWARD OF THE SAID TENDER IN THE CIRCUMSTANCES.”*



E. The Reply to Challenge

On 15th October 2020, the Public Body made the following reply to the challenge and stated that:

“The reasons for notification for award to Sotravac Ltee are as follows:

At bid opening on 22 July 2020, three bids were received namely:-

SN	Bidder	Bid Price Excluding VAT (MUR)
1.	<i>Gamma – Geovert Batelage Slope Stabilisation JV</i>	88,046,096.00
2.	<i>Sotravac Limitee</i>	83,074,764.00
3.	<i>Frankipile (Mauritius) International Ltd</i>	96,280,300.00

In reply to 8A (i) & (ii)

As a result of the bid evaluation carried out it was found that the bid of Sotravac Limitee was substantially responsive to the requirement of the Bidding Document inter-alia Sub Factors 2.4.2(a) and 2.4.2(b)(1) at Section III – Evaluation and Qualification Criteria.

In reply to 8B

Sotravac Ltee has submitted documentary evidence that it has performed works of similar nature.

In reply to 8C

The successful bidder has been retained because it passed all the requirements of the Bid Documents as defined under ITB 30, 35 and 37 of the Bid Document.

In reply to 8D

Your bid was valid up to 20th October 2020 instead of 16th November 2020 which is not as per the requirement of Clause 19.1 of ITB of the Bidding Document.

Clause 19 of ITB quoted “Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer in accordance with ITB 23.1. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.”

Your Bid was therefore considered as non-responsive.”

F. Grounds for Review

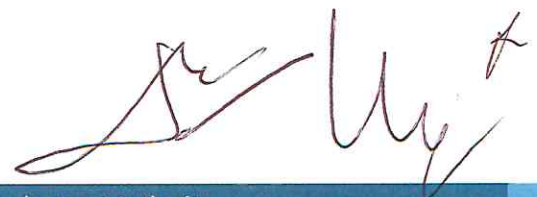
On 21st October 2020, the Applicant seized the Independent Review Panel for review on the following grounds:

- “A) THE PUBLIC BODY HAS FAILED TO CARRY OUT A PROPER EVALUATION AND ASSESSMENT WHEN IT WRONGLY SELECTED SOTRAVIC LTEE AS THE SUCCESSFUL BIDDER INASMUCH AS SOTRAVIC LTEE DOES NOT HAVE THE REQUIRED EXPERIENCE PROVIDED AS 2.4.2(a) and 2.4.2(b) (1) SPECIFIC EXPERIENCE-WHICH ARE MANDATORY REQUIREMENTS OF THE BIDDING DOCUMENTS.
- B) THE BID OF THE SUCCESSFUL BIDDER OUGHT TO HAVE BEEN REJECTED AS ITS BID DOES NOT SATISFY AND MEET MANDATORY REQUIREMENTS AND MINIMUM EXPERIENCE CRITERIA PROVIDED UNDER 2.4.2(a) and 2.4.2(b) OF THE BID DOCUMENT, PARTICULARLY SECTION III. EVALUATION QUALIFICATION CRITERIA.

2.4.2(a) reads as follows:- Specific Experience- Participation as Contractor, management contractor, or subcontractor, in at least one

contract with the last 10 years, each with a value of at least Rs. 15 Million, that have been successfully, and substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods/technology or characteristics as described in Section V, Employer's Requirements;

- (ii) 2.4.2(b)(1) reads as follows:- for the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities:-
1. Slope stabilization works height of at least 10 M height involving cutting/re-profiling, protection of slopes, construction of retaining structures and drains, etc.
- C) SOTRAVIC LTEE HAS NOT PERFORMED SIMILAR WORKS AS DESCRIBED IN PART 2- EMPLOYER'S REQUIREMENTS- SECTION V- EMPLOYER'S REQUIREMENTS-PART A Introduction and Definitions-1.3 Project Description-Earthworks/Re-profiling works (if needed) provision of earth retaining structures/rehabilitation/retrofitting/strengthening of existing retaining structures; Stabilisation of approximately 280M stretch of the escarpment as per location shown in drawings.
- D) THE BID OF THE SUCCESSFUL BIDDER OUGHT NOT HAVE BEEN CONSIDERED INASMUCH AS IT DOES NOT MEET THE ABOVE MANDATORY REQUIREMENTS.
- E) FRANKIPILE (MAURITIUS) INTERNATIONAL LIMITED OUGHT TO HAVE BEEN SELECTED FOR AWARD OF THE SAID TENDER IN THE CIRCUMSTANCES.
- F) FRANKIPILE (MAURITIUS) INTERNATIONAL LIMITED IS NOT SATISFIED WITH THE RESPONSE PROVIDED BY THE PUBLIC BODY IN ITS LETTER DATED 15 OCTOBER 2020, RECEIVED BY THE APPLICANT ON 16 OCTOBER 2020 AND THE APPLICANT MAINTAINS THAT SOTRAVIC LTEE DOES NOT SATISFY AND MEET MANDATORY REQUIREMENT AND MINIMUM EXPERIENCE CRITERIA PROVIDED UNDER 2.4.2(a) and 2.4.2(b) OF THE BID DOCUMENT. THE PUBLIC BODY MERELY CONTENDED THAT SOTRAVIC LTEE SATISFIED THE REQUIREMENT WITHOUT PROVIDING ANY PARTICULARS OF WORK OF SIMILAR NATURE ALLEGEDLY PERFORMED BY THE SUCCESSFUL BIDDER.
- G) THE APPLICANT'S BID IS STILL VALID AND HAS BEEN EXTENDED TILL 16 NOVEMBER 2020."

G. Statement of Case of the Applicant

A) FACTS OF THE CASE:

In February 2020, the Respondent invited bids from bidders for the Design-Build/Turnkey for Countermeasure Works to Slope Failure at Batelage, Souillac (Procurement Reference No. E/W/RDA/25/02-2020).

The Applicant submitted its bid within the deadline.

By way of letter dated 6 October 2020, the Respondent informed the Applicant that as a result of evaluation of bids carried out, its bid has not been retained for award by the Respondent. **A copy of the letter dated 6 October 2020 is herewith annexed and marked "Annex 1".**

The successful bidder is SOTRAVIC LIMITEE, of Industrial Zone, La Tour Koenig for the contract price of MUR 83,074,764.00 (Excl. of VAT).

On 12 October 2020, the Applicant challenged the decision of the Respondent under Section 43 of the Public Procurement Act 2006. **A copy of the challenge dated 12 October 2020 is herewith annexed and marked "Annex 2".**

By way of letter dated 15 October 2020 and received by the Applicant on 16 October 2020, the Respondent gave reasons for notification for award to Sotravic Ltee and informed the Applicant that its bid was not responsive. **A copy of the letter dated 15 October 2020 is herewith annexed and marked "Annex 3".**

The Applicant is now submitting its application for review before the Independent Review Panel.

B) THE REASONS STATED BY THE PUBLIC BODY

In its letter dated 15 October 2020, the Respondent gave reasons for award to Sotravic Ltee which are as follows:-

At bid opening on 22 July 2020, three bids were received namely:-

SN	Bidder	Bid Price Excluding VAT (MUR)
1.	Gamma – Geovert Batelage Slope Stabilisation JV	88,046,096.00
2.	Sotravic Limitee	83,074,764.00
3.	Frankipile (Mauritius) International Ltd	96,280,300.00

In reply to 8A (i) & (ii)

As a result of the bid evaluation carried out it was found that the bid of Sotravic Limitee was substantially responsive to the requirement of the Bidding Document inter-alia Sub Factors 2.4.2(a) and 2.4.2(b)(1) at Section III – Evaluation and Qualification Criteria.

In reply to 8B

Sotravic Ltee has submitted documentary evidence that it has performed works of similar nature.

In reply to 8C

The successful bidder has been retained because it passed all the requirements of the Bid Documents as defined under ITB 30, 35 and 37 of the Bid Document.

In reply to 8D

Your bid was valid up to 20th October 2020 instead of 16th November 2020 which is not as per the requirement of Clause 19.1 of ITB of the Bidding Document.

Clause 19 of ITB quoted “Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer in accordance with ITB 23.1. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.”

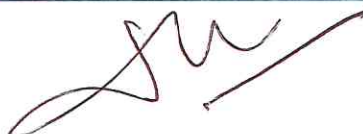
Your bid was therefore considered as non-responsive.”



C) THE GROUNDS FOR REVIEW:

The grounds for review are as follows:

- “A) The Public Body has failed to carry out a proper evaluation and assessment when it wrongly selected Sotravic Ltee as the successful bidder inasmuch as Sotravic Ltee does not have the required experience provided as 2.4.2(a) and 2.4.2(b) (1) specific experience-which are mandatory requirements of the bidding documents.
- B) The bid of the successful bidder ought to have been rejected as its bid does not satisfy and meet mandatory requirements and minimum experience criteria provided under 2.4.2(a) and 2.4.2(b) of the bid document, particularly section iii. evaluation qualification criteria.
- (i) 2.4.2(a) reads as follows:- Specific Experience- Participation as Contractor, management contractor, or subcontractor, in at least one contract with the last 10 years, each with a value of at least Rs. 15 Million, that have been successfully, and substantially completed and




that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods/technology or characteristics as described in Section V, Employer's Requirements;

- (ii) 2.4.2(b)(1) reads as follows:- for the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities:-
1. Slope stabilization works height of at least 10 M height involving cutting/re-profiling, protection of slopes, construction of retaining structures and drains, etc.
- C) SOTRAVIC LTEE has not performed similar works as described in PART 2-EMPLOYER'S REQUIREMENTS- SECTION V- EMPLOYER'S REQUIREMENTS-PART A Introduction and Definitions-1.3 Project Description-Earthworks/Re-profiling works (if needed) provision of earth retaining structures/rehabilitation/retrofitting/strengthening of existing retaining structures; Stabilisation of approximately 280M stretch of the escarpment as per location shown in drawings.
- D) The bid of the successful bidder ought not have been considered inasmuch as it does not meet the above mandatory requirements.
- E) Frankipile (Mauritius) International Limited ought to have been selected for award of the said tender in the circumstances.
- F) Frankipile (Mauritius) International Limited is not satisfied with the response provided by the Public Body in its letter dated 15 October 2020, received by the applicant on 16 October 2020 and the applicant maintains that Sotravic Ltee does not satisfy and meet mandatory requirement and minimum experience criteria provided under 2.4.2(a) and 2.4.2(b) of the bid document. The Public Body merely contended that Sotravic Ltee satisfied the requirement without providing any particulars of work of similar nature allegedly performed by the successful bidder.
- G) The Applicant's bid is still valid and has been extended till 16 November 2020. **A copy of Applicant's letter dated 20 October 2020 extending its bid to 16 November 2020 is herewith annexed and marked "Annex 4."**

THE ISSUES IN DISPUTE AND THE ARGUMENTS RELATING THERETO:

At all material times, the bid of the Applicant is valid and has been extended until the 16 December 2020.

The Applicant asserts that the successful bidder namely Sotravic Ltee does not satisfy and meet the mandatory requirements and minimum experience criteria

provided under 2.4.2(a) and 2.4.2(b) of the bid documents. Therefore, the said bid is not compliant and is non responsive.

The Public Body merely contended that Sotravic Ltee satisfied the requirements without providing any particulars of work of similar nature allegedly performed by the successful bidder.

RELIEF REQUEST:

- 1) To review the decision of the public body to award the bid to Sotravic Ltee inasmuch as the latter does not have the required experience provided as 2.4.2(a) and 2.4.2(b)
(1) specific experience-which are mandatory requirements of the bidding documents;
- 2) To recommend the annulment of the intention to award the procurement contract to Sotravic Ltee; and
- 3) To recommend a re-evaluation of the bids including that of the Applicant.



H. Statement of Reply of the Respondent

“Under headings A) FACTS OF THE CASE AND B) THE REASONS STATED BY THE PUBLIC BODY

1. Respondent takes note of the averments contained under the said headings of the Statement of Case on behalf of the Applicant (hereinafter referred to as “the Statement of Case”).

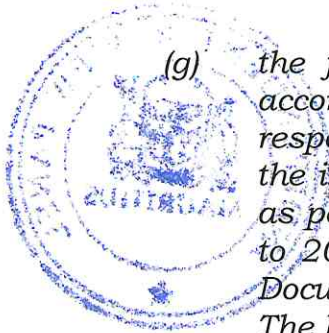
Under heading C) THE GROUND FOR REVIEW

2. Respondent denies the averments at paragraphs A) to F0 under the said heading of the Statement of Case as avers as follows-
 - (a) the tender for Design-Build/Turnkey for Countermeasure Works to a Slope Failure at Batelage, Souillac was launched through open advertised bidding (Procurement Reference No. E/W/RDA/25/02-2020) on 19th February 2020 with closing date scheduled for 20th July 2020;
 - (b) at the time of opening on 22nd July 2020, 3 bids were received, including that of the Applicant;
 - (c) as per the Instructions to Bidders (hereinafter referred to as “ITB”) contained in the bid document bearing Procurement Reference

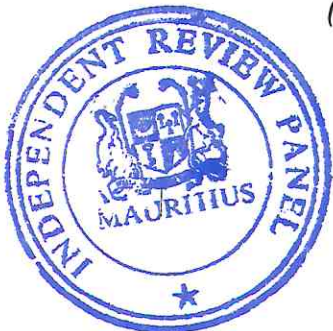


E/W/RDA/25/02-2020, all potential bidders had to comply with the mandatory requirements contained therein;

- (d) *the Bid Submission Form forms part of the mandatory requirements of the bids;*
- (e) *as per Clause 19.1 of the ITB, “Bids shall remain valid for the period specified in the Bid Data Sheet after the bid submission deadline date prescribed by the Employer in accordance with ITB 23.1. A bid valid for a shorter period shall be rejected by the Employer as non responsive”;*
- (f) *the bid evaluation process starts with the assessment of the bid’s responsiveness based on the contents of the bid itself, as defined in ITB 12. A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. The technical evaluation then follows;*
- (g) *the first exercise carried out by the Bid Evaluation Committee in accordance with ITB 12 and ITB 30 to check the completeness and responsiveness of bids revealed that Applicant had not complied with the instructions regarding Bid Submission Form and Appendix to bid as per ITB 12(a) to the extent that the Bid Validity provided was up to 20th October 2020 when as per the Addendum No. 4 of the Bid Documents, the Bid Validity was required to be 16th November 2020. The bid of Applicant was therefore considered as non responsive;*
- (h) *the bid of Applicant was therefore not considered for further evaluation as it did not comply with a mandatory requirement;*
- (i) *the bid of Sotravic Limitee passed the check for completeness and responsiveness and was considered for technical and financial evaluation in accordance with ITB 35 and 37;*
- (j) *a technical analysis of the bid of Sotravic Limitee regarding experience revealed that Sotravic Limitee met the experience requirements in as much as-*
- (i) *it has provided information to the effect that it has participated (as contractor or sub-contractor) in 4 contracts as set out in the table below within the last 10 years, each with a value of more than Rs 15 Million, that have been successfully and substantially completed and that are similar to the proposed works, subject matter of the present bid exercise, such that Sotravic Limitee satisfies and meets the mandatory requirements and minimum experience criteria under requirement in sub-factor 2.4.2(a) of Section III (Evaluation and Qualification Criteria) of the Bidding Documents –*

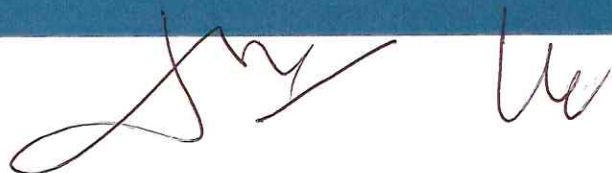


S/N	Name of Project Completed within last 10 years	Role	Similarity considered by BEC
1.	Stabilisation Works for Failed portion at Ring Road Phase I- Installation, Grouting and Stressing of Anchors Lateral for Port-Louis Ring Road Repais (Year Completed: 2016)	Sub-Contractor	Installation, Grouting and Stressing of Anchors Lateral Support Works
2.	Construction of Cells, Operation, Maintenance and Post – Closure Management- Mare Chicose Landfill Site (Year Completed: 2016)	Contractor	Cutting & Reprofilng
3.	Construction of the Cascade River Meanders Protection Works (Year: Completed: 2017)	Contractor	Stabilize the slope against sliding by lowering the piezometric level and add weight at the toe of the banks.
4.	Landslide Management at Chitrakoot Countermeasure works – Phase II (Year Completed: 2017)	Contractor	Horizontal Drainage Systems (Length – 316m) Stone Pitching and associated works Drainage works



- (ii) it has provided information to the effect that it has in respect of the 4 contracts mentioned at (i) the minimum experience in relation to one or more of the following key activities so that it satisfies and meets the mandatory requirements and minimum experience criteria under requirement in sub-factor 2.4.2(b) of Section III (Evaluation and Qualification Criteria) of the Bidding Document –

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- (a) *slope stabilization works height of at least 10 m height involving cutting/reprofiling, protection of slopes, construction of retaining structures and drains, etc; and*
- (b) *major earthwork involving excavation of at least 2,000 m³ of soil including rock material plus drainage works;*
- (iii) *prior experience in a slope stabilization project of a stretch of at least 280 m is not mandatory requirement under sub-factor 2.4.2 of Section III (Evaluation and Qualification Criteria) of the Bidding Document.*

3. *Respondent denies paragraph G) and reiterate the averments at paragraph 2 (g) and (h) above.*

Under heading THE ISSUES IN DISPUTE AND THE ARGUMENTS RELATING THERETO

4. *Respondent denies the averments under the above heading, puts Applicant to the proof thereof and reiterates the averments at paragraph 2 above. Respondent further avers that –*

- (a) *Applicant submitted an unsolicited letter purporting to extend its bid validity on 20 October 2020, after notification of award dated 06 October 2020;*
- (b) *to all intents and purposes, given that Applicant's bid was non-responsive at the closing date on account of Applicant submitting a bid with a shorter bid validity period in breach of ITB 19.1, that defect cannot be retrospectively cured by the letter dated 20 October 2020.*

Under the heading RELIEFS REQUESTS

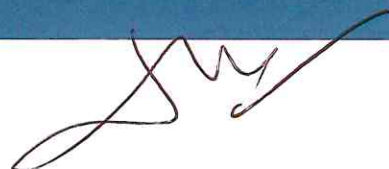
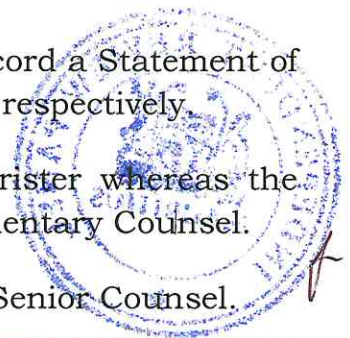
- (c) *In light of the above, the Respondent moves that the present application be set aside."*

I. The Hearing

The Hearing was held on 3 November, 2020. There was on record a Statement of Case and a Statement of Reply, by Applicant and Respondent respectively.

The Applicant was represented by Mrs. M. Bunwaree, Barrister whereas the Respondent was represented by Mrs. G. Topsy Sonoo, Parliamentary Counsel.

The Successful Bidder was represented by Mr. Gavin Glover, Senior Counsel.



J. Findings and Conclusions

(A) Issues

In the light of the Statement of Case of the Applicant, the Statement of Reply of the Respondent and the submissions made during the hearing, the Panel has identified three main issues that have to be decided upon, namely:

1. Does the Applicant have a locus to request for a review of the decision of the Public Body?
2. Was Road Development Authority right in considering the Applicant non-responsive because the Validity of its Bid was up to 20th October 2020 instead of 16th November 2020, at the time of bid submission?
3. Does Sotravic Limitée satisfy the experience requirement criteria spelt out for in the bid document?

(B) Locus of Applicant

This matter came up during the hearing, when Counsel for the Successful Bidder moved that since the Applicant was considered as non-responsive right at the initial stage of bid evaluation process, it does not have the locus to challenge decisions taken at the stages 2 and 3 of the evaluation process. He further stated that the Applicant had no case as his client was the lowest responsive bidder, whilst the Applicant submitted the highest bid.

Counsel for the Applicant refuted that whether Frankipile (Mauritius) Ltd. was considered as responsive or not or whether it is cheapest or most expensive, it still is an unsatisfied Bidder and can submit a challenge under Section 43 or apply for a review under Section 45 of the Public Procurement Act (PPA).

The relevant Sections from the PPA are cited hereunder:



Section 43 of PPA: Challenge

- (1) *A bidder who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a public body or the Board by this Act may subject to subsections (2) and (3) and section 39(5), challenge the procurement proceedings before the entry into force of the procurement contract.*

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Section 45 of the PPA: Right of Review

- (1) *An unsatisfied bidder shall, subject to section 39(5), be entitled to ask the Review Panel to review the procurement proceedings where –*
- (a) *the Chief Executive Officer of the public body does not issue a decision within the time specified in section 43(4);*
- (b) *he is not satisfied with the decision; or*
- (c) *after the entry into force of the procurement contract, the value of which is above the threshold prescribed by regulations but does not exceed the prescribed threshold referred to in section 40(3), he is not satisfied with the procurement proceedings on a ground specified in section 43(1).*

The Panel is of the view that irrespective of the conclusions at different stages of an evaluation process the Applicant is still an aggrieved bidder, as defined under **Section 43 (1)** and **Section 45 (1)** of the Public Procurement Act. It has the right to challenge a decision or ask for a review thereof, the moreso being given that RDA did not object to the Applicant's right to review in its statement of Reply and nor did it submit the same as an argument in its request to IRP to set aside the Application for Review.

The Panel therefore proceeds further with the examination of other issues related with this Application for Review.

(C) Bid Validity

1. In reply to the Challenge of the Applicant dated 12th October 2020, the RDA had amongst others, informed the Applicant through its letter dated 15th October 2020, that its bid had been considered as non-responsive as the Bid was valid up to 20th October 2020 instead of 16th November 2020, thus failing to satisfy the mandatory requirement under Clause 19.1 of the ITB of the Bidding Document.
2. Thereupon, the Applicant submitted an unsolicited letter dated 20th October 2020 and purporting to extend the validity of its Bid to 16th November 2020 and based on the same it stated in its Application for Review at the IRP dated 21st October 2020 that the Bid was still valid.
3. Clause 19.1 of the ITB states that: *"Bids shall remain valid for the period specified in the Bid Data Sheet after the bid submission deadline date prescribed by the Employer in accordance with ITB 23.1. A bid valid for a shorter period shall be rejected by the Employer as non responsive"*.

The BDS further specifies that the bid validity period shall be 120 days as from the deadline for submission of bids.

4. Consequently, the Panel finds that Validity of the Bid of the Applicant at the time of submission of bids was not in conformity with the requirement of bid document, since the Bid was valid for a shorter period, it has rightly been rejected by the Public Body as non-responsive.
5. The Panel further agrees with position of the Public Body that to all intents and purposes, given that Applicant's bid was non-responsive at the closing date on account of Applicant submitting a bid with a shorter bid validity period in breach of ITB 19.1, that defect cannot be retrospectively cured by the letter dated 20 October 2020.

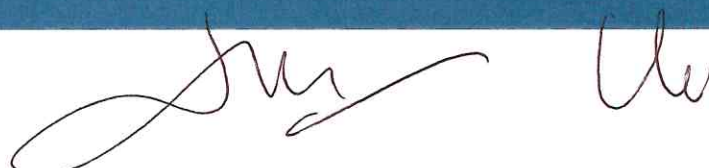
(D) Experience of the Successful Bidder.

With regards to the above and in essence the Applicant's position in the statement of case is that the Public Body wrongly selected Sotravic Ltee as the Successful Bidder as according to it the bid of Sotravic Ltee does not satisfy the required experience required under Section 2.4.2(a) and 2.4.2(b)(1) of the bidding document. The Applicant stated that the Public Body had merely contented that Sotravic Ltee satisfied the requirement without providing any particulars of work of similar nature allegedly performed by the Successful Bidder. The above sections of the Bid Document are cited at Section B (i) and B(ii) of the Statement of Case of the Applicant.

In response the Public Body, in its Statement of Reply, has provided the particulars of four projects and its assessment thereof determine the related experience of Sotravic Ltee. It has further concluded that a technical analysis of all experience details provided by Sotravic Ltee reveals that the latter met the experience requirement under Section 2.4.2(a) and 2.4.2(b)(1) of the bidding documents. The details are at Section H. 2(j) of the Statement of Reply of the Public Body.

During the hearing, the Country Manager of the Applicant Mr Y. Mongelard, deponed on where, according to him, under the different projects listed, the experience of Sotravic Ltee fell short of what was required in the bid documents. He produced a layout plan and two cross-sectional concept drawings from bid document in support of his views.

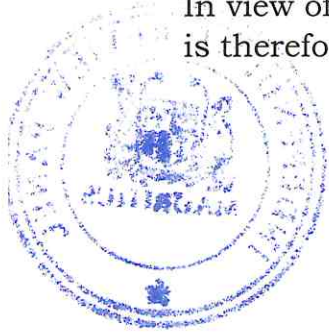
In reply, Counsel for the Public Body has pointed out that since this is a design and build contract, construction as per the concept drawings is not mandatory as the Successful Bidder can come with its own design and methodology for the slope stabilization works.



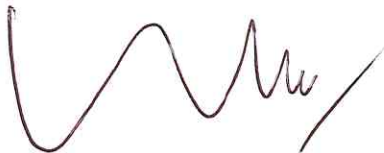
After examining all the facts of the case, the Panel finds that the BEC has made the right conclusion regarding the conformity of the experience of the Successful Bidder with the requirements in the bid document.

K. Conclusion

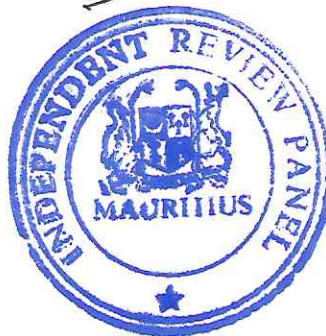
In view of the above the Panel finds no merit in this Application for Review and it is therefore set aside.



H. Gunesh
(Ag. Chairperson)



V. Mulloo
(Member)



R. Mungra
(Member)

Dated: 18 November 2020