



Independent Review Panel

Decision No. 7/25

In the matter of:

Maxi Clean Co Ltd

(Applicant)

v/s

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

(Respondent)

(Cause No. 06/25/IRP)

Decision



A. History of the case

On 17 February 2025, the Ministry of Environment, Solid Waste Management and Climate Change (Solid Waste Management Division) (Respondent) invited bids for the Operation and Maintenance of Poudre D'Or Transfer Station and Transportation of Wastes from Poudre D'Or Transfer Station to Mare Chicose Landfill-Procurement Ref.: ENV/SWM/EPROC/OIB/29/23-24 - eProc Ref. SWMD/IFB/2024/141-CPB Ref: No: CPB/35/2024.

B. Challenge

On **13 June 2025**, Maxi Clean Co Ltd, the Applicant challenged the opening of bids on the following grounds:

1. Conflict of interest by Sotravic

MCCL highlights that Sotravic holds strategic public contracts in the field of waste management field in Mauritius, including especially:

- a. the 10-years contract including landfill works for vertical expansion of the Mare Chicose Landfill, operation and post closure management of cells;
- b. the operation, maintenance and transportation of waste from two transfer stations namely at La Brasserie and La Chaumiere to Mare Chicose Landfill; and
- c. Concessionaire Agreements for the setting up of two Integrated Waste Processing Facilities (IWPF) each of capacity 100,000 tonnes per annum to collectively receive segregated waste from all over the whole Mauritius (the "IWPF Agreements").

(all the above contracts collectively referred to as the "Sotravic's Existing Agreements").

2. MCCL states that if Sotravic is awarded the contract, this would:

- a. Place Sotravic in a wrongful position of direct conflict in breach of clause 7 Bid Document which aims to avoid any sort of conflict of interest whatsoever to ensure procurement integrity; and
- b. Create a situation whereby clause 3.2.3 of the General Conditions of the Contract to be entered into by the eventual successful bidder (under Section VI of the Bid Document) would be violated even before the start of the contract.

A. In its capacity as the Mare Chicose Landfill operator

3. MCCL states that when the waste is dropped off at the landfill which Sotravic manages on behalf of the Ministry, the only people physically



present who can visually inspect operations and the type of waste being deposited are Sotravic's *préposés*. The waste loading process at the transfer station would also be visually inspected by Sotravic's *préposés*. Given the bidding exercise relates to the transportation of waste from a transfer station to the landfill, if the same entity operates the landfill, and checks and verifies incoming waste brought by *itself*, this will inevitably create a situation of conflict and lead to a serious risk of malpractices which would be to the detriment of the Ministry.

4. Such risks cannot be mitigated 111 practice owing to the nature of operations. The payment for both contracts is based on rate per ton. There is the risk that Sotravic will always favour its truck/trailers to unload on tipping platform that are easily accessible and would divert all other trailers from other transfer stations to unload on tipping platforms that are in a very poor state specially during the raining season. This would cause heavy damage to trucks/trailers.
5. The conflict situation also allows Sotravic to unfairly and wrongfully undercut its competitors because it may consolidate the revenue streams from the landfill (which include payments for waste transported from transfer station operators and post-closure costs) for its pricing strategy for the present bid. Sotravic's substantially lower bid is a clear example of a wrongful predatory pricing and/or cross-subsidisation adopted to protect its overall business. All other bidders are consequently severely and irreversibly disadvantaged.

B. As holder of the WPF Agreements

6. It is public knowledge that Sotravic holds the IWPF Agreements. The bidding documents troublingly do not disclose such crucial information. Sotravic would as such, be the collecting waste brought to the facilities by the transfer operator(s) for processing. Again, this will create a situation of direct conflict of interest if Sotravic is retained as transfer operator at Poudre d'Or Transfer Station:
 - a. The same operational issues that arise at the Mare Chicose landfill (no visual counter examination of loads in trailers at facility) will be repeated.
 - b. Sotravic is also able to adopt cost and pricing strategies that take into consideration revenues to be generated from IWPF activities (in the form tipping fees to be paid by the Ministry for every ton of waste received) to bid ant competitively to the detriment of other bidders such as MCCL who do not derive any other revenue from the waste management and landfill ecosystem operated by the Ministry.

II. Unfair access to privileged information which distorts competition

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7. One of the main criteria for bidders when setting their respective bid prices is the distance between the landfill and the Poudre d'Or transfer station - refer to at Section IV - Activity Schedule of the bidding document.
 - a. The setting up of the IWPF is also mentioned under that section but the only detail given is Laventure (with no precise location).
 - b. There is no indication of the precise start date of operations (only "by mid of 2027" is stated in the Clarification No. 1 issued by the Ministry on 2 June 2025). Bidders such as MCCL do not have access to such privileged information and are consequently forced to come with an estimate to cater for the future changes in disposal site.
 8. On the other hand, as holder of the IWPF Agreements Sotravic clearly has a definite but wrongful advantage especially because it knows the exact location of the IWPFs and the exact start date of operations. It may can adjust its costs and bid accordingly. Other bidders such as MCCL are not aware of such crucial information. Sotravic therefore has access to insider information allowing it to set prices in an unfair manner. This clearly contravenes the basic principles of sound procurement practices.
- III. Lower price but a notable history of poor performance.**
9. Sotravic as the landfill operator is *de facto* the party responsible for the Mare Chicose fire and environmental disaster that occurred in November 2024, thereby evidencing its inaptitude to be handed further responsibilities with a national dimension.
 10. The regular accumulation of wastes at the two-transfer stations operated by Sotravic Ltée has caused long waiting times and long queuing for all wastes carriers from the respective regions, leading to a negative impact on door-to-door refuse collection service for all authorities. In December 2024, the Ministry was consequently forced to appoint another contractor to cart away about 7000 tons of waste from each transfer station.

The letters of award bearing Procurement No. ENV/SWM/PROC/RB/16/2024-2025 and Procurement No. NV/SWM/PROC/RB/18/2024-2025 are herewith enclosed (**ANNEX A1 and ANNEX A2**).
 11. Further, the Ministry has recently repeatedly reproached Sotravic of consistent failures to fulfil its contractual obligations in relation to two existing transfer stations, including by way of letter dated 15 April 2025 bearing reference ENV/SWM/PROC/OIB/14/21-22 & ENV/SWM/PROC/OIB/05/21-22 whereby the Ministry sought to





maintain its decision to exclude Sotravic from public procurement for 6 months (**ANNEX B**). Therefore, Sotravic's bid should be purely and simply discarded from evaluation exercise.

12. Given the unreasonably low rate quoted by Sotravic in this bid, there is a real risk that no trailer owner would be willing to contract with *it* owing to unattractive terms, which would create even worse problems at Poudre d'Or Transfer Station.
13. It is therefore highly questionable whether Sotravic's bid reflect actual market conditions (which have however been distorted), or represent a desperate attempt to make up for its consistently poor record. It would be against public interest to select a bidder solely on its price (which price has been set unfairly as explained above) having a notorious performance of not being able to deliver.

IV. Wrongful strengthening of monopolistic situation

14. Sotravic's Existing Agreements mean that it is already in a quasi-monopolistic situation. Further allowing it to integrate the ecosystem with the issues highlighted above will create serious market risks where competitors will be priced out and the risk for fraudulent practices is increased. It is crucial that public funds be used judiciously to allow healthy competition for benefit of all stakeholders.

V. Prayers

15. MCCL therefore requests that:
 - a. The bid from Sotravic Ltée be rejected;
 - b. Alternatively, Sotravic Ltée be excluded from participating in any new tender process relating to the above contract.

C. Reply to Challenge

On **20 June 2025**, the Respondent, in reply to the Challenge of the Applicant, stated that:

Bidder's Grounds for Challenge

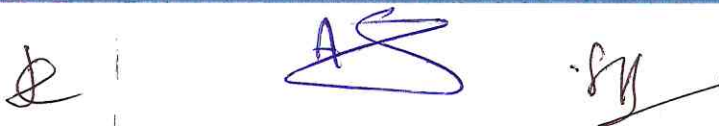
Maxi Clean Co Ltd ("MCCL") challenges the opening of bids dated 11 June 2025 whereby Sotravic Ltee ("Sotravic") was found to have quoted the lowest price on the following grounds.



E *SN* *AS*

SN	Maxi Clean Company Ltd	MINISTRY'S RESPONSE
1.	Conflict of interest by Sotraviv MCCL highlights that Sotraviv holds strategic public contracts in the field of waste management field in Mauritius, including especially: a) The 10-years contract including landfill works for vertical expansion of the Mare Chicose Landfill, operation and post closure management of cells; b) The operation, maintenance and transportation of waste from two transfer stations namely at La Brasserie and La Chaumiere to Mare Chicose Landfill; and c) Concessionaire Agreements for the setting up of two Integrated Waste Processing Facilities (IWPF) each of capacity 100,000 tonnes per annum to collectively receive segregated waste from all over the whole Mauritius (the "IWPF Agreements"). (All the above contracts collectively referred to as the "Sotraviv's Existing Agreements").	a) The 10 years contract for Landfill Works for Vertical Expansion for the Mare Chicose Landfill has been awarded to Joint Venture SOTRAVIC/STRATA. b) Agreed c) Two Concession Agreements have been signed with Special Purpose Companies owned by Sotraviv Ltée, each of receiving capacity 130,000 tons per annum.
2.	MCCL states that if Sotraviv is awarded the contract, this would: a) Place Sotraviv in a wrongful position of direct conflict in breach of clause 7 Bid Document which aims to avoid any sort of conflict of interest whatsoever to ensure procurement integrity; and	a) MCCL has not demonstrated any Conflict of Interest as per Clause 7.1 (a) to (f) Section I of the 1TB.

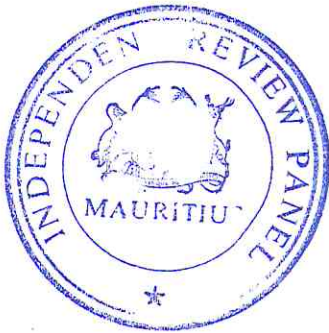
	b) Create a situation whereby clause 3.2.3 of the General Conditions of the Contract to be entered into by the eventual successful bidder (under Section VI of the Bid Document) would be violated even before the start of the contract.	b) No comments
A. In its capacity as the Mare Chicose Landfill operator 3.	MCCL states that when the waste is dropped off at the landfill which Sotravic manages on behalf of the Ministry, the only people physically present who can visually inspect operations and the type of waste being deposited are Sotravic's <i>préposés</i>. The waste loading process at the transfer station would also be visually inspected by Sotravic's <i>préposés</i>. Given the bidding exercise relates to the transportation of waste from a transfer station to the landfill, if the same entity operates the landfill, and checks and verifies incoming waste brought by <i>itself</i>, this will inevitably create a situation of conflict and lead to a serious risk of malpractices which would be to the detriment of the Ministry. 	Para 6.4 of Section V. Scope of Service and Performance Specifications of the Bidding Document for Poudre D'Or Transfer Station (PDTs) states that: "The Contractor shall be responsible for verification of the type of wastes reaching the station. Waste vehicles will be subject to inspections and dedicated Load Check Teams will be organized to handle these inspections." As per paragraph 3.2.2 of Volume 2 of the Bidding Document for the Landfill Contract, the Landfill Contractor has a control mechanism in the form of inspections and verifications at the point of entry of the Landfill (Guard Cabin) to prevent or minimize the incidence of unpermitted wastes being off loaded at the Landfill. If there appears to be a discrepancy a complete visual inspection is undertaken. For this purpose, the land fill supervisor at the tipping front effects a visual inspection during the waste unloading operations and has the authority



		to stop any unloading should unpermitted wastes be observed. Moreover, the Consulting Engineer and the Enforcement Officers of the Solid Waste Management Division carry out monitoring to prevent any malpractice.
4.	Such risks cannot be mitigated owing to the nature of operations. The payment for both contracts is based on rate per ton. There is the risk that Sotravic will always favour its truck/trailers to unload on tipping platform that are easily accessible and would divert all other trailers from other transfer stations to unload on tipping platforms that are in a very poor state specially during the raining season. This would cause heavy damage to trucks/trailers.	The landfill operations are supervised by an Engineer who is appointed by the Employer.
5.	The conflict situation also allows Sotravic to unfairly and wrongfully undercut its competitors because it may consolidate the revenue streams from the landfill (which include payments for waste transported from transfer station operators and post-closure costs) for its pricing strategy for the present bid. Sotravic's substantially lower bid is a clear example of a wrongful predatory pricing and/or cross-subsidisation adopted to protect its overall business. All other bidders are consequently severely and irreversibly disadvantaged.	The cost of the services is related to cost items such as quantities of wastes, deployment of trucks, fuel, repairs and maintenance, personnel and other alike costs which are considered to be equal amongst bidders. The potential bias or advantages that Sotravic Ltee may have as Operator of the Landfill has not been demonstrated by MCCL. Any risks are managed through our Consulting Engineer.
B	As holder of the WPF Agreements	





6.	It is public knowledge that Sotravic holds the IWPF Agreements. The bidding documents troublingly do not disclose such crucial information. Sotravic would as such, be the collecting waste brought to the facilities by the transfer operator(s) for processing. Again, this will create a situation of direct conflict of interest if Sotravic is retained as transfer operator at Poudre d'Or Transfer Station: a) The same operational issues that arise at the Mare Chicose landfill (no visual counter examination of loads in trailers at facility) will be repeated. b) Sotravic is also able to adopt cost and pricing strategies that take into consideration revenues to be generated from IWPF activities (in the form tipping fees to be paid by the Ministry for every ton of waste received) to bid ant competitively to the detriment of other bidders such as MCCL who do not derive any other revenue from the waste management and landfill ecosystem operated by the Ministry.	Section IV (Activity Schedule) Item 4 refers to the setting up of the Integrated Waste Processing Facilities. It is inappropriate to impute ulterior motive to the Ministry for the omission in mentioning the Contract Holders of the IWPF. The award of contracts to IWPF Project was widely relayed in the media. MCCL has not demonstrated Conflict of Interest as per Clause 7.1. 
II 7.	<u>Unfair access to privileged information which distorts competition</u> One of the main criteria for bidders when setting their respective bid prices is the distance between the landfill and the Poudre d'Or transfer station - refer to at Section IV - Activity	It is submitted that the BOQ provides for payment of transportation on a tonnage basis. The oneway distance from PDTs to the landfill has been indicated. The Contract provides for the

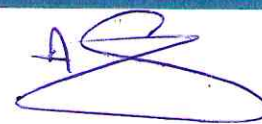
	Schedule of the bidding document. a) The setting up of the IWPF is also mentioned under that section but the only detail given is Laventure (with no precise location). b) There is no indication of the precise start date of operations (only "by mid of 2027" is stated in the Clarification No. 1 issued by the Ministry on 2 June 2025). Bidders such as MCCL do not have access to such privileged information and are consequently forced to come with an estimate to cater for the future changes in disposal site.	calculation of the new rate per ton for disposal to a new site i.e. IWPF to be derived from the original rate and indicated distance.
8.	On the other hand, as holder of the IWPF Agreements Sotravic clearly has a definite but wrongful advantage especially because it knows the exact location of the IWPFs and the exact start date of operations. It may can adjust its costs and bid accordingly. Other bidders such as MCCL are not aware of such crucial information. Sotravic therefore has access to insider information allowing it to set prices in an unfair manner. This clearly contravenes the basic principles of sound procurement practices.	The term 'insider information' is considered disproportionate cannot be established that Sotravic Ltée has relied on his future performance and efficiency of the IWPF to its financial bid for the PDTs
III 9.	<u>Lower price but a notable history of poor performance.</u> Sotravic as the landfill operator is <i>de facto</i> the party responsible for the Mare Chicose fire and environmental disaster that occurred in November 2024, thereby evidencing its inaptitude to	The cause of fire and the responsibility for the failure to control its propagation has not been determined.

	be handed further responsibilities with a national dimension.	
10.	The regular accumulation of wastes at the two-transfer stations operated by Sotravic Ltée has caused long waiting times and long queuing for all wastes carriers from the respective regions, leading to a negative impact on door-to-door refuse collection service for all authorities. In December 2024, the Ministry was consequently forced to appoint another contractor to cart away about 7000 tons of waste from each transfer station. The letters of award bearing Procurement No. ENV/SWM/PROC/RB/16/2024-2025 and Procurement No. NV/SWM/PROC/RB/18/2024-2025 are herewith enclosed (ANNEX A1 and ANNEX A2).	The poor performance of the serving contractor i.e. not denied.
11.	Further, the Ministry has recently repeatedly reproached Sotravic of consistent failures to fulfil its contractual obligations in relation to two existing transfer stations, including by way of letter dated 15 April 2025 bearing reference ENV/SWM/PROC/OIB/14/21-22 & ENV/SWM/PROC/OIB/05/21-22 whereby the Ministry sought to maintain its decision to exclude Sotravic from public procurement for 6 months (ANNEX B). Therefore, Sotravic's bid should be purely and simply discarded from evaluation exercise.	The Letter of Exclusion from bidding for the Ministry's Contracts dated 15 April 2025 which appeared in the Ministry's website has been withdrawn. 
12.	Given the unreasonably low rate quoted by Sotravic in this bid, there is a real risk that no trailer owner would be willing	The percentage of price deviation will be determined at evaluation age.



	to contract with it owing to unattractive terms, which would create even worse problems at Poudre d'Or Transfer Station.	
13.	It is therefore highly questionable whether Sotravic's bid reflect actual market conditions (which have however been distorted), or represent a desperate attempt to make up for its consistently poor record. It would be against public interest to select a bidder solely on its price (which price has been set unfairly as explained above) having a notorious performance of not being able to deliver.	Evaluation of bid is carried out at the level of Central Procurement Board.
IV	<u>Wrongful strengthening of monopolistic situation</u>	
14.	Sotravic's Existing Agreements mean that it is already in a quasi-monopolistic situation. Further allowing it to integrate the ecosystem with the issues highlighted above will create serious market risks where competitors will be priced out and the risk for fraudulent practices is increased. It is crucial that public funds be used judiciously to allow healthy competition for benefit of all stakeholders.	The matter should be referred to competent authorities
V.	<u>Prayers</u> MCCL therefore requests that: a. The bid from Sotravic Ltée be rejected; b. <u>Alternatively</u> , Sotravic Ltée be excluded from participating in any new tender process relating to the above contract.	Appropriate action initiated with respect to poor performance.





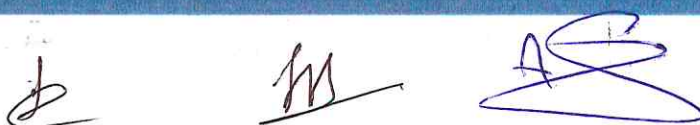
D. Grounds for Review

On 25 June 2025, the Applicant seized the Independent Review Panel for review on the following grounds:

(I) Conflict of interest by Sotravic

2. The Applicant states that - and this is confirmed in the Respondent's Response - that Sotravic holds strategic public contracts in the field of waste management field in Mauritius, including especially:
 - a. the 10-years contract including landfill works for vertical expansion of the Mare Chicose Landfill (the "**Landfill**"), operation and post closure management of cells; the Respondent has clarified that the contract has been awarded to the Joint Venture Sotravic/Strata — which does not change the fact that Sotravic is involved in the operation of the Landfill;
 - b. the operation, maintenance and transportation of waste from two transfer stations namely at La Brasserie and La Chaumiere to the Landfill; and
 - c. Concessionaire Agreements signed through special purpose vehicles ("SPVs" owned by Sotravic for the setting up of two Integrated Waste Processing Facilities (IWPF) each of capacity 130,000 tonnes per annum to collectively receive segregated waste from all over the whole Mauritius (the "**IWPF Agreements**").
 (all the above contracts collectively referred to as the **Sotravic's Existing Agreements**).
3. The Applicant states that if Sotravic is awarded the present contract, this would place Sotravic in a wrongful position of direct conflict in breach of clause 7 under Section I of the Bid Document which aims to avoid any sort of conflict of interest whatsoever to ensure procurement integrity.
 - a. The Respondent has replied that the Applicant has not demonstrated any conflict of interest as per clause 7.1(a) to (f) of the ITB. The Applicant states that it does not specifically rely on clauses 7.1(a) to (f) which aim to prohibit bid rigging when related parties bid for the same contract. The Applicant is advised that a purposive interpretation must be given to clause 7 of the ITB:

The said clause provides that "**A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified**". A Bidder **may** be considered to have a conflict of interest with one or more parties in this bidding process, if(...)" (emphasis added). The Applicant states that the said clause aims to prevent *any* conflict of interest, including but not limited to

conflicts arising when related parties participate in procurement proceedings.

- ii. The Applicant's position is reinforced by the existence of clause 3.2.3 of the General Conditions of the Contract to be entered into by the eventual successful bidder (under Section VI of the Bid Document); it would be absurd that if the ITB does not prevent the type of conflict of interest being presently invoked but such conflict may subsequently be invoked after a bidder is awarded the contract.

- b. Following from the above, the Applicant reiterates that the Respondent is turning a blind eye to the impending violation of clause 3.2.3 of the General Conditions of the Contract to be entered into even before the start of the contract.

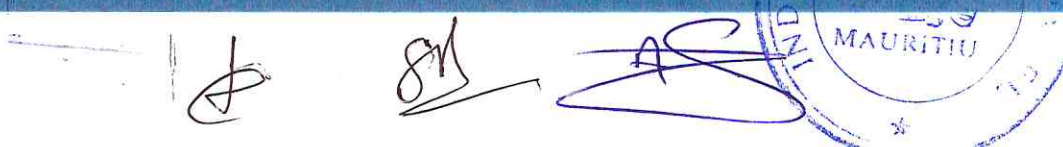
A. Sotravac - in its capacity as the Mare Chicose landfill operator

4. The Applicant states that when the waste is dropped off at the Landfill which Sotravac manages on behalf of the Respondent Ministry, the only people physically present who can visually inspect operations and the type of waste being deposited are Sotravac's *préposés*. The waste loading process at the transfer station would also be visually inspected by Sotravac's *préposés*. Given the bidding exercise relates to the transportation of waste from a transfer station to the landfill, if the same entity operates the landfill, and checks and verifies incoming waste brought *by itself* this will inevitably create a situation of conflict of interest and activities and lead to a serious risk of malpractices which would be to the detriment of the Ministry.
5. The Respondent's Response refers to the Landfill's Contractor's control mechanism in the form of inspections and verifications at the point of entry of the Landfill. The Applicant records the Respondent's admission and states that should Sotravac's bid for the present contract be retained, as the Landfill Contractor it would itself verify the very waste that it would transport as Transfer Station Contractor. The landfill supervisor who is meant to effect a visual inspection will inevitably be a *préposé* of Sotravac itself, thereby confirming the flagrant conflict of interest and activities.
6. The Applicant states that such risks cannot be mitigated in practice owing to the nature of operations. The payment for both contracts is based on rate per ton. There is the risk that Sotravac will always favour its truck/trailers to unload on tipping platform that are easily accessible and would divert all other trailers from other transfer stations to unload on tipping platforms that are in a very poor state specially during the raining season. This would cause heavy damage to trucks/trailers.
7. The Respondent's Response refers to supervision of landfill operations by



an Engineer appointed by the Respondent and monitoring by Enforcement Officers of the Solid Waste Management Division; the Applicant states that this does not eliminate the real risk that exists for the following reasons:

- a. Only visual inspections are carried out and it is in practice difficult to really scrutinise and determine with precision and/or challenge the quantity and type of waste being unloaded from the waste trucks given their height; and
- b. Waste from transfer stations is often deposited at nighttime when no *préposé* of the Respondent is present. Sotravic regularly seeks approval from the Respondent Ministry to extend the operating hours of the Mare Chicose Landfill to transport waste from the transfer stations that it currently operates. For instance, this is the case for La Chaumiere Transfer Station which Sotravic currently operates, owing to waste accumulation. The Applicant refers to the herewith attached (i) sample of request for extended operating hours made to the Respondent Ministry on 28 February 2025 by Sotravic (**ANNEX 4A**); and (ii) the ensuing correspondence issued by the Ministry (**ANNEX 4B**) together with other instances where the Ministry notified parties that Sotravic's *request* for extended hours had been approved.
- c. It is clear that Sotravic as operator of the transfer station seeks approval from the Ministry, which in turns seeks approval of the Mare Chicose Landfill Operator (Sotravic itself) to open the landfill till late at night. The additional costs payable to the Landfill operator (Sotravic) to keep the Landfill open are then charged back to the transfer station operator (refer to the terms of approval in the above letter dated 28 February 2025), i.e., Sotravic such that the net cost effect for it is zero. The situation poses the following difficulties:
 - i. There would inevitably be excessive deviations from standard opening times which would create scope for malpractices given that there is no third-party supervision after normal working hours of the landfill operations by an Engineer or Enforcement Officers of the Solid Waste Management Division appointed by the Respondent.
 - ii. Sotravic benefits from a wrongful advantage compared to other bidders because it is the one that determines whether the Landfill may be kept open and informs the Ministry accordingly; it may thus discriminate between Sotravic transfer station operators and non-Sotravic transfer station operators.
 - iii. The Applicant is further informed that Sotravic and the Respondent already have an agreement on the additional rate payable for overtime

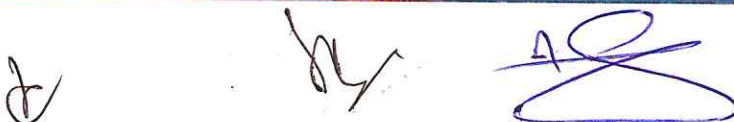


operations of the Landfill. As such, Sotravic may already unfairly determine its pricing strategy for the present bid in advance based on how it may influence overtime opening of the Landfill and revenue (by making requests as transfer station operator).

8. The Applicant is advised that this Review Panel had considered the real possibility of conflict in similar circumstances in the matter *Compagnie Régionale de Services et de l'Environnement Ltée vs Ministry of Social Security, National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division) (Solid Waste Management Division)* — CN 19/19/IRP. The Applicant's Counsel will submit on the matter during hearing stage.
9. The conflict situation also allows Sotravic to unfairly and wrongfully undercut its competitors because it may consolidate the revenue streams from the landfill (which include payments for waste transported from transfer station operators and post-closure costs) for its pricing strategy for the present bid. Sotravic's substantially lower bid is a clear example of a wrongful predatory pricing and/or cross-subsidisation adopted to protect its overall business. All other bidders are consequently severely and irreversibly disadvantaged.
10. The Respondent's Response does not address those concerns and merely states that the cost of services relates to cost of items. The Respondent further states that the "any risks are managed through our Consulting Engineer"; this again does not address the Applicant's concern of predatory pricing strategies.

B. Sotravic - as holder of the IWPF Agreements

11. It is admitted that Sotravic holds the IWPF Agreements — through SPVs. The bidding documents troublingly do not disclose such crucial information. The Applicant records the Respondent's confirmation of the omission.
12. The Applicant does not impute ulterior motives, as alleged by the Respondent, but highlights an important fact: Sotravic would be receiving waste brought to the facilities by the transfer operator(s) for processing. Again, this will create a situation of direct conflict of interest if Sotravic is retained as transfer operator at Poudre d'Or Transfer Station:
 - a. The same operational issues that arise at the Mare Chicose landfill (no visual counter examination of loads in trailers at facility) would be repeated. In that those issues will even be exacerbated given that Sotravic will be the sole owner and operator of the IWPFs without



any third-party involvement.

- b. Further, under the terms of the IWPF agreements (extracted from the relevant tender documents and attached herewith as ANNEX 5), the Sotravic-owned SPVs as Concessionaires will receive Tipping Fees from, or will pay Tipping Fees to, the Respondent based on variances in the Net Municipal Solid Waste (MSW). Incoming MSW will be supplied by the Respondent to the IWPFs through transfer station operators for processing. As transfer station operator, Sotravic may therefore influence the level of incoming MSW, which would lead to insufficient waste for the IWPFs and thus Positive Tipping Fees, i.e., Sotravic's SPVs claiming and receiving additional revenue from the Respondent.
- c. Sotravic is also able to adopt cost and pricing strategies that take into consideration revenues to be generated from IWPF activities (in the form of the Tipping Fees to be paid by the Respondent Ministry for every ton of waste received) to bid anticompetitively to the detriment of other bidders such as MCCL who do not derive any other revenue from the waste management and landfill ecosystem operated by the Ministry.

13. In response to the Respondent's argument that no conflict of interest under clause 7.1 of the ITB has allegedly been demonstrated, the Applicant repeats what has been stated above as regards what should be the correct interpretation of conflict of interest.

(II) Unfair access to privileged information which distorts competition

14. One of the main criteria for bidders when setting their respective bid prices is the distance between the landfill and the Poudre d'Or transfer station — refer to at Section IV — Activity Schedule of the bidding document.
 - a. The setting up of the IWPF is also mentioned under that section but the only location detail given for one of them is Laventure (with no precise location and distance). The second site has not been disclosed, and it is only known by Sotravic which inevitably is in better position to calculate the new rate per ton and possible number of trips for the new itinerary which would directly affect the rate quoted in the present bid.
 - b. There is no indication of the precise start date of operations. This was meant to be **"by end of 2026"** (refer to clause 4, Section IV Activity Schedule) in the tender documents. However, after having been queried by a potential bidder the Ministry amended this crucial piece of information in Clarification No. 1 dated 2 June 2025 to **"by mid 2027"**. Bidders such as the Applicant do not have access to such privileged information and are consequently forced to come with an estimate to cater for the future changes in disposal site,




while Sotravic has an edge over its competitors as it may determine in advance how it may organise its activities and transfer station operations.

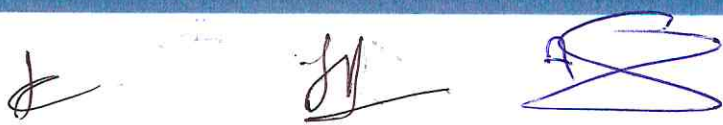
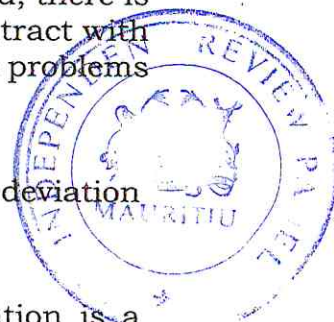
15. The Respondent's Response states that *"the Contract provides for the calculation of the new rate per ton for disposal to a new site i.e. IWPF to be derived from the original rate and indicate distance"*. The Respondent's Response only provides that the rate will be based on distance but the Applicant's position is that the precise distance is known to Sotravic only as it is the one that will build the IWPFs. Sotravic clearly has a definite but wrongful advantage especially because it knows the exact location of the IWPFs and the exact start date of operations.
16. Sotravic may thus adjust its costs and bid accordingly. Other bidders such as the Applicant are not aware of such crucial information. Sotravic therefore has access to insider information allowing it to set prices in an unfair manner. This clearly contravenes the basic principles of sound procurement practices. The Respondent alleges that the term "insider information" is disproportionate but the Applicant states that it is evidently highly plausible that Sotravic would have considered the IWPF that it would itself set up and service to calculate its bid price given the circumstances.

(III) **Lower price but a notable history of poor performance**

17. The Applicant states that Sotravic as the landfill operator is *de facto* the party responsible for the Mare Chicose fire and environmental disaster that occurred in November 2024, thereby evidencing its inaptitude to be handed further responsibilities with a national dimension. The Respondent states that *"the cause of fire and the responsibility for the failure to control its propagation has not been determined"*. The Applicant refers to the herewith attached press article of l'Express which refers to a letter from the Consulting Engineer, Luxconsult (Mauritius) Ltd dated 9 January 2025 (**ANNEX 6**) highlighting Sotravic's repeated contractual violations as the Landfill operator.
18. The regular accumulation of wastes at the two-transfer stations operated by Sotravic has caused long waiting times and long queuing for all wastes carriers from the respective regions, leading to a negative impact on door-to-door refuse collection service for all authorities. In December 2024, the Ministry was consequently forced to appoint another contractor to cart away about 7000 tons of waste from each transfer station.
The letters of award bearing Procurement No. ENV/SWM/PROC/RB/16/2024-2025 and Procurement No. ENV/SWM/PROC/RB/18/2024-2025 are herewith enclosed (**ANNEX 7A** and **ANNEX 7B**).

The Applicant also refers to the attached press article from Defimedia dated 11 January 2025 (**ANNEX 8**) reporting that the Respondent has called Sotravic to account.

19. The Respondent's Response confirms Sotravic's poor performance and that "appropriate action" has been initiated in that regard.
20. Further, the Ministry has recently repeatedly reproached Sotravic of persistent failures to fulfil its contractual obligations in relation to two existing transfer stations, including by way of letter dated 15 April 2025 bearing reference ENV/SWM/PROC/OIB/14/21-22 & ENV/SWM/PROC/OIB/05/21-22 whereby the Ministry sought to maintain its decision to exclude Sotravic from public procurement for 6 months (**ANNEX 9**) - the "Initial Letter".
21. The Respondent's Response states that the Initial Letter has been withdrawn from the Ministry's website. The Applicant states that irrespective of whether the Initial Letter was withdrawn, this demonstrates Sotravic's propensity of failing to properly discharge its contractual obligations.
22. The Applicant has further taken cognizance of another letter of exclusion dated 21 June 2025 (ANNEX 10) banning Sotravic from bidding exercises for a period of 6 months from the letter. This reinforces the Applicant's above contention, and Sotravic should not be permitted take further part specifically in the present procurement proceedings whereby a conflict of interest exists as this would create further scope for questionable practices.
23. Given the unreasonably low rate quoted by Sotravic in this bid, there is a real risk that no truck trailer owner would be willing to contract with it owing to unattractive terms, which would create even worse problems at Poudre d'Or Transfer Station.
- a. The Respondent has stated that the percentage of price deviation will be determined at evaluation stage.
- b. The Applicant's point is the following: waste accumulation is a direct consequence of an insufficient number of trucks. If it is at the outset indisputable clear that Sotravic will not be able to contract with any truck trailer at the rate at which it has quoted, its bid cannot be taken seriously; the potential for poor performance is evident. Sotravic will not only be unable to fulfill its obligations but will be incapable of dealing with unforeseen situations and emergencies.
24. It is therefore highly questionable whether Sotravic's bid reflect actual market conditions (which have however been distorted), or represent a desperate attempt to make up for its consistently poor record. It would be against public interest to select a bidder solely on its price (which



price has been set unfairly as explained above) having a notorious performance of not being able to deliver.

(IV) **Wrongful Strengthening of mono polistic situation**

25. Sotravic's Existing Agreements mean that it is already in a quasi-monopolistic situation. Further allowing it to integrate the ecosystem with the issues highlighted above will create serious market risks where competitors will be priced out and the risk for fraudulent practices is increased. It is crucial that public funds be used judiciously to allow healthy competition for benefit of all stakeholders.
26. The Respondent's Response provides that the matter should be referred to competent authorities; the Applicant states that whilst it reserves its right to escalate the matter further, the Respondent ought to have regard to all of the above considerations when deciding whether to award to Sotravic a further major contract in light of the existence of a conflict of interest and activities, and its undisputed history of poor performance. The Respondent's mission (as stated on its website) is to "*devise effective waste management policy to minimize the negative impacts of solid and hazardous wastes*". As such, it may by itself decide on the best policy to achieve such goals.

E. The Hearing

Hearing was held on 10 July 2025. There is on record a Statement of Case filed by Applicant and a Statement of Defence filed by the Respondent respectively.

The Applicant was represented by Me. N. Ramburn, Senior Counsel, whilst the Respondent was represented by Me. N. Dauharee-Jeewa, Ag. Assistant Parliamentary Counsel.

F. Findings

This is a bit of an unusual case where the Respondent turns around and is agreeable to the main prayer in this application before us, namely that Sotravic's bid for the present tender be rejected. Right at the start, a representative of the CPB, Mr Rughoobur Jaychand, Deputy Chief Executive confirmed before us that, indeed, following a letter from the Ministry, the bid of Sotravic Ltd in this procurement exercise would be rejected. Such confirmation from the Respondent Public Body would have been the end of the matter. The right course of action would have been for the Applicant to move to withdraw its application. Or in the absence of such motion, the Panel could have simply and purely set aside the application.





However, Counsel for the Applicant, instead moved in terms of its third prayer which reads as follows: namely that the Panel:

33 c "Recommend that Sotravac Ltée be excluded from participating in any procurement proceedings relating to transfer station operations as long as it remains the Mare Chicose Landfill operator and/ or the holder of IWPF Agreements, and/or make such necessary recommendations as the Review Panel deems proper"

In its Statement of Defence, the Respondent raised a preliminary objection which reads as follows:

"The Independent Review Panel does not have jurisdiction as regards prayer 33 c"

Counsel for the Respondent took strong objection to the Applicant's motion, arguing that the Panel has no jurisdiction to make such a recommendation. She moved that that the present application be set aside.

Counsel for the Applicant took the view that the Panel does have a power under Section 45(10) of the PPA to make such order/recommendation.

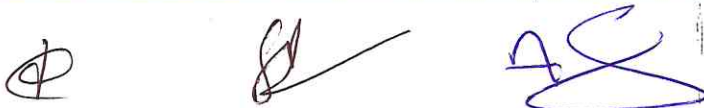
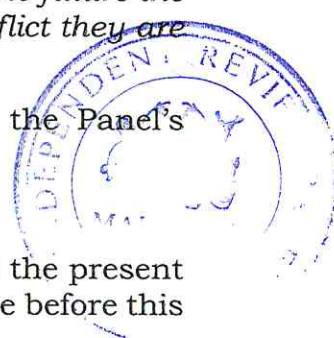
He argued that Sotravac is one of the major players in the solid waste field. The Applicant, MCCL is one of the players and it manages one of the Centres in Poudre D'Or. The Respondent's Bidding documents are clear on avoidance of situations of conflict. Counsel, at first, purported to bring evidence to that effect which, in a nutshell, would show that if the Panel does not put out a policy decision from now, not a blanket policy but a policy- regarding conflict situations whereby if allowing Sotravac, the company for the time being, operating Mare Chicose, the Centre D'enfouissement where all the waste goes and also allowing the same company to participate in contracts to operate all the other transfer stations, there would not be any system of checks and balances.

Counsel was determined to insist on the necessity of the Panel's intervention in the form of recommendations for future tenders for the sake of clarity and certainty on the issue of conflict. One major player in this case, Sotravac, who is in charge of the solid waste for depot at Mare Chicose will be able to circumvent all the issues if, as he put it "the IRP does not give a clear and certain recommendation so that in the future the CPB also knows exactly what is the IRP's feeling on the conflict they are evaluating."

We have heard arguments on both sides. Below follow the Panel's determination.

Locus

As Counsel for the Respondent rightly submitted, indeed in the present situation the Applicant does no longer have the locus to come before this



Panel. Section 43(i) of the Public Procurement Act (the PPA), reads as follows,

3. 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 coming into force of the procurement contract.

Obviously the right of challenge is dependent on the bidder having suffered or being likely to suffer loss or injury. The Public Body has, so to say, declared that the direct competitor of the MCCL, Sotravic, will no longer be in the race and will not be a participant in procurement proceedings in question. Hence, there is indeed no loss or injury that the Applicant is likely to suffer from the procurement exercise in question. Sotravic is completely out of the picture. The Applicant no longer has any right to challenge the said procurement proceedings.

Jurisdiction

Does the Panel have jurisdiction to grant such a prayer as prayed for? Section 45(10) of the PPA, provides the clear answer.

(10) *The Review Panel may dismiss an application for review or may, if it determines that there is merit in it, order one or more of the following remedies:-*

- (a) Prohibit the public body from acting or deciding in an unauthorized manner or from following an incorrect procedure;***
- (b) Recommend the annulment in whole or in part of any unauthorised act or decision of the Public Body; or***
- (c) Recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation; or***
- (d) Recommend payment of reasonable costs incurred in participating in the bidding process where a legally binding contract has been awarded which, in the opinion of the Review Panel, should have been awarded to the applicant.***

It is clear that our powers are limited to the above which relate only to the specific procurement exercise under review before the Panel and certainly not to any future tenders.

The Panel is bound by the remedies provided in Section 45(10). There is no general provision for any other powers given to the Panel under the Act. In the light of the clear wording of Section 45, Counsel for the Respondent rightly submitted that this Panel does not have the jurisdiction to actually entertain the recommendation prayed for.



Although Counsel for the Applicant readily agreed that the Panel cannot bind itself with a future tender, he, nevertheless, forcefully argued that the purpose of insisting on the recommendation was for the clarity and certainty of future tenders. He argued the Panel is entitled, in the interests of justice, to give guidance for the future once and for all, for the sake of clarity and certainty.

However, as Counsel for the Respondent rightly submitted, this Panel is, of course, not like a Court of Equity with inherent powers to give equitable remedies. It is a quasi-judicial body with specific powers provided by the Legislator in Section 45(10). It cannot go beyond those powers, all relating to the particular procurement exercise itself of which review is sought. They do not relate to future exercises. The Panel cannot be asked to fetter the discretion of Public Bodies or the Board *ad infinitum*. This would be tantamount to really unreasonable and unlawful fettering of the discretion of the Public Body or of the Board in future procurement exercise.

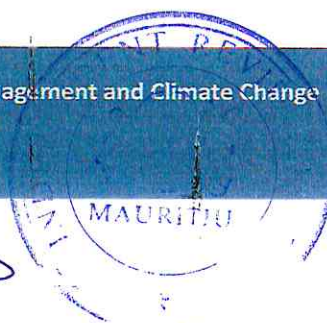
Counsel for the Applicant has sought support for his prayer solely from two previous decisions of this Panel, where, according to him, the Panel indeed made the type of recommendation prayed for here, namely ***Compagnie Régionale de Service de L'Environnement Ltée (CRSE LTEE) Ltée v/s Ministry of Social Security, National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division) (Solid Waste Management Division) (CN 19/19/IRP) (CRSE) and BFK Titanium Properties Ltd v. Ministry of Environment, Solid Waste Management and Climate Change (Solid Waste Management Division) CN No. 12/23. (BFK).***

However, there is indeed an obvious and material distinction between the said decisions and the present application in that, in both these cases, there was an actual decision by the public body that was being challenged before the panel. In both cases there was an actual decision on the procurement proceedings under review. In fact, the situation arising here can be easily distinguished from most of the cases which are usually before this Panel.

Both the above cases were thus heard on the merits. In each case, there were a successful bidder as well as an aggrieved bidder challenging the decision of the public body. In CRSE, having heard the case on the merits and recommending an annulment of the decision of the public body, the Panel simply ventured to observe thus:

"... even though it is not our remit to advise the CPB, we believe that the prohibition of conflict activities, if it is indeed to remain, should be thoroughly explored and clarified before another bidding exercise is carried out."

So it is clear that the above was simply an observation and not a recommendation.



In the case **BFK Titanium Properties Ltd vs Ministry of Environment** too, an actual decision to award the contract to the successful bidder was actually made and challenged before the Panel.

The Panel set aside the application for being devoid of merits.

In fact, in *BFK Titanium Properties Ltd*, despite hearing the case on the merits, the Panel concluded that it **did not** have jurisdiction in the matter at hand. The Panel did call attention to the fact that the Respondent Ministry and State Counsel on its behalf “*did not take issue with the jurisdiction of the Panel, until the very last*”. True it is that the Panel went on to make, the following remarks:

*“It has been the cursus of this Panel, although in the presence of sometimes overwhelming procedural bars, to provide the parties an opportunity to present their cases in full, which may or may not bring to light material that would require our intervention in the form of **recommendations for future tenders, or the action by well-intentioned public officials.**”.*

However, the gist of what was said must not be taken out of context.

Further, we are not bound by previous decisions or remarks/views of the Panel, especially when they are not in line with our powers clearly provided by the PPA. As stated above, the Panel is simply not mandated to review future procurement proceedings.

G. Conclusion

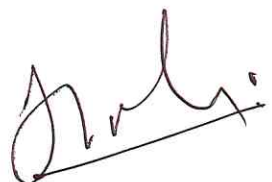
In the light of all the above, the preliminary objection raised by the Respondent Public Body must succeed. We therefore set aside the application.



Mr A. Gathani
(Member)



Ms J. Ramano
(Chairperson)



Mr S. Ragoobar
(Member)

Dated: 6 August 2025