



Independent Review Panel

Decision No. 09/25

In the matter of:

Sotravic Limitee

(Applicant)

V/S

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

(Respondent)

(Cause No. 10/25/IRP)

Decision



A. History of the case

On 22 August 2025, the Respondent (Ministry of Environment, Solid Waste Management and Climate Change (Solid Waste Management Division)) invited bids through Open International Bidding on the e-procurement system for the “Operation and Maintenance of La Brasserie Transfer Station and Transportation of Wastes from La Brasserie Transfer Station to Mare Chicose Landfill for a period of 36 months” bearing Reference. No: CPB/13/2025-ENV/SWM/EPROC/OIB/29/2024-25/EPROC-Ref SWMD/IFB/2025/168.

B. Challenge

On 26 August 2025, the Applicant challenged the procurement proceedings on the following grounds:

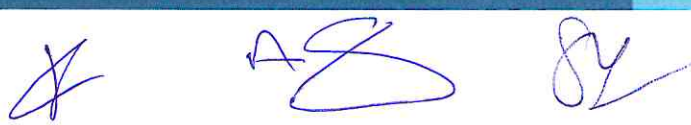
Bidder’s ground for challenge:

The Public Body/Ministry elected to have the service Contract to be established on the basis of the General Conditions of Contract (GCC) reference NCS/RFQ-GCC14/11-21 prepared by the PPO. As per the comments included in the said GCC (with added emphasis):

1. This sample contract for the Provision of Services has been prepared for use when hiring firms to provide Services paid **on the basis of lump-sum remuneration**.
2. Lump-sum contracts are used when **definition of the tasks to be performed is clear and unambiguous**, when the **commercial risk taken by the Service Provider is minimal**.
The environment and conditions under which the services for which bids invited will have to be rendered are, to the opposite of the assumptions of the GCC, risks prone and complex in that, for instance:

a) The bid documents contemplate regular operation from the upper platform of La Brasserie TS, notwithstanding that it is documented as being unserviceable. There is a material that this platform will remain unserviceable at the time of contract formation. Yet, no contractual mechanism exists for the Service Provider to obtain relief or compensation should this risk materialise-unlike the claims procedure provided under the standard conditions prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC). This results in an unfair allocation of risk to Service Providers and creates a distorted bidding environment, whereby bidders must assess and price the risk differently, leading to an uneven playing field.

b) The bid documents make no provision for addressing the social issue of waste pickers who derive their livelihood from the site. The Employer merely places the obligation on the Service Provider to prevent trespassing, despite it being well established that the police are unable to prevent waste pickers from entering, establishing themselves and carrying out activities which disrupt site operations. This omission imposes an unrealistic



burden on Service Providers and exposes them to operational and safety risks beyond their reasonable control.

It is further submitted that the burden of addressing the waste picker issue properly lies with the Employer. Having elected to establish and operate the site at its current location,

the Employer is uniquely placed, through the various services of the State, to develop a structured plan and to allocate the necessary resources to resolve what is fundamentally a social matter. It is therefore inappropriate and unreasonable for the Employer to pass this responsibility to the Service Provider under the guise of preventing trespass.

- c) The bid documents unfairly require the Service Provider to absorb the additional costs arising from Employer-determined events under section V – Scope of Services and performance Specifications. By way of example, the Service Provider must bear additional costs caused by cleanup campaigns scheduled on Sundays and public holidays, without any indication of their frequency, scope, or quantum.

In a similar vein, the provision compelling the Service Provider to extend the operating hours of the Transfer station at “no cost to the Employer’s” is framed without any defined limits. This exposes the Service Provider to indefinite and open-ended obligations. The absence of clear parameters renders these requirements commercially unreasonable and creates uncertainty in pricing. Bidders are left either to make arbitrary assumptions, resulting in inconsistent and incomparable tenders, or to exclude such costs altogether, thereby undermining transparency and fairness in the procurement process.

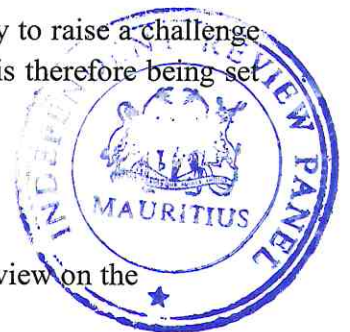
C. Reply to Challenge

On 29 August 2025, the Respondent, in reply to the Challenge by the Applicant, stated that:

2. Your company was excluded to participate in the bidding exercises to be conducted by this Ministry as per the Ministry’s letter dated 21 June 2025 for a period of 6 months. Based on this exclusion, your company is not currently eligible to participate in this procurement exercise.
3. It is considered that the current ineligibility does not allow your company to raise a challenge under Section 43 of the Public Procurement Act 2006. Your application is therefore being set aside and the challenge is not being entertained.

D. Grounds For Review

On 08 September 2025, the Applicant seized the Independent Review Panel for review on the following grounds:-



Irregularity 1 in Procurement Proceedings

1. Unlawful denial of Right to Challenge under section 43 of the PPA

(A) Exclusion under Section 35A does not extinguish the right to challenge.

(B) Administrative Exclusion does not tantamount to Ineligibility



Irregularity 2 in Procurement Proceedings

1. The Public Body's decisions to exclude Sotravic and reject its offer are ultra vires the PPA 2006:

Irregularity 3 in Procurement Proceedings

1. Inappropriate form of bidding template and amendments to bidding template.

Statement of Applicant on economic interest:

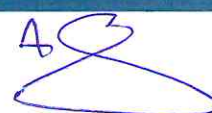
The Applicant is, pursuant to a previous bidding exercise, the incumbent Service Provider for the very Services subject to the present procurement proceedings. As such, it is uniquely positioned to deliver these Services to a highly competitive price. Unless the irregularities identified in this application for review are rectified, the Applicant will be unlawfully prevented from submitting an offer that would secure best value for money for the Public Body and generate value added and related economic gains for it.

Special measures sought for:

- (1) Suspension of the procurement proceedings pending the determination of the Review Panel and other Special measures as per the annexed Statement of Case

Relief requested:

1. An order declaring that the administrative exclusion relied upon by the Public Body does not, and cannot, lawfully deprive the Company of its statutory right to raise challenges in respect of procurement proceedings generally and in respect of the above procurement proceedings.
2. An order declaring that the Public Body's, decision to exclude the Applicant from participating in all bidding exercise and to reject any bid submitted by the Applicant in bidding exercises undertaken by the 21st June 2025 are illegal and/or ultra vires the PPA 2006 and are not to be given effect in the course of procurement proceedings.
3. An order declaring that the Public Body, pending the conclusion of ongoing judicial proceedings relating to the administrative exclusion, has to treat the Sotravic's bids as valid for purposes of participation in the procurement exercise, and ensure that Sotravic is



afforded full and equal opportunity to compete in all procurement proceedings it elects to pursue.

4. To entertain and determine the merits of Sotravic's challenge to the bidding documents for Operation and Maintenance of La Brasserie Transfer Station and transportation of wastes from La Brasserie Transfer Station to Mare Chicose Landfill for a period of 36 Months - Procurement Reference: ENV/SWM/EPROC/OIB/29/2024-25/EPROC -Ref SWMD/IFB/2025/168 / CBP Ref No. CPB/13/2025, including all issues raised in the original submission, without deferral to the Public Body to uphold the principles of fairness, transparency, and equal treatment in public procurement.
5. To implement any directions or corrections arising from the Panel's aforesaid determination, including the amendment or re-preparation of the bidding documents to address the identified deficiencies.
6. Such further or alternative relief as the Independent Review Panel considers just, equitable, and appropriate to protect Sotravic's rights under the Public Procurement Act 2006 and the principles of fairness, transparency, and equal treatment in public procurement for contract award.

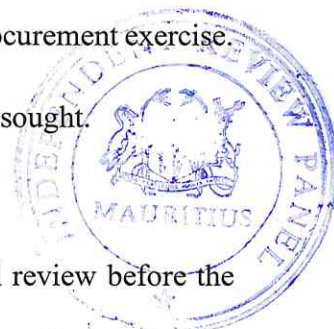
E. The Hearing

The Hearing was held on 29 September 2025. There is on record a Statement of Case filed by the Applicant, a Statement of Defence by the Respondent and a Statement of Reply to the Defence filed by the Applicant.

The Applicant was represented by Mr Désiré Dian and Mr Bacorisen of Counsel whilst Ms P. Dhunpath, Ag. Assistant Solicitor-General and Mrs Faugoo-Boolell, represented the Respondent. Mr N.Moorlah, Principal Project Officer of the Ministry deponed as witness for the Respondent.

In its Statement of Defence, the Respondent raised a Preliminary Objection which is averred to dispose of the matter. The Preliminary Objection contains three limbs as follows:

1. The Applicant has no locus standi to apply for review regarding this procurement exercise.
2. The Independent Review Panel has no jurisdiction as regard the relief sought.
3. The present application an abuse of process :
 - (i) The Applicant has lodged an application for leave for judicial review before the Supreme Court regarding the decision;



(ii) It tantamounts to a disguised judicial review application.

We heard very forceful arguments on the preliminary objection on both sides, particularly on behalf of Applicant.

F. Findings

It must be said at the outset that it was clear to us that the preliminary objection was well taken. From the evidence produced before us, the following came to light. It is clear that by virtue of the letter dated 21 June 2025, produced by the Applicant and indeed forming part of its own application (Annex 3) that the Public Body had informed the Applicant that the Ministry had decided to exclude the Applicant (Sotravic) from participating in “*all bidding exercises*” and to reject any bid submitted by the latter in bidding exercises undertaken by the Ministry for a period of 6 months.

Secondly, it is in evidence, from documents produced – Documents A, B and C, that on 25 August 2025, the Applicant filed an application for leave for judicial review before the Supreme Court against, inter alia, the above decision, namely the exclusion of the Applicant from all bidding exercises and rejection of any submitted bids, for a period of six months on the main grounds of the decision being illegal and ultra vires and constituting a procedural irregularity. The Applicant had also prayed for a stay of execution of the said decision. The application for leave was returnable on 22 September 2025. We note that the reason invoked for asking for a stay pending the outcome of the application is “*otherwise by the time this leave stage is heard, the applicant will be out of business and everything will be closed*”.

Thirdly, prior to the said application for leave for judicial review, by Proceipe and affidavit dated 21 July 2025 the Applicant had prayed for an Interim Order in the nature of an injunction restraining and prohibiting the Respondent from, inter alia, implementing its decision to exclude the applicant from all bidding exercises.

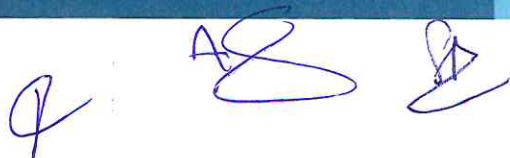
It would seem, therefore, that side by side with the judicial review application, a Proceipe was filed, moving for an injunction. The application was set aside. The Court found “*in no uncertain terms that applicant [was] seeking to challenge the decision contained in the letter dated 21 June, pursuant to section 35A of the PPA, which is an administrative decision with a statutory underpinning in the realm of public law.*” The Supreme Court also opined that it was a disguised form of judicial review (*Sotravic Limitée v. The Ministry of Environment, Solid Waste Management and Climate Change JIC/781/2025*. Document B).

We note also that no stay has been granted.

However, despite the above we propose to address the arguments put forward by both sides.

Locus

The Applicant argues that Sotravic qualifies as a bidder under Section 2 of the Public Procurement Act 2006 (the PPA) and therefore possesses the right to challenge procurement proceedings under s. 43.

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Counsel for the Applicant, Mr Dian forcefully argued Sotravic has locus standi and does qualify as bidder. The purported exclusion as per the Respondent's decision of 21 June 2025 (the Exclusion Letter) was inherently and blatantly unlawful. It does not deprive the Applicant of its status as bidder and cannot extinguish the fundamental statutory right to challenge procurement proceedings under section 43 of the PPA. If truly the Respondent was acting in accordance with Section 35A, what we find in Section 35A of the PPA has to tally with the contents of the 21 June letter.

Mr Dian referred us to the principle that Parliament does not legislate in vain. If Parliament has intended to put the word 'or' in Section of 35A (referred to below) and applying the Rules of Interpretation under the Interpretation and the General Clauses Act, it means that 'or' must be read disjunctively. 'Or' cannot be substituted for the word 'and'. And, therefore, what is written in the letter is in itself unlawful and whatever is done in pursuit of something unlawful is unlawful. Further, in Section 35A, no mention is being made of 'for a period of six months' and this is a substantive requirement or not part of Section 35A and, therefore, that decision in itself is unlawful. Anything done as a consequence of something unlawful cannot stand in law. Counsel for the Applicant maintained that the exclusion letter of 21st of June 2025 is an unlawful decision and, therefore the Applicant is a potential participant and has a right to challenge which is provided under Section 43 of the PPA. Such right is distinct from a right to bid.

The basis of an application for review is Section 45 of the PPA which provides as follows:

45(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)

(1A) Where an **unsatisfied bidder** is entitled to ask the Review Panel to review the procurement Proceedings under Sub-Section (1), he shall seize the Review Panel.

The operative words are "unsatisfied bidder".

Who is a bidder? Section 2 of the Public Procurement Act 2005 defines "bidder" as "**a participant or potential participant in procurement proceedings**"

A participant is obviously someone who takes part in procurement proceedings and a potential participant is someone who can or is entitled to take part in such proceedings.

As per the Applicant's own Statement of Case before this Panel, it is clear from letter dated 21 June 2025 that the Applicant has been excluded from participation in procurement exercises for a period of six months pursuant to the decision contained in the said letter. This letter clearly states that, in accordance with 'Section 35(A) of the Public Procurement Act, this Ministry has decided to exclude your Company, Sotravic Ltée, from participating in all bidding exercises and to reject any bid submitted by



your Company in bidding exercises undertaken by this Ministry for a period of six months as from the date of this letter’.

Section 35A of the PPA provides:

35A. Exclusion of suppliers, contractors and consultants

- (1) Notwithstanding that a supplier, contractor or consultant is not suspended or debarred under section 53, a public body may exclude him from bidding or reject a bid submitted by him in a bidding exercise where he has shown significant or persistent deficiencies in the performance of his obligations under a prior contract with that public body or any other public body.**

It is clear that a public body has such a power to exclude a supplier, contractor or consultant from bidding.

So, Sotravic Ltée has then been excluded from all bidding exercises and therefore does not qualify as a bidder. It can neither participate nor be a potential participant in bidding exercises.

One final argument put forward by the Applicant with regard to locus is that the Respondent’s own bidding documents -ITB 5.1-5.6, (Annex 6 of Statement of Case) define eligibility exhaustively and do not include administrative exclusion under Section 35A. However, a perusal of ITB 5.3 (a) shows that:

“A Bidder that is under a declaration of ineligibility by the Government of Mauritius in accordance with applicable laws at the date of the deadline for bid submission or thereafter, shall be disqualified.”

However, as rightly submitted by Ms Dhunpath, Counsel for the Respondent, the exclusion is an administrative decision provided by law which is only amenable to judicial review.

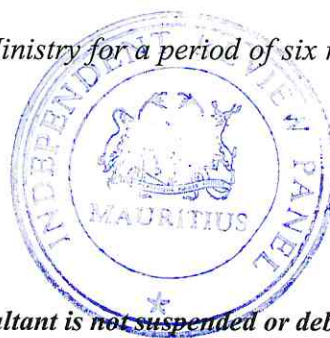
The objection with regard to locus is therefore rightly taken. The Applicant does not qualify as a bidder.

Jurisdiction

Does the Panel have jurisdiction as regard the relief sought?

The Applicant argues that the Panel does have jurisdiction to entertain the present application inasmuch as section 45(1) grants the Panel jurisdiction to review procurement proceedings. The Panel can grant

relief in terms of any of the provisions in s. 45(10). Any quasi-judicial body or tribunal has incidental and ancillary powers allowing the exercise of powers that are reasonably necessary to perform its statutory duties, even if not expressly granted and the reliefs sought here fall within the ambit of section 45(10) of the PPA. The Applicant further avers that the Respondent’s argument on the issue of jurisdiction is an attempt to avoid scrutiny.

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However, as rightly submitted by Counsel for the Respondent, it is obvious from the averments made by the Applicant that what, in fact, is being challenged, is the exclusion letter 21st of June 2025. This raises the important question of jurisdiction. Section 45 provides as follows:

*(1) 'An **unsatisfied bidder** shall subject to Section 39(5) be entitled to ask the Review Panel to review the procurement proceedings where –*

It is clear the words “procurement proceedings” in the Act refer to or are linked to a particular contract or a particular or specific procurement exercise. It is not any action or decision in the PPA that a contractor can challenge.

The act or the decision under Section 35(A) does not have anything to do with any particular procurement exercise or any specific procurement proceedings as such. It is a power given to the public body vis-à-vis defaulting contractors. The statutory power falls under the realm of Public Law. As rightly submitted by the Counsel for the Respondent, it is only the Supreme Court which has the power to review the decision-making process with respect to that decision to exclude the Applicant from bidding. The mandate of this Panel under section 45 is to review “procurement proceedings”. It does not have the mandate to review any decision of the Public Body under Section 35(A) which falls under the realm of Public Law and which can only be amenable to judicial review.

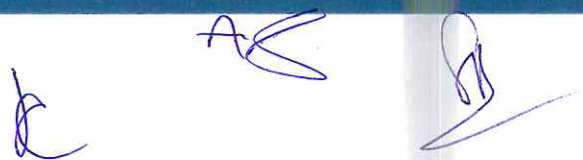
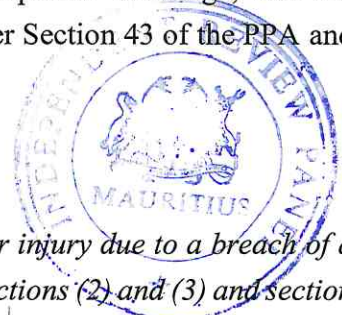
Counsel for the Applicant maintained that under S. 43, the Applicant has a right to challenge the Exclusion Letter. We have seen that, the Applicant does not qualify as a bidder. Moreover, what a bidder can challenge, is the procurement proceeding and here it is not the procurement proceeding which is being challenged. What is being challenged, is the Exclusion Letter. We note that the Public Body did not even entertain the challenge and, rightly so. Thus, even Section 45(1)(a) does not apply.

It was clear to us indeed, as per the Respondent’s response to the purported challenge, that the ineligibility of Applicant does not allow the latter to raise a challenge under Section 43 of the PPA and its application for challenge was rightly set aside and not entertained.

Section 43 of the PPA provides as follows:

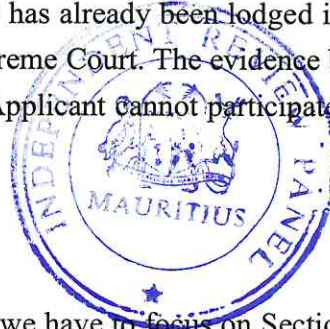
*43 (1) A **bidder** who claims to have suffered, or be likely to suffer, loss or injury due to a breach of a duty imposed on a public body or the Board by this Act may subject to subsections (2) and (3) and section 39(5), challenge the procurement proceedings before the entry into force of the procurement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

As rightly submitted by Ms Dhunputh, this Panel also does not have jurisdiction as regard any of the relief sought as the relief sought, is in relation to the administrative exclusion, not the procurement exercise/proceeding in question. The Panel is not the proper forum for such challenge. There is no merit whatsoever in any of the relief which is being sought, because this Panel is only empowered to make the



orders as provided for in Section 45(10). None of the relief sought falls within the ambit of section 45(10) of the PPA.

As stated above, an application for leave for judicial review has already been lodged in relation to the administrative exclusion which will be heard before the Supreme Court. The evidence before us is also that so far there is no order granted. As matters stand, the Applicant cannot participate in any bidding exercise.



Abuse of process

Counsel for the Applicant stressed all along on the fact that we have to focus on Sections 35A, 43 and 45 of the PPA and maintains its stand against each limb of the preliminary objection. Labouring under the same misconceptions of Sections 43 and 45 of the PPA, the Respondent maintains in its Reply to the Statement of Defence that a judicial review application does not oust the jurisdiction of the Panel to review breaches of the procurement process according to law. It maintains that the application is not a disguised judicial review application.

The above unreasonable and almost desperate stand by the Applicant's Counsel throughout the Hearing of this application before us is most understandable. We note that in pressing for a stay order before the Judge in Chambers in its application for leave for judicial review, the reason given for such order was as follows:

“... otherwise by the time this leave stage is heard, the applicant will be out of business and everything will be closed”. (Document B) Proceedings before the Judge in Chambers, 22 September 2025.

The alleged immense hardship and prejudice seem to have prompted the various applications. Again, in its application for leave for Judicial review, the applicant, avers the irreparable prejudice likely to be caused to it and its employees, that would go beyond the exclusion period of 6 months, in those terms:

“Indeed, the Applicant will be excluded from a market of nearly Rs 1,500,000,000/- and there is a real and serious risk that it will run out of a business which it has built over a lifetime and have to terminate the employment of nearly 400 employees”. (Document A).

The forceful, yet extremely misconceived arguments put forward throughout this hearing before us are indeed understandable. However, as rightly and equally forcefully submitted by the Counsel for the Respondent, the present application before this Panel does seem to be a disguised judicial review application for the simple fact that the Applicant is challenging the public body's decision to exclude the Applicant from participating in any bidding exercise for six months. And this seems to be the third

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attempt by the applicant to achieve the same end of challenging the exclusion decision made by the public body.

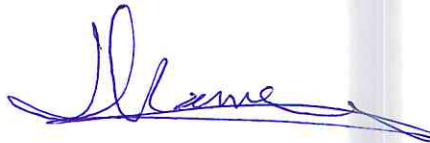
The present application does seem to constitute an abuse of process.

In *Peerun V D & Anor v. The Association of Notaries 2025 SCJ 371*, the Supreme Court had this to say:

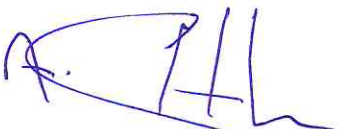
“As was aptly held in O’Reilly v Mackman (1983) 2 AC 237, where the proper remedy is by way of judicial review, ‘as a general rule it would be contrary to public policy and an abuse of the process of the court for a plaintiff complaining of a public authority’s infringement of his public law rights to seek redress by ordinary action.’”

G. Conclusion

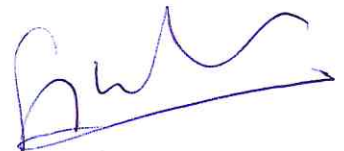
In the light of all the above, the preliminary objection is upheld and the present application is set aside.



Ms J. Ramano
(Chairperson)



A. Gathani
(Member)

S. Ragoobar
(Member)

Dated: 07 October 2025

