



Independent Review Panel

Decision No. 10/25

In the matter of:

Sotravic Limitée

(Applicant)

v/s

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

(Respondent)

(Cause No. 15/25/IRP)

Decision



A. History of the case

On 17th February 2025, the Respondent (Ministry of Environment, Solid Waste Management and Climate Change) (Solid waste Management Division) invited bids through Open International Bidding 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 bearing Reference No: ENV/SWM/EPROC/OIB/29/23-24 eProc Ref: SWMD/IFB/2024/141-CPB Ref No: CPB/35/2024.

The closing date for the submission of bids at the CPB was fixed for 09 June 2025.

Four (4) bids were received and the Applicant (Sotravic Ltée) was one of the bidders. However, the bid from Sotravic Ltée was not evaluated following a letter dated 21 June 2025 from the Public Body informing the Applicant that the Public Body has decided to exclude the applicant company from participating in all bidding exercises for a period of 6 months as from date of the issue of the letter dated 21 June 2025.

The Applicant has applied to the Supreme Court for leave to apply for Judicial Review against the decision of the Public Body against the exclusion letter.

B. Evaluation

A Bid Evaluation Committee (BEC) was set up to evaluate the bids received and to identify the lowest evaluated substantially responsive bid.

C. Notification of Award

On 23rd September 2025, the Respondent informed all the bidders who submitted their bids including the applicant that the evaluation of the bids received has been carried out and the particulars of the Successful Bidder is given as hereunder:-

<u>Bidder</u>	<u>Address</u>	<u>Amount exclusive of VAT</u> <u>(MUR)</u>
Maxi Clean Company Ltd	Grande Rosalie, D'Epinay	MUR 363,708,500

D. Challenge

On 29 September 2025, the Applicant challenged the procurement proceedings on the following grounds:-

Bidder's grounds for challenge:

Regarding Act or Omission 1:

1. Section 35A of the Public Procurement Act does not allow exclusion for a period of 6 months. The 6 month period is to be found in Directive 75 from the PPO and is ultra vires section 35A of the Act, therefore, making the decision to exclude Sotravic Limitée unlawful and inapplicable to this procurement.
2. Section 35A of the Public Procurement Act provides for exclusion or rejection of offers and not exclusion and rejection of bids for a period of 6 months also making the Public Body's decisions of 21 June 2025 ultra vires the Act and inapplicable in this procurement.



3. Section 35A(1) of the Public Procurement Act provides for exclusion from bidding in a bidding exercise or rejection of a bid. Sotravic Limitée has been excluded from bidding with regard to the La Chaumière Transfer Station, nor has its bid with regard to the Poudre D'or Transfer Station rejected.

Regarding Act or Omission 2:

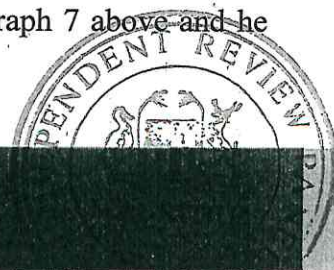
4. The principles to be followed for the evaluation of bids are essentially given under ITB 32 (Evaluation and Comparison of Bids) which references ITB 29 (Examination of Bids and Determination of Responsiveness) ITB 5 (Eligible Bidders), ITB 6, (Qualification of the Bidder) and ITB 30 (Correction of Errors) also detail procedural steps.
5. The Applicant submitted the lowest Bid Price at MUR306,433,180 which is less than the bid price of Maxi Clean Company Ltd by MUR 57 million.
6. In submitting his bid, the applicant met the prerequisites for his bid to progress to detailed evaluation as per ITB 29.1, namely, he met the eligibility criteria as per ITB 5 included the bid security in the amount of MUR 2,500,000 and, having more than *10 years' experience in such bids, made a conforming bid.
7. The Applicant was not requested to confirm the correction of any arithmetical error under ITB30 (Correction of Errors), made no proposal for variation, deviation or alternate offer or extended any discount) so that his evaluated bid price as per the provisions of ITB32 (Evaluation and Comparison of Bids) is its bid Price of MUR 306,433,180 reported at opening).
8. The Notification to Unsuccessful Bidder dated 23 September 2025 indicates that the evaluated Bid Price of Maxi Clean Company Ltd is same as stated in the opening report, i.e. MUR363,708,500.
9. In furtherance of ITB 32 (Evaluation and comparison of Bids), the Applicant's Bid Price of MUR 306,433,180 is the lowest evaluated Bid price because the evaluated Bid Price of Maxi Clean Company Ltd is more than MUR 57 M higher than the Applicant's.

Regarding Act or Omission 3:

10. The Applicant's bid price is the lowest evaluated Bid Price as per paragraph 7 above and he meets the eligibility criteria given in ITB 5 as per paragraph 6 above.

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11. The Applicant is qualified as per the provisions of ITB Clause 6.
12. There is no lawful reason for reasonably exercising the Employer's Right to accept or reject any bid in rejecting the Applicant's Bid as given under ITB 35.1.
13. In the application of ITB 34 (Award Criteria), the Applicant is to be selected as successful bidder be awarded the Contract considering specifically that ITB clause 34.1 provides that the Contract will be awarded to the responsive Bidder offering the lowest evaluated Bid price who is eligible and qualified as per ITB 5 and 6 respectively.

Regarding Act or Omission 4:

14. CPB indicated in the course of the hearings related to IRP decision 7/25 – Maxi Clean Co.Ltd v Ministry of Environment, Solid Waste Management and Climate Change (Solid Waste Management Division), the Applicant's bid in the present procurement exercise "would be rejected..." and that this was "following a letter from the Ministry".
15. There are no provisions in the PPA 2006 for CPB to be instructed or be influenced by Public Bodies in its functions or overseeing the examination and evaluation of bids in line with the bidding documents.
16. CPB is to oversee the examination and evaluation of bids (S11) (1) (d), to review the recommendations of the bid evaluation committee (s(11) (1)(e)), and approve the award of contracts (S(11)(1)(e)) taking into account as per PPA 2006, among other parameters, evaluation criteria and methodology given in the bidding documents, qualification criteria and methodology disclosed in the bidding documents and the need to obtain best value for money. (S11 (2) (a), (b) and (e)).
17. The rejection of a bid, on the basis of external instructions or influence rather than the statutory evaluation framework and the provisions of the corresponding bidding documents, is ultra vires the Public Procurement Act 2006, is accordingly unlawful and cannot be given effect.

E. Reply to Challenge:

On 03 October 2025, the Respondent, in reply to the Challenge of the Applicant, stated as follows:-

"Your Company was excluded to participate in the bidding exercises to be conducted by this Ministry as per this Ministry's letter dated 21 June 2025 for a period of 6 months. Based on this

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exclusion, your Company does not currently satisfy the eligibility criteria for this procurement exercise”.

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.

F. Grounds For Review

On 09 October 2025, the Applicant seized the Independent Review Panel for review on the following grounds:-

Ground 1 – Failure to examine and evaluate every bid according to the criteria and methodology set out in the bidding documents.

- a.-The Applicant submitted the lowest Bid Price at MUR 306,433,180 which is less than the bid price of the selected bidder that is Maxi Clean Company Ltd by MUR 57 million.
- b.-The principles to be followed for the evaluation of bids are essentially given under ITB 32 (Evaluation and Comparison of Bids) which references ITB 29 (Examination of Bids and Determination of Responsiveness) ITB 5 (Eligible Bidders). ITB 6 (Qualification of the Bidder) and ITB 30 (Correction of Errors) also detail procedural steps. Annex 6.
- c.-In submitting his bid, the applicant met the prerequisites for his bid to progress to detailed evaluation as per ITB 29.1, namely he met the eligibility criteria as per ITB 5, included the bid security in the amount of MUR 2,500,000 and, having more than 10 years' experience in such bids, made a conforming and responsive bid. ANNEX 11 including ANNEX 11.9 (bid security).
- d.-The Applicant was not requested to confirm the correction of any arithmetical error under ITB30 (Correction of Errors), made no proposal for variation, deviation or alternate offer or extended any discount so that his evaluated bid price as per the provisions of ITB 32 (Evaluation and Comparison of Bids) is its bid Price of MUR 306,433,180 reported at opening.
- e.-The Notification to Unsuccessful Bidder dated 23 September 2025 indicates that the evaluated Bid Price of Maxi Clean Company Ltd is same as stated in the opening report, i.e, MUR 363,708,500.
- f.-In furthermore of ITB 32 (Evaluation and Comparison of Bids), if is the Applicant's Bid Price of MUR 306,433,180 is the lowest evaluated Bid Price because the evaluated Bid Price of Maxi Clean Company Ltd. is more than MUR 57 M higher than the Applicant's:



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Ground 2 – Failure to discharge its function adequately

In the circumstances, the applicable evaluation and qualification criteria and methodology yield the Applicant to be the successful bidder since:

1. The Applicant's bid price is the lowest evaluated Bid Price and he meets the eligibility criteria given in ITB 5.
2. The Applicant is qualified as per the provisions of ITB Clause 6.
3. There is no lawful reason for reasonably exercising the Employer's Right to accept or reject any bid in rejecting the Applicant's Bid as given under ITB 35.1
4. In the application of ITB 34 (Award Criteria), the Applicant is to be selected as successful bidder be awarded the Contract considering specifically that ITB Clause 34.1 provides that the Contract will be awarded to the responsive Bidder offering the lowest evaluated Bid Price who is eligible and qualified as per ITB 5 and 6 respectively.

Ground 3 – Board's failure to discharge its functions adequately

The Central Procurement Board ("CPB") is to oversee the examination and evaluation of bids (S11(1)(d), to review the recommendation of the bid evaluation committee (S(11)(1)(e), and approve the award of contracts (S(11)(e)(i) taking into account as per PPA 2006, among other parameters, evaluation criteria and methodology given in the bidding documents, qualification criteria and methodology disclosed in the bidding documents and the need to obtain best value for money. (S11 (2) (a), (b) and (e), but has failed to do so adequately.

G. The Respondent's preliminary objections in law

The Public Body did not file a Statement of Reply but instead filed a preliminary objection in law to read as follows:

Whilst reserving its right to file a Statement of Defence, Respondent moves that the present application be set aside in as much as:

- (a) The applicant does not qualify as a bidder given that it is excluded from participating in all bidding exercises undertaken by the Respondent for a period of 6 months as from 21 June 2025 and as such it does have any locus for a review regarding the procurement exercise;
- (b) The Independent Review Panel does not have jurisdiction as regard the reliefs sought;
- (c) The Present application constitutes an abuse of process given that:
 - (i) the applicant has lodged an application for leave for Judicial Review dated 25 August 2025,

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regarding the decision of the Respondent to exclude the Applicant from participating in all bidding exercises and to reject any bid submitted by the Applicant in bidding exercises undertaken by the Respondent, for a period of six months as from 21 June 2025;

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

G. The Arguments

The Applicant company was represented by Mr S Bhuckory, Senior Counsel together with Miss B Dulthummon.

Respondent was represented by Mrs N Dauharry Jeewa, Assistant Parliamentary Counsel together with Mrs Faugoo Boolell, Ag. Senior State Counsel instructed by Mrs K Ramessur Principal State Counsel.

The Applicant raised the issue that the Public Body cannot only file a Preliminary Objection but should file its Statement of Reply. The application was fixed for Arguments to the 17 October 2025 for this Panel to rule whether the Public Body should file its Statement of Reply containing the Preliminary Objection in law and its reply on the merits.

On 31 October 2025, the Panel ruled that the Panel will hear on the Preliminary Objections filed in Law.

On 03 November 2025, both Counsel agreed that they would file their respective submissions in writing which they did on 05 November 2025.

The Applicant has in its written submissions addressed the three issues raised by the Respondent.

On the issue of Locus Standi, the Applicant has submitted that (a) Applicant's bid was formally received by the Public Body (b) Respondent requested the applicant to extend its bid validity.

The Respondent on its part did not press much on the issue of Locus Standi.

At this stage the Panel is of opinion that the Applicant has a locus to apply for a challenge and review in as much as the applicant was made aware of the outcome of the bidding exercise that is the letter of Notification was also addressed to the Applicant.

On the second issue, the Applicant submits that this Panel has jurisdiction to entertain this application for Review as the reliefs sought by it falls within the ambit of the Independent Review Panel and referred to Section 45(10) of the Public Procurement Act and invited the Panel to distinguish this present application from the case of **BFK Titanium Properties Ltd v Ministry of Environment**,

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Solid Waste Management and Climate Change (Solid Waste Management Division) (Decision No.12/23).

And finally, on the issue of abuse of Process, the applicant has submitted that in applying for Judicial Review does not preclude the applicant from seeking relief before the IRP as part of the procurement process. In support thereof, Mr S Bhukhory SC has referred to this Panel the judgment of **Narsinghen v The Local Government Service Commission [2023 SCJ 416]** and **Air Mauritius Technical Services Staff Union v The Employment Relations Tribunal [2025 SCJ 329]**

In the first judgment which Mr S Bhukhory SC referred to, the Supreme Court ruled that the party applying for Judicial Review should exhaust all remedies available to it before seeking the Supreme Court intervention and the second judgment ruled that a party applying for Judicial Review should enter the application promptly.

The Respondent addressed in its written submissions on only two grounds, viz: (a) The Independent Review Panel has no jurisdiction to entertain this application for review as the exclusion decision made under Section 35 of the Public Procurement Act fall outside the jurisdiction of the Panel and may only be challenged by way of Judicial Review.

The Public Body, on the issue of abuse of process has amongst others, referred to this panel the Authority of **Auleear B A & Ors v SBI (Mtius) Ltd [2025 SCJ 382]** and **Chady M S & Anor v Swab Kufe Ltd & ors [2025 SCJ 413]**.

The panel has given due consideration to the submissions on both sides and the judgments referred to therein.

H. Findings

The Applicant has made in all six applications for review and in all the six applications the letter of exclusion dated 21 June 2025 has been the main objection for the Public Body for the applicant to proceed with its application for review.

In the application bearing cause number 10/2025 IRP, the Independent Review Panel in a motivated decision came to the conclusion that the application does seem to constitute an abuse of process.

The IRP also referred to the case of *Peérún V D & Anor v The Association of Notaries 2025 SCJ 371* where the Court had this to say:

‘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.’

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In two other applications, that is the application bearing number 11/2025 and 12/2025, both were set aside on the Pro Forma date when the Public Body informed the Panel that a certificate of urgency has been issued and the contract has been awarded.

In the application bearing cause number 13/2025, the Panel upheld the preliminary objections raised by the Public Body and set aside the application for review. An order was made to that effect.

The application bearing cause number 14/2025 had the same fate. A ruling was filed and the Panel had set aside the application on the ground that the letter of exclusion dated 21 June 2025 which formed part of the record before it was subject to an application for leave to apply for Judicial Review.

The Panel in this application has no alternative than to uphold the preliminary objections filed by the Public Body and comes to the conclusion that it cannot hear this application for review in view of a Judicial Review pending before the Supreme Court.

I. Conclusion

In the light of the above reasoning, the Panel sets aside the present application for review.

H. Gunesh
(Vice Chairperson)

A. Gathani
(Member)

R. Mungra
(Member)

Dated : 07 November 2025

