



Independent Review Panel

In the matter of:

Decision No. 03/26

Sotravic International Ltd

(Applicant)

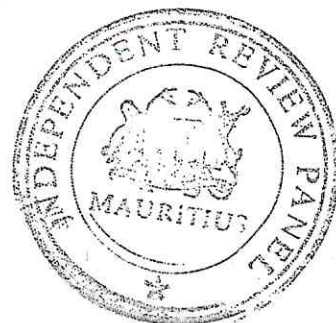
v/s

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

(Respondent)

(Cause No. 19/25/IRP)

Decision



A. History of the case

On 24 November 2025, the Ministry of Environment, Solid Waste Management and Climate Change (Solid Waste Management Division) (Respondent) proceeded with an open International bidding for the Operation and Maintenance of La Chaumière Transfer Station and Transportation of Wastes from La Chaumière Transfer Station to Mare Chicose Landfill for a Period of 30 Months – Procurement Ref: ENV/SWM/EPROC/OIB/28/2024-25 - e-Proc Ref. No. SWM/IFB/2025/167-CPB Ref: CPB/12/2025.

The closing date for submission of bids was fixed for 09 December 2025.

The date of opening of bids was 11 December 2025.

The present case has spanned a number of months before the Panel given that the Ministry has graciously sought to find solutions and the parties have held some form of negotiation to try and resolve the matter. Consequently, the procurement proceedings have been put on hold ever since the suspension ordered by the Panel lapsed in December 2025.

The Applicant's challenge and, more importantly, its application for review have, over time, changed (some grounds have been dropped while others have been founded differently). Nevertheless, as in the practice in the Panel's judgments, we will reproduce the grounds as they have appeared in the challenge and in the review proceedings.

B. Challenge

On 28 October 2025, the Applicant challenged the opening of the bids on the following grounds:

Bidder's grounds for challenge:

Regarding Act or Omission1:

The Public Body/Ministry elected to have the service Contract to be established on the basis of the General Conditions of Contract (GCC) reference Ref: NCS/RFQ-GCC14/11-21 prepared by the PPO with specific unwarranted amendments to the GCC.

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, and further incompatible with the amendments applied to the GCC and templates.

These defects, as set out in the examples that follow, distort the allocation of risk, undermine equality of treatment, and compromise the fairness and transparency of the procurement process.

- (a) The bid documents unfairly require the Service Provider to absorb 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 frequency, of their, 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" 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.
- (b) The valuation documents of services under the bid is left to an arbitrary mechanism. While Bill 11 is stated to be note payable on a monthly lump sum basis, it adds that *"in cases of operational failures leading to excessive accumulation of wastes at the station, payment for Operations and Maintenance will be based on the performance of carting away of wastes on a pro-rata principle."* This wording is imprecise, lacks any defined parameters, and effectively grants the Employer unilateral discretion in determining payment.

The absence of an objective procedure for measurement or independent determination opens the door to arbitrary valuation and exposes the Service Provider to unpredictable financial risk. To ensure fairness and transparency, it is necessary that any Employer claim or adjustment be subject to determination by a neutral third party, in line with the approach adopted under the standard conditions of the Fédération Internationale des Ingénieurs-Conseils (FIDIC).

The failure to provide such a mechanism undermines equal treatment of bidders and creates an uneven playing field, as different bidders are compelled to assess and price the risk of arbitrary deductions differently.

- (c) The bid documents fail to provide any contractual mechanism for the Service Provider to obtain relief or compensation in respect of Employer-responsible circumstances that may generate additional costs. By contrast, the standard conditions prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) include a structured claims procedure with pre-defined common Employer responsible circumstances which ensures that such risks are allocated fairly and managed transparently.



The omission of such a mechanism in the present documents creates uncertainty in bid pricing. The consequence is a distorted bidding environment, undermining equal treatment, transparency, and the achievement of best value for money.

- (d) Clause 8 of the GCC provides for disputes to be settled by adjudication, with decisions to be rendered within 28 days from notification of the dispute. However, this provision has been altered in the Special Conditions to substitute court litigation as the sole means of resolution.

This amendment significantly increases the time and cost required to resolve disputes and deprives the Service Provider of a prompt and effective remedy, contrary to the balance originally envisaged in the GCC. The effect is to penalise all bidders by exposing them to protracted and uncertainty and financial strain in the event of a dispute. This not only undermines fairness and efficiency in contract administration but also distorts equal treatment among bidders and discourages competitive participation, thereby jeopardising value for money in the procurement process.

C. Grounds for Review:

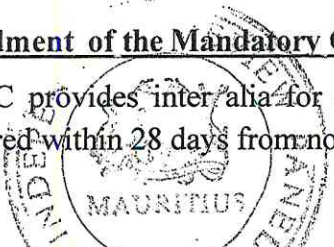
Ground 1: incorrect use of PPO Standard Bidding Document Template

1. The Public Body has used the incorrect PPO Standard Bidding Document Template inasmuch as
 - a. the PPO General Conditions of Contract currently used (Ref: NCS/RFQ-GCC14/11-21) is in fact intended for use for Lump-sum Contracts "when the definition of the tasks to be performed are clear and unambiguous" and "when the commercial risk taken by the Service Provider is minimal";
 - b. the present procurement in question involves –
 - i. Substantial ambiguities in task definition and scope;
 - ii. Substantial commercial risks being placed on the Service Provider;
 - iii. absence of clear costing parameters pertaining to Employer's determined events;
 - iv. Arbitrary determination of payment to the service provider without objective criteria; and
 - v. Absence of relief or compensation mechanisms in respect of Employer-responsible circumstances.
2. The use of the selected PPO GCC will hence lead to an arbitrary or skewed evaluation process and a vitiated contract award contrary to the transparency and value-for-money principles of the PPA 2006.

Ground 2: Unlawful amendment of the Mandatory General Conditions of Contract ("GCC")

1. Clause 8 of the GCC provides *inter alia* for disputes to be settled by adjudication, with decisions to be rendered within 28 days from notification of the dispute.

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2. Sub-Clause 8.2.3 of the Special Conditions purports to delete Clause 8 of GGC and substitute court litigation as the sole dispute resolution mechanism.
3. This aforementioned amendment contravenes section 7(c) of the Public Procurement Act and Directive No.1 issued by the Procurement Policy Office ("PPO") which makes the use of standard forms of contracts and similar documents issued by the PPO mandatory by public bodies.

D. The Hearing

A hearing was held on Wednesday 26 November 2025. The Applicant was represented by Mr S. Bhuckory SC, together with Ms B. Dulthummon and Ms S. Bhuckory, whilst Mrs A. Jalloo, Principal State Counsel, together with Ms H. Thug, Temporary State Counsel, represented the Respondent initially and Mrs. N. Dauharry Jeewa (Ag Assistant Parliament Counsel) appeared at the substantive hearing held on 28th January 2026.

E. Findings

We are thankful to Mr Bhuckory and Mrs Jeewa for their extensive oral submissions which we have attempted to summarise below insofar as they relate to the real issues in dispute before us.

Mr Bhuckory submitted along the following lines.

Unlawful amendment of the Mandatory General Conditions of Contract

Directive No. 1 clearly provides:

"In accordance with Section 7(c) of the Act, use of the standard documents issued by the Office is mandatory."

The amendments brought by the Respondent to the General Conditions of Contract ("GCC") violate the mandatory provisions of section 7(c) of the Act. The GCC cannot be customised accordingly. The customisation of the Standard Bidding Documents ("SBD") is only applicable to the Particular Conditions of Contract. He quoted:

Part III – CONDITIONS OF CONTRACT AND CONTRACT FORMS Section VI. GCC

"This section contains the general clauses to be applied in all contracts. The text of the clauses in this section shall not be modified."

The initially attempted changes to have disputes resolved by the Courts whilst all standard documents provide for speedier methods (i.e. adjudication and/or arbitration) went beyond customisation, distort the balance of rights and obligations between the parties, undermine transparency, fair competition and comparability of bids. The amendment also affects the comparability of bids as bidders are likely to factor in higher costs and legal risks when pricing their offers under a litigation-based dispute mechanism.

Mr Bhuckory also argued that departure from the mandatory framework also undermines the principles of transparency and value for money.

Unauthorised amendment of Clause 8 of GCC

Senior Counsel for the Applicant submitted that the deletion of Clause 8 of the GCC and replacing it with a new clause for dispute resolution through Mauritian Courts was illegal and ultra vires. According to him, once the Ministry chooses to apply a process, this process has to be followed through and through to its logical and natural end and cannot be changed.

It is not a change that warrants a mere stroke of the pen. Hence, the Applicant has been denied a fair process by the sudden change of direction.

We understand that to mean that the Applicant is not only joining issue with respect to initially wording of the Bidding Documents imposing a court-based dispute determination but with respect to the proposed course to revert to the arbitration mechanism through an addendum suggested as from late December 2025.

Senior Counsel maintained that the proposed addendum, though accepted by the Applicant, changes the rules *ab initio* altogether.

The golden thread that runs through our **principles** regarding amendments at the end of the day is whether **there was** prejudice caused to a party. Here the amendment is clearly prejudicial for being a consequential one.

It seems to us that the Applicant, *in fine*, is taking issue with the lack of an adjudication process.

On the Respondent's side, Mrs Jeewa argued as follows.

ITB 12 of the Bidding Documents deals with the amending of Bidding Documents, in particular ITB 12.1, 12.2 and 12.3 which provide very clearly that at any at time, prior to the deadline for submissions of bids, bid preparation and bid submissions, the employer may amend the bidding documents by issuing addenda. Any addendum issued shall be part of the bidding documents.

What the Respondent is seeking to do, is to have the bidding document aligned to the standard bidding document by bringing back the arbitration method of dispute resolution instead of the parties having to go before the courts of law.

She added that there is no prejudice being caused to the prospective bidder as we are still at the launching stage. The bid extension period has been extended. Amendments to the bidding documents are being made to be aligned strictly to the Standard Bidding Documents. Putting forward this addendum at this particular stage, is actually in all fairness and in strict compliance to the term of the SBDs.

Mrs Jeewa stressed on the first part of the special condition of contract as per the SBD, Clause 8.2.3 and the "Notes" for larger contracts and contracts likely to be awarded to the international contractors.

The amendment proposed by the Respondent is very clearly in alignment to the special condition of the contract. Here the matter is not strictly a matter of law. It has a very factual basis. The addendum is in line with the bidding documents. The Procurement Policy Office is allowing public bodies to



customise the bidding documents by removing the adjudication and parties can choose amicable settlement and then go straight to arbitration.

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On the whole, we find, the present matter has eventually become one that turns around a single issue: The departure by the Ministry from the requirement of going through an adjudication process prior to litigation.

In short, the SBD, using FIDIC and similar standards, contain in the General Conditions of Contract a two-stage dispute resolution process, should amicable negotiations fail; first, an adjudication, and secondly, arbitration. The Ministry, in the bid as initially floated, sought to have only the courts of law determine any dispute. With the amendment proposed through an addendum circulated in December 2025, the Ministry reintroduced the arbitration process but not the adjudication.

It is indeed correct, as submitted by the Applicant, that the standard bidding documents issued by the Procurement Policy Office (also “PPO”) are binding on all public bodies, and the PPO alone can allow a public body to depart from the said standard documents.

Equally, the Ministry is correct when it states, and has established beyond doubt, that, when it comes to the adjudication process, the PPO has permitted public bodies from doing away with that process altogether; *vide* the phrase ‘[insert “Not Applicable” if not applicable]’ set out in Section VII. Special Conditions of Contract in the standard bidding documents.

As such, we can only hold that the removal of the ‘adjudicator’ process was lawful insofar as the Public Procurement laws are concerned.

However, another question must immediately arise, out of fairness to the Applicant and to the other bidders, that is, whether the decision by the Ministry, the very choice not to have an adjudicator, although clearly permitted in law to do so, falls foul of the principles of administrative and public law. In legal terms, was the decision by the Ministry reasonable in the *Wednesbury* sense.

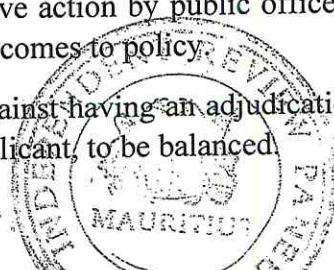
We have given anxious consideration to that question and there follows our conclusion on the point.

The Ministry has graciously explained to us, during the hearing, why the decision was made to move away from the normal ‘adjudicator’ process for this particular procurement contract, reasons we will refrain from setting out in this judgment because of the specific nature of the procurement exercise. It was, in effect, a policy decision made by the Ministry, as is within its rights.

On the other hand, the Applicant’s points on it being better to have an adjudication process before moving to arbitration were scant, and understandably so. Although we do feel some inclination towards some of these submissions, especially given that adjudication is a staple in the field and in such contracts in both public and private settings, the question we need answer is not whether that dispute resolution method is preferable but, rather, whether the Ministry acted unreasonably. Moreover, the threshold is even higher when an applicant seeks to quash a policy decision.

Judicial bodies are loath to interfere with executive action by public officers working under elected officials and the hesitation is even greater when it comes to policy.

We have found the points made in favour and against having an adjudication process, taken in their best possible light and in the best case for the Applicant, to be balanced.



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As such, the inescapable conclusion is that the Ministry has not acted so unreasonably that no other reasonable authority would have made the same choice or decision.

We, therefore, decline to interfere with the Ministry's choice not to have an 'adjudicator' in the present procurement's Bidding Documents.

F. Conclusion

The Applicant for Review is, accordingly, set aside.



**J. Ramano
(Chairperson)**



**A. K. Namdarkhan
(Member)**



**R. Mungra
(Member)**

Dated: 13th February 2026