

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA**

In the matter of an Application for
mandates in the nature of Writs of
Certiorari and Mandamus in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka

CA (Writ) Application No: 50/2018

Sierra Construction Limited,
112, Havelock Road,
Colombo 5.

PETITIONER

Vs.

1. Municipal Commissioner,
Colombo Municipal Council,
Town Hall, Colombo 7.
- 1A. Colombo Municipal Council,
Town Hall,
Colombo 7.
2. Richardson Technologies (Pvt) Limited,
342, Galle Road,
Colombo 3.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: **Arjuna Obeyesekere, J**

Counsel: Romesh De Silva, P.C., with Hiran De Alwis and Vasanthakumar Niles for the Petitioner

Senani Dayaratne with Ms. Nishadi Wickremasinghe for the 1st and 1A Respondents

K. Kanag-Isvaran, P.C., with Chandaka Jayasundera, P.C., Nigel Bartholomeusz, Lakshmanan Jeyakumar and Ms. Aslesha Weerasekera for the 2nd Respondent

Supported on: 19th September 2019 and 14th October 2019

Written Submissions: Tendered on behalf of the Petitioner on 11th November 2019

Tendered on behalf of the 1st and 2nd Respondents on 8th November 2019

Tendered on behalf of the 2nd Respondent on 11th November 2019

Decided on: 19th June 2020

Arjuna Obeyesekere, J

The issue that arises for the determination of this Court at this stage is whether the Petitioner has made out a prima facie case that the decision of the 1st Respondent, the Municipal Commissioner of the Colombo Municipal Council, and the 1A Respondent, the Colombo Municipal Council, to reject the bid submitted by the Petitioner as being unresponsive, is illegal and/or unreasonable.

The facts of this matter very briefly are as follows.

By an advertisement published in the *Daily News* newspaper of 31st July 2017, marked 'P4', the 1st Respondent, had invited bids for the supply, installation and commissioning of a LED smart street lighting system for the City of Colombo. The said invitation specified *inter alia* that:

- (a) The closing date for the submission of bids shall be 25th August 2017;
- (b) All bids shall be valid until 20th February 2018; and
- (c) All bidders are required to submit a Bid Security, which shall be valid until 22nd March 2018.

In terms of Section 1 of the tender document, marked 'P8' (*Instructions to Bidders*) the Project was to be carried out as a Public Private Partnership between the Colombo Municipal Council and the successful bidder. Accordingly, the successful bidder was required to invest the total cost of the Project, and thereafter recover its investment through advertisements, or any other scheme proposed by the bidder.

While Clause 8.2 of 'P8' specified that bids shall be valid until 20th February 2018, Clause 8.3(c) of 'P8' specified that the bid security shall be valid until 22nd March 2018. It is common ground that evaluation of bids and obtaining the necessary approvals would take time, and therefore, the need to keep the bids alive and valid for a specified period. Furthermore, once a decision is taken, and such decision is conveyed to the successful bidder, it takes time to execute

a formal contract etc, and therefore, the need to keep the bid security valid for a period after the expiry of the validity date of the bid.

The Petitioner, who states that it is a leading engineering and construction company and has completed several projects of high value, had collected the tender documents on 31st July 2017.¹ The pre-bid meeting had been held on 9th August 2017, with the participation of the Petitioner, as well as others who had collected tender documents and the Officials of the Colombo Municipal Council.

This Court must observe that in terms of Clause 8.8(b) of 'P8', *"The employer may, in exceptional circumstances and at its discretion, extend the deadline for submission of Bids by issuing an addendum, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline will thereafter be subject to the deadline as extended."*

Together with a letter dated 18th August 2017 marked 'X6', the 1st Respondent had issued to all those who had participated at the pre-bid meeting, including the Petitioner, the minutes of the said meeting, and an amendment to the bidding document in the form of Addendum No.1. According to the said Addendum, marked 'X5a', the aforementioned dates specified in 'P8' had been amended as follows:

- a) The closing date of the bids had been extended until 4th September 2017;
- b) The bid validity period had been extended until 2nd March 2018;

¹ Vide letter dated 31st July 2012 issued by the Petitioner, marked 'X2'.

c) The bid security was to be valid until 1st April 2018.

In addition to 'X6', the Petitioner had been informed by a letter dated 15th August 2017, marked 'P5' of the above change in dates, and specifically that, *"with these changes, bidding documents shall also be changed to match with these days."* A notice informing the Public about the extension of the date for the submission of bids, the bid validity period, and the bid security, had been published in the daily newspapers of 17th August 2017.²

Together with a covering letter dated 4th September 2017, marked 'P3', the Petitioner had submitted its bid to the 1st Respondent, with paragraph two of 'P3' reading as follows:

"Our bid is valid till 20th February 2018 and bid security is valid until 22nd March 2018. The bid security issued from Sampath Bank ... is attached."

Thus, as at the closing date of the bids, the Petitioner had not complied with the extension of the bid validity period and the extended bid security date, introduced by the Addendum 'X5a', and conveyed to it by 'P5', and 'X6'.

The Petitioner by a letter dated 25th September 2017, marked 'P7a', informed the 1st Respondent as follows: *"With reference to the above subject tender, we Sierra Construction Limited herewith enclose the bid security extension letter"* Annexed to 'P7a' was a letter issued by the Bank extending the validity period of the bid security until 1st April 2018.

² Vide newspaper advertisements marked 'X10'.

This Court must observe at this stage that what the Petitioner has extended by 'P7a' is only the validity date of the bid security and not the bid validity period. Thus, it appears that even though the Petitioner sent the letter 'P7a', its bid continued to be non-responsive for the reason that the validity period of the bid did not meet the date stipulated by the Colombo Municipal Council.

The bids had been evaluated by a Technical Evaluation Committee (TEC) comprising of Officers of the Colombo Municipal Council. Paragraph 1 of the report of the TEC under the heading, '*Responsiveness*' reads as follows:

"Sierra Construction Limited

(a) The Bidder has been unable to submit a valid bid bond as the validity period of bid security is upto 2018-03-22 which is shorter than the required bid validity period (upto 2018-04-01) and the name of the Bid security is Sierra Construction Pvt Limited which is not the present name of bidder. Since it is a major deviation, the bid is considered as non-responsive"

The 1st Respondent had thereafter issued the 2nd Respondent a letter of acceptance dated 11th January 2018.³

Dissatisfied with the decision of the 1st Respondent to reject its tender as well as award the tender to the 2nd Respondent, the Petitioner filed this application, seeking *inter alia* the following relief:

³ Vide 'X17'.

- a) A Writ of Certiorari to quash the decision to award the letter of acceptance to the 2nd Respondent;
- b) A Writ of Mandamus directing the 1st Respondent to pre-qualify the Petitioner for the said Project;
- c) A Writ of Mandamus granting the Project to the Petitioner.

The learned President's Counsel for the Petitioner challenged the above decision to reject its tender on three principle grounds.

The first submission of the learned President's Counsel for the Petitioner was that the bid validity period can only be extended where exceptional circumstances arise, and that, as no such circumstances had arisen, the decision to extend the date of validity of the bid security is *ultra vires* and that no consequence would flow from such decision. He relied on the provisions of Clause 8.2(b) of 'P8' in support of his submission.

Clause 8.2(b) of 'P8' reads as follows:

"In exceptional circumstances, prior to expiry of the original bid validity period, the Employer may request from the Bidders to extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by facsimile. A bidder may refuse the request without forfeiting its bid security. A bidder agreeing to the request will not be required or permitted to modify its bid, but will be required to extend the validity of its bid security for the period of the extension, and in compliance with Clause 15 in all respects."

This Court does not agree with the said submission, for the following three reasons.

The first reason is that the Petitioner has acquiesced in the said extension and therefore, cannot complain that exceptional circumstances have not arisen, justifying an extension.

As noted earlier, the Petitioner participated at the pre-bid meeting held on 9th August 2017. In terms of Item 10 of the minutes of such meeting, marked 'X5b', '*some bidder(s) have requested time extension to the closing date of the bid, it was informed to submit it in writing and the decision will be informed to all bidders.*' It is not the position of the Petitioner that it objected to such an extension being considered and/or being granted by the 1st Respondent.

The Petitioner was thereafter served with the letter dated 15th August 2018, marked 'P5', and the Addendum, marked 'X5a', together with the letter dated 18th August 2017, marked 'X6' informing *inter alia* that the closing date of the bids had been extended until 4th September 2017, with corresponding changes being made to the validity periods of the bid and the bid security. A notice informing the Public about the extension of the relevant dates had been published in the daily newspapers of 17th August 2017.⁴ Once again, there is no material before this Court that the Petitioner objected to extensions being granted or to the said course of action.

Not only did the Petitioner not object, the fact that the Petitioner accepted the said extension and acted upon it is clear by the fact that the Petitioner

⁴ Vide newspaper advertisements marked 'X10'.

submitted its bid only on 4th September 2017, which is the extended date for the submission of bids.

The second reason why this Court cannot agree with the first submission of the Petitioner, is that the party inviting proposals, in this case the 1st Respondent, has the right to set out the terms and conditions governing the said invitation, and therefore it is within the power of the 1st Respondent to determine the closing date of tenders. This power would extend to granting of extensions of time for prospective tenderers to prepare their bids. In coming to this conclusion, this Court has only applied the basic principles of the Law of Contract relating to an invitation to treat.

The 1st Respondent states that he received several requests, compendiously marked 'X7', from prospective bidders, seeking an extension of the closing date for bids. This Court has examined the said letters and observes that the said requests have been made primarily on the ground that the Project was of a complex nature and further time is required to prepare the bid proposal. It is in the interests of the Colombo Municipal Council to receive as many bids as possible, in order to maintain the competitive nature of the bidding process, and obtain for itself, financially the most advantageous offer. It is the view of this Court that the circumstances in which the extension was granted can be considered as being an exceptional circumstance. Granting an extension of time to submit bids in such circumstances cannot be considered as being unreasonable.

This Court must observe that Clause 8.8(b) of 'P8' enables the 1st Respondent to extend the deadline for the submission of bids, and requires the bidders to

comply with the extended deadlines. This Court is of the view that even if provision for extensions of time has not been stipulated in the tender document, the party inviting bids has the power to extend the time periods. Therefore, it is the view of this Court that granting an extension would not be illegal, and that all bidders must comply with the extended dates.

The third reason why this Court does not agree with the first submission of the Petitioner, is that Clause 8.2(b) appears to apply to a situation which arises after bids have been accepted. This is clear by the statement in clause 8.2(b) that a bidder can refuse to extend the bid validity period without forfeiting the bid security.

The second submission of the learned President's Counsel for the Petitioner was that it was unreasonable to reject the Petitioner's bid, for two reasons – The first is that in terms of Clause 8.3(b) of 'P8', the bid can be rejected only if there is no bid security at all and not where there is a discrepancy with its validity date. The second is that by the time the TEC evaluated the Bids, the Petitioner had rectified the error.

There is no dispute that the bid was not valid until 2nd March 2018, and the bid security was not valid until 1st April 2018. The bid submitted by the Petitioner was therefore not in conformity with the Bidding document, as at the closing date for submissions of bids. Whether the bid of the Petitioner can be rejected for this deviation depends on whether the requirement that the bid security be valid until 1st April 2018 was mandatory.

Clause 8.3 of 'P8' provides as follows:

- a) The Bidder shall furnish, as part of his Bid, a Bid security of not less than Rs. 1,500,000.*
- b) The bid security shall be an unconditional on demand guarantee obtained from a reputed bank or insurance company in Sri Lanka.*
- c) Bid security shall be valid till 22.03.2018.*
- d) Any Bid not accompanying (sic) bid security mentioned in (b) above shall be rejected by the Employer as non-responsive.*

It is the view of this Court that Clause 8.3(d) would apply to all requirements of the bid security, and accordingly, the submission of a bid security issued by a commercial bank for a sum not less than Rs. 1.5 million, and valid for a period of one month after the expiry of the validity period of bids had been made mandatory by 'P8'.

As already observed, the three dates, namely (a) the date of submission of the bids, (b) the date until which the bid was required to be valid, and (c) the expiry date of the bid security had been set out in the Invitation to Bid 'P4', the bidding document 'P8', the Addendum 'X5a', the letter sent to the Petitioner 'P5', and the paper notification that followed, namely 'X10', thereby highlighting the mandatory nature of complying with such dates. The provisions of Clauses 8.2(a), 8.3 and 8.8(b) makes it clear to this Court that each bidder was required to comply with the dates stipulated by the 1st Respondent, and that it was mandatory that the bid was accompanied by a Bid Security valid until 1st April 2018. The fact that the consequence of non-

compliance has been stipulated in '**P8**' itself shows that the said requirement is mandatory. Any deviation from this requirement can be categorised as a major deviation, and the bid of the Petitioner shall be rejected for such deviation, without any further evaluation.

Even though the learned President's Counsel for the Petitioner submitted that the Government Procurement Guidelines do not apply to this tender, useful guidance in this regard can be found in Sections 7.8.2 – 7.8.4 of the said Guidelines. In terms of Sections 7.8.2 and 7.8.3, a deviation which is deemed acceptable would be categorized as a *minor deviation*, and is one which has no effect on the validity or legality of the Bid, or has no effect on the functionality, quality or delivery of the Goods or Services offered, or is a slight deviation which can be ignored. **A major deviation**, on the other hand is a deviation which is unacceptable and would include non-submission of bid security, insufficient bid security or **failure to provide sufficient validity period of the bid**.⁵

Referring to minor and major deviations, the Supreme Court in **Sunway International (Pvt) Ltd. and Another vs Airport & Aviation Services (Sri Lanka) Limited and Others**⁶ held as follows:

"This classification of deviations from Bidding Documents as major or minor, is widely accepted and was made reference to by the Andhra Pradesh High Court in Baxalta Bioscience India Pvt. Ltd vs. The State of Telangana, Health, Medical and Family Welfare Department and Others (Writ Petition No. 40315 of 2016 on 13.03.2017), where it was stated that

⁵ Vide Sections 7.8.2 and 7.8.4.

⁶ SC (FR) Application No. 147/2017; SC Minutes of 2nd December 2019.

“The requirements in a tender notice can be classified into two categories - those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to enforce them rigidly. In the other cases, it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.”

The identical issue – i.e. the fact that a bid security must be valid as required by the employer - arose in **Pamkayu (M) Snd Bhd (Appearing By Its Attorney, Hemachandra) and Another Vs. Liyanaarachchi, Secretary, Ministry of Transport and Highways and Another.**⁷ In that case, the Secretary, Ministry of Transport and Highways, on behalf of the Cabinet Appointed Tender Board had called for sealed tenders from suppliers or their accredited agents for the supply of 100,000 Nos. Heavy Hardwood Sleepers. The Technical Evaluation Committee had rejected 13 of the 17 offers received as being 'non-responsive', and of the three 'substantially responsive' offers, after evaluation and for stated reasons, had recommended that the order for the supply of Sleepers should be awarded to the 1st petitioner which had '*complied with the technical and commercial requirements of the tender*'. The Cabinet Appointed Tender Board while rejecting the recommendations of the Technical Evaluation Committee, had recommended the acceptance of the tender of the 5th respondent, which had been rejected by the Technical Evaluation Committee as not being a responsive offer for four reasons, including the reason that the validity of the Bid Bond submitted was valid only for 120 days instead of 150

⁷ [2001] 1 Sri LR 118 at pages 123 - 125.

days as required in the tender. Upon the petitioner challenging the decision of the Cabinet Appointed Tender Board, the Supreme Court stated as follows:

"I turn now to the matter of the bid security. It was the fourth matter considered by the Cabinet Appointed Tender Board in deciding upon the correctness of the decision of the Technical Evaluation Committee. Clause 13 of the 'Instructions to Bidders' states, inter alia, as follows:

". . . Bid security shall remain valid for a period of 150 days. However the bidder should agree to extend this period of validity if requested by the purchaser. Any bid not accompanied by an acceptable bid security shall be rejected by the purchaser as non-responsive. . . ."

It is not in dispute that the bid bond submitted by the fifth Respondent was valid only for a period of 120 days, whereas clause 13 of the 'Instructions to Bidders' plainly requires that "Bid security shall be valid for a period of 150 days". In terms of clause 13, the Technical Evaluation Committee therefore rejected the bid as being non-responsive. The Cabinet Appointed Tender Board, however, regarded the failure of the bidder to be a 'minor deviation.' The reason given for that view was that the bid security was still in force and that the 'tenderer had time to extend the validity.' There was no doubt that there had been a 'deviation' from what was 'an acceptable bid security' as described in clause 13. There was in fact, no 'acceptable bid security', for the period in the first instance was expressly fixed at 150 days. Extensions of that period were provided for. However, there was no provision enabling the extension of a period that fell short of the stipulated 150 days. In terms of section 113 of Guidelines

*on Government Tender Procedure a deviation might have been considered 'minor', inter alia, if it had not been specified in the bid documents as a ground for rejection of the bid. In the matter before us, the failure to submit an 'acceptable bid security' was specified as a ground for mandatory rejection of a bid. Therefore, it was not open to the Cabinet Appointed Tender Board to regard the failure of General & Railway Supplies (Pvt.) Ltd. to comply with the provisions of clause 13 as 'minor.' Bidders were required to furnish bid security. Such security had to be furnished in accordance with the directions given on matters of importance. The non-compliance related to a matter of substance and not of mere form. **The failure to comply with the directions on so important a matter as the period required to be covered, in my view, made it an unacceptable bid security.** A bidder who submits an unacceptable bid security is in no better position than a person who fails to furnish bid security. Section 112.6 of the Guidelines on Government Tender Procedure states that where bid security is required the failure to furnish a bid security with a bid should be considered 'a major deviation' and be a ground for the rejection of the bid."*

This Court shall now consider the submission of the learned President's Counsel for the Petitioner that the Petitioner had rectified the error by the time the TEC evaluated the bid and that, the Petitioner was therefore in compliance of the bidding document. In order to maintain a level playing field and fairness among all bidders, it has been repeatedly held by the Supreme Court that the rights and obligations of all bidders must be determined as at the closing date of the bids, and that compliance with a requirement of the bid after the closing date violates this basic requirement.

SmithKline Beecham Biologicals S.A. and Another Vs. State Pharmaceutical Corporation of Sri Lanka and Others⁸

was a case where the selected bidder had not been registered under the Public Contracts Act as at the closing date of bids. The petitioner, who was one of the bidders complained to the Supreme Court that the bid of the selected bidder could not have been considered as it has not complied with the tender conditions relating to registration under the said Act. The Supreme Court held as follows:

*“In the matter before us, on the relevant date, namely, the 3rd of July 1996 – the date when the Tenders were closed, the only tenderer who was qualified was SmithKline Beecham Biologicals S.A. since only its Rubella Viral Vaccine was registered as required by the Tender document (P1). The only responsive bid was therefore that of SmithKline Beecham Biologicals S.A. although it was not the lowest bid. The only tenderer who was able to comply with the requirement in Clause 19 that a copy of the certificate of registration should be annexed to the Tender was SmithKline Biologicals Beecham S.A. Therefore the only complete tender was that of SmithKline Beecham Biologicals and therefore it was the only tender that qualified for evaluation. The Tender Board misdirected itself by believing that it was obliged to recommend the acceptance of the tender of Biocine S.p.A because its price was “the lowest responsive offer”. It may have been the lowest offer, but at the relevant date, namely the 3rd of July 1996 it was not a “responsive” offer at all, for Biocine S.p.A. had failed to comply with the condition of registration.”*⁹

⁸ [1997] 3 Sri LR 20.

⁹ Ibid, page 55.

“Therefore, the Guidelines too make it clear that a Tender Board may only consider bids which are responsive and qualified by substantially conforming with the tender documents. The State and its agencies are bound by and must rigorously and scrupulously observe the procedures laid down by them on pain of invalidation of an act in violation of them.”¹⁰

In **Pamkayu (M) Snd Bhd (Appearing By Its Attorney, Hemachandra) and Another Vs. Liyanaarachchi, Secretary, Ministry of Transport and Highways and Another**, the Supreme Court went onto hold as follows:¹¹

*“The sixth Respondent was registered under and in terms of the Public Contracts Act, and obtained an extension of the bank guarantee on the 10th of July 2000, whereas the tenders were closed on 16th March 2000. **The award of a tender must be based on compliance with the terms and conditions of the tender, documents on the date and at the time specified for the closing of the tender.** An offer that does not comply with the terms, conditions and specifications at that date and time must be rejected in the same way as a late offer.”*

The above two judgments were cited with approval by the Supreme Court in **Sunway International (Pvt) Ltd. and Another vs Airport & Aviation Services (Sri Lanka) Limited and Others**.¹² In this case, the petitioners’ claimed that although it was not the highest bidder, it was the highest ‘responsive’ bidder by virtue of having fulfilled all of the eligibility requirements specified in the tender documents. The bids of those who had submitted a bid higher than the

¹⁰ Ibid, page 44.

¹¹ Supra, page 125.

¹² Supra.

petitioner had been rejected by the Technical Evaluation Committee, including the bid of the 11th respondent for not having the required financial capability as required by Clause 6d of the Instructions to Bidders. The Ministerial Procurement Committee had however decided to waive the requirement relating to financial capacity in order to award the tender to the highest bidder, and on the basis that it would yield a higher income to the 1st respondent.

The Supreme Court, having taken into consideration, the aforementioned judgments and the factual circumstances that had arisen in this application held as follows:

“The MPC had through this decision, in a context of national competitive bidding, changed the ‘goal post’ after the closure of bids on 30th December 2015 and after the TEC evaluation. If there was a genuine need to waive a certain eligibility requirement to serve the interests of the 1st Respondent, the process provided by Clause 11.1 of the Instructions to Bidders (P5) could have been resorted to, and an Addendum amending the Bidding Documents could have been issued by the Tender Board, “prior to the deadline given for submission of bids” and communicated to, and acknowledged by the Bidders.

The actions of the MPC members, namely, the waiving off of the essential requirement of financial capability at the bid evaluation stage, and introducing a different threshold of financial capability for the 11th Respondent by way of an additional sum equivalent to one-month rental applicable to the final year of contract, in lieu of the stricter requirement stipulated in Clause 6d, are in themselves discriminatory and arbitrary.

Such conduct has clearly changed the 'goal post' and hindered the providing of an equal opportunity, by precluding other bidders who could have otherwise submitted a higher bid than the 11th Respondent, unencumbered by the financial capability requirement, from participating in the bidding process. Had the waiver been notified at the point of calling for bids, more entities would have been eligible to submit bids. It is also discriminatory towards all the other bidders in the present case, who were evaluated by the TEC, including the Petitioners, based on all the prescribed qualification requirements, including that of financial capability, while the 11th Respondent's compliance to it was dispensed with.

However the waiving off of certain requirements and introducing lower thresholds, after the closure of bids, solely for increased revenue is a compromise on the quality as well as a stark violation of the transparency and certainty of government procurement process.

In the present application, the 1st Respondent had clearly demarcated the "goal post", and it was up to the Petitioner to comply with the same. The acceptance of an amended bid security after 4th September 2017 would have amounted to a shifting of 'goal posts'. Therefore, it is the view of this Court that the submission of a bid security after the closing date does not negate the deviation.

The third submission of the learned President's Counsel for the Petitioner was that the Procurement Guidelines, 2006 do not apply to the tender in issue, as contended by the learned Counsel for the 1st Respondent, and that, given the nature of the Project that was to be carried out, what is applicable would be

the 1998 Guidelines for BOO/BOT projects. However, it is noted that the 1998 Guidelines too, would be applicable only to the Government. It is the view of this Court that the necessity to consider which Guidelines would apply does not arise as the provisions of the tender document 'P8' have clearly set out the requirement of the Colombo Municipal Council, and the consequences of the failure to submit a bid security as stipulated in 'P8'.

The learned President's Counsel for the Petitioner submitted that the bid of the 2nd Respondent does not meet the financial conditions of the tender document 'P8', and that its bid is financially more advantageous to the CMC than the bid of the 2nd Respondent. The learned Counsel for the 1st and 1A Respondents and the learned President's Counsel for the 2nd Respondent, while denying the above, submitted that the financial proposal of the Petitioner is incomplete and inadequate and that the Petitioner has grossly overestimated its bid. Quite apart from this issue being a disputed fact, this Court does not have the expertise to consider matters relating to the evaluation of the financial responsiveness of the bidders.

In the above circumstances, this Court does not see any legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal