

## **INDEPENDENT REVIEW PANEL**

**In the matter of:**

**Servansingh Jadav & Partners Consulting Engineers Ltd**

**(Applicant)**

**v/s**

**Ministry of Environment & National Development Unit**

**(Respondent)**

**(Cause No. 16/08/IRP)**

### **Decision**

#### **A. Background**

1. The Ministry of Environment & National Development Unit through open advertised bidding invited bids for consultancy services on 17 April 2008. The consultancy services were requested for three types of projects to be implemented in two distinct zones, Zone 1 and Zone 2 respectively. The three projects were as follows:
  - (a) Drain
  - (b) Roadwork
  - (c) Embellishment/Infrastructure

The closing date for submission of bids was Tuesday 03 June 2008 at 13.30 hrs at the latest at the Central Procurement Board. The bids were to be submitted in accordance with the “two envelope”

system – one envelope for the “Technical Offer” and another one for the “Financial Offer”.

The tender reference number was: CPB/26/8.

2. The Ministry of Environment & National Development Unit issued two sets of addenda during the bid invitation period:
  - (a) Addendum 1 was issued on 21 April 2008 and was a set of Appendices to the Tender Documents.
  - (b) Addendum 2 was issued on 13 May 2008 and followed a pre-bid meeting held on 25 April 2008. It dealt with the reduction of key personnel and the splitting of the contract into two zones.
3. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the three bids that had been received by the closing date of 03 June 2008.
4. The Bid Evaluation Committee submitted its report on the Technical Offers received on 14 July 2008. Paragraph 14 (pg 16) gives the following recommendations of the Bid Evaluation Committee as follows:

*“pursuant to clause 1.4 of the Instructions to Tenderers, Technical offers scoring 49 marks and higher shall be considered as responsive.*

*Given that MD has scored 58.42 marks his offer is retained for financial evaluation.*

*However, it should be noted that as per section 2.2 of the Terms of Reference, the intention of the Employer (NDU) is to appoint two Consultancy Firms, one for each of the two zones. Since only one bidder has qualified and the two other Firms have significantly underscored due to non submission of details on projects values, the Central Procurement Board (CPB) may consider seeking the missing information/clarifications pertaining to project values from all bidders. The BEC is of the opinion that this option would provide the basis for a fairer technical evaluation of the bids received. A draft letter for this purpose is enclosed at Appendix D.*

*In case the CPB is not agreeable to the above BEC’s proposal, then it is recommended that the Board considers proceeding with further evaluation with the bid from Mega Design Ltd only.”*

5. The proposals of the Bid Evaluation Committee to seek clarifications from the bidders appear to have been rejected by the Central Procurement Board. The Bid Evaluation Committee met on 12 August 2008 to consider the Financial Offer of only one bidder, Mega Design Ltd. This Financial Offer had been opened by the Central Procurement Board on 05 August 2008.
6. The Bid Evaluation Committee submitted its report on the financial offer of Mega Design Ltd on 13 August 2008. It recommended that the consultancy services be awarded to Mega Design Ltd for either Zone 1 or Zone 2. The choice of the zone to be awarded was left to the Ministry of Environment & National Development Unit. The financial offer can be summarised as follows:

<u>Project Type</u>	<u>Fixed Percentage Fee</u>
(i) Drain	13 %
(ii) Roadwork	8%
(iii) Embellishment/Infrastructure	10%

There will be payment as per the quoted rates for additional duties and reimbursables. The Bid Evaluation Committee recommended the award subject to Mega Design Ltd accepting six conditions.

7. The Central Procurement Board wrote to Mega Design Ltd on 18 August 2008 and requested confirmation of its agreement to the six conditions mentioned in the report of the Bid Evaluation Committee (financial offer). On 21 August 2008, Mega Design Ltd replied that it agreed with the conditions subject to two conditions of its own.
8. The Central Procurement Board informed the Ministry of Environment & National Development Unit on 28 August 2008 that it had “approved the award of contract for the services to Mega Design Ltd for either Zone 1 and Zone 2 with the following Fixed Percentage Fees and as per the quoted hourly rates for Additional Duties and Reimbursibles detailed in Annex 1.

<u>Project Type</u>	<u>Fixed Percentage Fee</u> <u>Exclusive of VAT</u>
(i) Drain	13 %
(ii) Roadwork	8%

(iii) Embellishment/Infrastructure 10%

9. The Ministry of Environment & National Development Unit wrote to Servansingh Jadav & Partners Consulting Engineers Ltd on 29 August 2008 to inform them that Mega Design Ltd had been selected for the award of Tender No. CPB/26/08 and that the award will be in relation to one zone. The zone to be awarded is not specified.

Servansingh Jadav & Partners Consulting Engineers Ltd had submitted a bid for zone 1 only.

10. The Ministry of Environment & National Development Unit notified Mega Design Ltd on 02 September 2008 that it had been selected for the award of Tender No. CPB/26/08 and that the award will be in relation to Zone 2.
11. On 03 September 2008, Servansingh Jadav & Partners Consulting Engineers Ltd dissatisfied with the decision of the Ministry of Environment & National Development Unit challenged the procurement proceedings in a fairly detailed document.
12. Servansingh Jadav & Partners Consulting Engineers Ltd made an application for review to the Independent Review Panel on 26 September as no decision had been communicated to them by the Ministry of Environment & National Development Unit in response to their challenge of 03 September 2008.
13. The Ministry of Environment & National Development Unit was informed by the Independent Review Panel that Servansingh Jadav & Partners Consulting Engineers Ltd had made an application for review with respect to Tender No. CPB/26/08 and that procurement proceedings should be suspended until the appeal is heard and determined.
14. The Ministry of Environment & National Development Unit wrote to the Central Procurement Board on 30 September 2008 with respect to the appeal filed by Servansingh Jadav & Partners Consulting Engineers Ltd. The Central Procurement Board wrote to the Ministry of Environment & National Development Unit on 09 October 2008 giving details on the bid of Servansingh Jadav & Partners Consulting Engineers Ltd.

**B. Grounds for Review**

The grounds for review submitted by Servansingh Jadav & Partners Consulting Engineers Ltd are as follows:

- “1. *Having regard to the Evaluation Criteria for the technical Assessment, namely;*
- (a) Firm’s general experience and track record in the field of assignment (20 marks)*
  - (b) Qualification and experience of Key Personnel (30 marks); and*
  - (c) Understanding of the Terms of Reference and Comments thereon, Proposed Methodology, Adequacy of Work Plan and Personnel Schedule (20 marks).*

*The Central Procurement Board (CPB) was wrong to have preferred Mega Design Ltd since Servansingh Jadav & Partners Consulting Engineers Ltd (SJPCE Ltd) ought to have fared better than Mega Design Ltd, had the CPB been minded to act fairly reasonably, in the interest of the Client Ministry, on the basis of the criteria for Technical Evaluation as described in the Tender Documents for the Consultancy Services and as compared with the same criteria in the Technical Proposal submitted by Mega Design Ltd.*

*For your information the three criteria are more fully described in our Volume B “Technical Proposal”, the relevant parts of which are as follows, as regards to SJPCE Ltd:*

<i>Evaluation Criteria</i>	<i>Location of Responses</i>
<i>General experience and track record in the field of assignment (20 marks)</i>	<i>Parts 2 and 3</i>
<i>Qualification and experience of Key Personnel (30 marks)</i>	<i>Parts 8 and 9</i>
<i>Understanding of the Terms of Reference and Comments thereon, Proposed Methodology, Adequacy of Work Plan and Personnel Schedule (20 marks)</i>	<i>Parts 6, 7 and 8</i>

2. *The CPB was wrong in its evaluation exercise in as much as, having regard to the financial bids, of the respective bidders, SJPCE Ltd had quoted a more competitive fee than Mega Design Ltd.*

<i>Project Type</i>	<i>Project Value</i>	<i>Mega Design</i>	<i>Ltd</i>	<i>SJPCE</i>	<i>Ltd</i>
		<i>Fixed % fee (exclusive of VAT)</i>	<i>Fee (MUR)</i>	<i>Fixed % fee (exclusive of VAT)</i>	<i>Fee (MUR)</i>
<i>Drain</i>	<i>150,000,000</i>	<i>13%</i>	<i>19,500,000</i>	<i>8.90%</i>	<i>13,350,000</i>
<i>Roadwork</i>	<i>75,000,000</i>	<i>8%</i>	<i>6,000,000</i>	<i>8.90%</i>	<i>6,675,000</i>
<i>Embellishment and Infrastructure</i>	<i>75,000,000</i>	<i>10%</i>	<i>7,500,000</i>	<i>8.90%</i>	<i>6,675,000</i>
<i>Total</i>			<i>33,000,000</i>		<i>26,700,000</i>

3. *In the circumstances, having regard to the above two grounds, the CPB cannot have reached its said decision, had it been minded to act reasonably, fairly and objectively since the Technical Evaluation ought not to have put SJPCE Ltd at a disadvantage to the extent that the CPB’s assessment of the technical criteria has, as it appears overridden the highly competitive edge which SJPCE Ltd has over Mega Design Ltd as regards to the financial bid.*
4. *The CPB was wrong to have restricted its ward to one zone, without specifying whether the said award related to Zone I or Zone II, thereby totally disregarding the “Instructions to Tenderers” in respect of the appointment of two separate firms for the provisions of the Consultancy Services in two distinct zones, namely Zone I and Zone II, the more so that the instructions specify that “Each Firm will be responsible for projects in one zone”. In the circumstances the selection by the CPB is vitiated.*
5. *The CPB has not complied with Section 24(6) of the Public Procurement Act 2006.*
6. *The Chief Executive Officer of the Ministry of Environment & National Development Unit has failed to issue a decision in respect of the Challenge made to him by SJPCE Ltd within the prescribed time limit.”*

### **C. The Evaluation Process**

Three bids were received at the Central Procurement Board by the closing date of 03 June 2008. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the technical offer of the three bidders and submitted its report on 14 July 2008. The Bid Evaluation Committee met again on 12 August 2008 to evaluate the financial offer of

the only responsive bidder, Mega Design Ltd. The bidder was recommended for an award subject to six conditions. The Central Procurement Board made an offer to Mega Design Ltd on 18 August 2008 subject to the bidder agreeing to the six conditions. Mega Design Ltd accepted the offer on 21 August 2008 with the conditions subject to two new conditions of its own. The Ministry of Environment & National Development Unit was informed by the Central Procurement Board on 28 August 2008 that it had approved the award of the contract to Mega Design Ltd for either Zone 1 or Zone 2. On 03 September 2008, the Ministry of Environment & National Development Unit notified Mega Design Ltd that it had been selected for the award of Tender No. CPB/26/08 and that the award would be in relation to Zone 2. Servansingh Jadav & Partners Consulting Engineers Ltd not being aware of the zone selected for an award and dissatisfied with the decision of the Ministry of Environment & National Development Unit challenged the procurement proceedings. This was followed by an application for review to the Independent Review Panel on 26 September 2008 as no decision had been communicated to them by the Ministry of Environment & National Development Unit in response to their challenge. On 09 October 2008, the Ministry of Environment & National Development Unit informed the Independent Review Panel that a certificate of urgency was being issued under the provision of Section 45(6) of the Public Procurement Act 2006 to proceed with the consultancy award to Mega Design Ltd for Zone 2. As Servansingh Jadav & Partners Consulting Engineers Ltd had submitted a bid for Zone 1 only the request for review was maintained.

#### **D. Determination**

1. For the purpose of reaching a determination for this appeal, the Independent Review Panel has considered the grounds for review submitted by Servansingh Jadav & Partners Consulting Engineers Ltd on 26 September 2008, the comments of the Central Procurement Board on the bid of Servansingh Jadav & Partners Consulting Engineers Ltd on 09 October 2008 and the reply of the Applicant on 17 October 2008. The Bid Evaluation Committee reports on the technical offers received and the financial offer were also made available to the Independent Review Panel. The letter of Central Procurement Board to Mega Design Ltd on 18 August 2008 and its subsequent reply on 21 August 2008 have also been examined.
2. Section 2 of the bidding documents details the Terms of Reference for these consultancy services.

Paragraph 2.6 (pg 10) indicates that the annual capital budget earmarked for implementation of the three types of projects, covering both zones, is as follows:

- (a) Drain projects – Rs150M
- (b) Roadwork projects – Rs75M
- (c) Embellishment/Infrastructure projects – Rs75M

The Section gives additional information on the budget allocation. The Section concludes with “ *Figures regarding budgetary provision are given as indication only and the Employer shall not necessarily be committed to entrust projects to the Consultant for the equivalent amount.*”

- 3. Paragraph 2.8 gives the timeframe for the consultancy services. A duration of 30 months is allowed as the contract period for the consultancy services in each zone to cover the three types of projects.
- 4. Section 3 of the bidding documents deals with staffing requirements and scope of services. Paragraph 3.1 details the staffing requirements for key personnel as follows:
  - (a) A Project Director;
  - (b) One Registered Engineer with at least five years post registration experience
  - (c) Two Registered Engineers with at least three years post registration experience;
  - (d) One Sworn Land Surveyor with at least three years relevant experience;
  - (e) Three Technical Assistants with at least five years relevant experience or alternatively three Inspector of Works with at least seven years relevant experience

It is further specified that except for the Project Director, one Engineer mentioned under item (c), the Land Surveyor and one of the Technical Assistant/Inspector of Works, it is required that all key personnel be provided on a full time basis.

Consultancy Firms are also informed in this Section that “ *Also, the requirements concerning registration and minimum period of experience shall be mandatory for consideration of a Technical Proposal. No staff shall be considered/evaluated as key personnel if he does not possess the minimum required experience and/or is not duly registered.*”



Appendix 1.6 gives a format for personnel schedule to be filled by bidders to indicate the expected time input for each key personnel.

5. Section 1 of the Tender Documents gives the Instruction to Tenderers and paragraph 1.4 deals with the Technical Evaluation *“The marks allocated to the technical and financial proposals would be 70 and 30 respectively. The technical proposals shall be evaluated using the following criteria:*
  - (i) *Firm’s general experience and track record in the filed of assignment (20 marks).*
  - (ii) *Qualification and experience of key personnel (30 marks).*
  - (iii) *Understanding of the Terms of Reference and comments thereon, proposed methodology, adequacy of work plan and personnel schedule (20 marks).*

*Technical proposals scoring less than 49 marks will be considered as non responsive and will not be evaluated further.”*

6. Paragraph 1.3.1 (vi) states that the CVs of key personnel should be submitted as per format at Appendix 1.5 of the Tender Document and at paragraph 1.3.2 bidders are advised that no marks would be allocated in case of non submission of the required information.
7. The Bid Evaluation Committee states in its report that the technical evaluation was carried out as per the “Detailed Criteria for Evaluation of Technical Proposals” submitted by the Central Procurement Board on 01 July 2008.
8. At paragraph 11.1.2.3 of the Technical Evaluation Report, it is stated that Engineer 2 did not provide the date of his registration in his CV. This information was obtained by the Bid Evaluation Committee from the web sites of the CRPE. The Independent Review Panel considers that the Bid Evaluation Committee used the correct approach instead of adhering very strictly to paragraphs 1.3.2 and 3.1.
9. However, at paragraph 11.2.2.1, it is stated that the “value of works for most of the projects in which the Proposed Director was involved has not been given. He has not been marked under this criterion”. This now appears to be a very strict reading of paragraph 1.3.1(vi). The Proposed Director is a Director of Servansingh Jadav & Partners Consulting Engineers Ltd and his detailed CV mentioned the project which were under his direct responsibility. The value of these projects admittedly were not provided in his CV but were available in the Technical Proposal of

the bidder. The Independent Review Panel considers that the information were available in the document submitted and could easily have been retrieved. In our view, this does not warrant penalisation. The moreso that the value of the projects were otherwise available.

10. Paragraph 11.2.2.2 (pg 10) of the Technical Evaluation Report states that the Engineer 1 proposed by Servansingh Jadav & Partners Consulting Engineers Ltd does not meet the tender requirements and as such he was not given any works. The Independent Review Panel considers this decision to be very harsh when the detailed CV of Mr V. Pakiry Poullée is examined. The Engineer holds a B-Tech (Civiling), an MSc (Civil Eng. Struct.) and has been a Registered Professional Engineer since 1981. He has been extensively involved with housing projects for the Mauritius Housing Co. Ltd and it is recognised that on all these projects there are infrastructural works, similar to those referred to in this tender.
11. Paragraph 11.2.2.3 (pg 11) of the Technical Evaluation Report states that the CVs of Engineers 2 and 3 proposed by Servansingh Jadav & Partners Consulting Engineers Ltd were not marked as they did not have the mandatory post registration experience. The Independent Review Panel concurs with the conclusion of the Bid Evaluation Committee on this matter as the dates of registration of the engineers 2 and 3 are 28 October 2005 and 16 August 2006 respectively.
12. The Bid Evaluation Committee submitted its Financial Evaluation Report on 13 August 2008 and section 5 (pg 5) contains the recommendations. Paragraph 5.1(e) reads *“The consultancy firm should provide a written undertaking for deployment of proposed key personnel namely, Engineer Mr D. Chan Yook Fo who is actually in employment at the Mauritius Port Authority and Engineer Mr R. Salauroo who is employed by State Land Development Co. Ltd.”* In its Technical proposal, Mega Design Ltd at Section 5 provides details of the staffing nominated by the consultant. From the table on Pg 5-2 it is observed that:

<b>Position</b>	<b>Nomination</b>	<b>Mobilisation FT/PT</b>	<b>Time input (months)</b>
Civil Eng. 1 – Design/Supervision	D. Chan Yook Fo	FT	30
Civil Eng. 2 – Design/Supervision	R. Salauroo	PT	20

The CV of Mr D. Chan Yook Fo indicates that he is employed by Mega Design Ltd and has been seconded to Mauritius Ports Authority while that of Mr R. Salauroo indicates that he is presently employed by State Land Development Co. Ltd and will reinstate Mega Design Ltd. However, when requested to confirm the deployment of the two key personnel by the Central Procurement Board, the firm Mega Design Ltd failed to do so. Instead, it suggests that they will be deployed if the value of projects warrants their mobilization. The Independent Review Panel considers that this condition cannot be accepted as it vitiates the whole procurement proceedings. The status of Mr D. Chan Yook Fo also deserves comments. There is no documentary evidence defining the terms and conditions of his secondment to the Mauritius Ports Authority in the technical offer of Mega Design Ltd. The availability of those two engineers as per the offer of Mega Design Ltd has to be confirmed in no uncertain terms.

13. At the hearing held, the Permanent Secretary of the Ministry of Environment & National Development Unit, through Counsel, informed the Panel that it is the wish of the Ministry that the procurement exercise for both Zone 1 and Zone 2 would be cancelled and that a new exercise would be carried out through restricted bidding. For its part, the Applicant maintained its request for a review of the decision of the Public Body to consider that its technical proposal scored less than 49 marks and as such was non-responsive.
14. The Panel for the reasons given above finds that there is merit in the application and recommends a re-evaluation of the bids, more specially that of the Applicant.

**(Dr. M. Allybokus)**  
***Chairperson***

**(H. D. Vellien)**  
***Member***

**(Mrs E. Hanoomanjee)**  
***Member***

**Dated this 5<sup>th</sup> of November 2008**