

INDEPENDENT REVIEW PANEL

In the matter of:

**Luxconsult (Mtius) Ltd/Luxconsult S.A/Kocks Consult
with Luxconsult S.A as leading partner** (Applicant)

v/s

Road Development Authority (Respondent)
(Cause No. 07/09/IRP)

Decision

A. Background

1. The Road Development Authority on 01 August 2008 invited through open public advertisement, Expression of Interest for Consultancy Services for the Study of the Verdun-Trianon Link Road. The deadline for the submission of expression of interest together with the duly filled forms was Tuesday 19 August 2008 at 13.30 hours (local time) at latest. The bids received were opened in public on the same day.
2. Eight firms submitted an expression of interest for the consultancy services by the closing date. By letter dated 10 September 2008, the Central Procurement Board informed the Public Body that it had evaluated the applications received and six firms had been short listed for the consultancy.
3. The Public Body then invited Request for Proposals from the six short listed firms on 16 September 2008. The deadline for the

submission of proposals was Tuesday 04 November 2008 at 13.30 hours. The proposals were to remain valid 120 days after the submission date, i.e. until 04 March 2009.

However, the Public Body issued Addendum No. 2 on 21 October 2008 through which the deadline for the submission of proposals was extended to Tuesday 25 November 2008. Proposals were to remain valid up to 24 March 2009.

The bids received were opened in Public on 25 November 2008 at the Central Procurement Board.

4. As a result of the increase of the prescribed amount by Regulations (GN 198 of 2008), effective as from 12 September 2008, the Central Procurement Board forwarded on 05 December 2008 all the opened technical proposals and the unopened financial proposals to the Public Body for evaluation purposes.

The Officer in Charge of the Public Body constituted a Bid Evaluation Committee to carry out a technical evaluation of the bids received.

B. The Evaluation Process

1. The Bid Evaluation Committee submitted its report on the technical evaluation on 19 January 2008 which reveals that all firms generally have met the requirements of the TOR and have scored above the 80 points minimum technical score required. The report states that the bids have been evaluated in accordance with Clause 5.2(a) of the Instructions to Consultants and Clause 8 (pg 72) of Section 5 – Terms of Reference of the Request for Proposal. All six firms were considered to be technically responsive and it was recommended that their financial envelopes be opened for further evaluation.
2. The Board of the Road Development Authority at its 146th Meeting held on 22 January 2009 took note of the technical evaluation report and gave its approval to open the financial proposals of the responsive bidders on Wednesday 28 January 2009.
3. The notes of the meeting held on 28 January 2009 in relation to the opening of the financial proposals indicate that the score of each bidder was read in the same order as assigned by the Central Procurement Board. The sealed envelope of each bidder was then

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opened and the financial proposal was read in figures and words exactly as stated in the document. The meeting was attended by representatives of all six firms that had put in a proposal.

4. The Bid Evaluation Committee submitted its final evaluation report on 04 February 2009. The report indicates that the criteria used for the financial proposals were as per the Instructions to Consultants, Clause 5.7 (pg 33) of the Invitation for Proposals.

The overall evaluation was then carried out in accordance with the provisions of Clause 5.7.

The results of the overall evaluation given in table 4, paragraph 7 of the Final Evaluation Report are as follows:

<i>Bidder's No.</i>	<i>Name of firms</i>	<i>Technical Score (St)</i>	<i>Financial Score (Sf)</i>	<i>Total Score (0.8St + 0.2Sf)</i>	<i>Ranking</i>
1	<i>Egis BCEOM International/GIBB (Mtius) Limited</i>	98.4	51.46	89.01	3
2	<i>RITES LTD (India)- Servansingh Jadav & Partners (Mtius)</i>	93.3	55.94	85.83	5
3	<i>Frischmann Prabhu (India) PVT Limited/Dagon Ingenieur Conseil Ltee</i>	96.0	100	96.80	1
4	<i>Luxconsult SA – Luxconsult (Mtus) Ltd – Kocks Consult</i>	95.9	90.19	94.76	2
5	<i>Mega Design Ltd/Africon Limited</i>	94.3	47.62	84.96	6
6	<i>Arab Consulting Engineers Moharram - Bakhoum</i>	96.1	49.96	86.87	4

5. The Committee recommended that the firm Frischmann Prabhu (I) Pvt. Ltd be awarded the contract for the sum of £264,800.12 (GBP Two hundred and sixty four thousand eight hundred and Pence twelve) and MUR 7,899,940.00 (Mauritian Rupees Seven million eight hundred and ninety nine thousand nine hundred and forty).

The recommendations of the Committee were approved by the Board of the Road Development Authority on 12 February 2009

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and on 24 February 2009 the Road Development Authority notified all the bidders in compliance with Section 24(12) of the Public Procurement Act 2006.

6. On 24 February 2009, Luxconsult (Mtius) Ltd/Luxconsult S.A/Kocks Consult with Luxconsult S.A as leading partner dissatisfied with the decision of the Public Body made a challenge to the award. The Officer in Charge of the Public Body replied to the challenge of the aggrieved bidder on 27 February 2009.
7. The aggrieved bidder still dissatisfied with the decision of the Public Body made an application for review to the Independent Review Panel on 09 March 2009. Pursuant to Section 45(4) of the Public Procurement Act 2006, on 10 March 2009, the Panel suspended the procurement proceedings for the contract until the appeal was heard and determined.
8. The Public Body on 11 March 2009 certified giving reasons, as per Section 45(5) of the Public Procurement Act 2006, that urgent public interest considerations require the procurement proceedings to proceed. Pursuant to Sections 45(4)(5)(6) and (7) of the public Procurement Act 2006, the Panel lifted the suspension on the same day and informed both the Public Body and the aggrieved bidder accordingly. The Public Body made an award to Frischmann Prabhu (I) Pvt. Ltd on 16 March 2009. The Panel heard the case on 24 March 2009 and 02 April 2009.

C. Grounds for Review

The grounds for review are as follows:

“(a) Because the selected bidder, which is an association consisting of Frischmann Prabhu (India) PVT Ltd and Dagon Ingenieur Conseil Ltee, does not qualify for the marks allocated on grounds of specific experience inasmuch as the projects disclosed in the FORM TECH 2B were not undertaken by the legal entities which form part of the selected bidding association. The Applicant further states that such disclosures:

- (i) amount to a misrepresentation on the part of the selected bidder;*
- (ii) frustrate the purpose of requiring specific experience;*
- (iii) are inconsistent with the requirements and exigencies of the Public Body specifically ant the context in general;*

- (iv) *are irrelevant inasmuch as they are not selected bidder's own specific experience and;*
- (v) *are procedurally unfair*

- (b) *Because the abovenamed Applicant verily believes that the technical proposal which it has submitted was not evaluated in accordance with the evaluation grid detailed in Clause 5.2(a) of the instructions to consultant data sheet and therefore states that it was unfairly marked in the technical evaluation in spite of its strict compliance to the requirements of the RFP.*

- (c) *Because the majority of the staff of the selected bidder does not have experience in the region and marks in relation to local experience should therefore have been deducted on that account. Moreover, the only two staff members of the selected bidder who have local experience have no experience in highway works and they should therefore have been marked accordingly. Again, this is inconsistent with the requirements and exigencies of the Public Body specifically and the context in general.*

- (d) *Because the selected bidder's team leader/highway engineer is not allowed to validate and approve all designs inasmuch as it has proposed a team leader/highway engineer who are not on the roll of engineers of the Council of Registered Professional Engineers of Mauritius (CRPE) and who are therefore not qualified to perform the duties of an engineer in Mauritius. Again this is inconsistent with the requirements and exigencies of the Public Body specifically and the context in general."*

D. Submissions and Findings

1. Grounds (c) and (d) of the Applicant's application for review refer to the qualifications and experience of staff of the selected bidder which do not satisfy the requirements and exigencies of the Public Body. In its Technical Evaluation Report dated 19 January 2009, the Bid Evaluation Committee asserts that the bids had been evaluated in accordance with Clause 5.2(a) of the Instructions to Consultants and Clause 8 (pg 72) of Section 5 Terms of Reference of the Request For Proposal.

2. Section (iii) of paragraph 5.2(a) reads as follows:

Criteria	Points
<i>Key professional staff qualifications and competence for the assignment (refer also to para. 8.0 of the TOR):</i>	
<i><u>Feasibility and detailed Design phase</u></i>	
<i>a) Team Leader/Highway Engineer</i>	<i>10</i>
<i>b) Traffic Engineer</i>	<i>5</i>
<i>c) Structural Engineer</i>	<i>2.5</i>
<i>d) Material Engineer</i>	<i>5</i>
<i>e) Transport Economist</i>	<i>5</i>
<i>f) Environmental Specialist</i>	<i>2.5</i>
<i>g) Qualified surveyor</i>	<i>5</i>
<i><u>Supervision phase</u></i>	
<i>a) Resident Engineer</i>	<i>15</i>
<i>b) Assistant Resident Engineer (Highways & Bridges)</i>	<i>5</i>
<i>c) Qualified surveyor</i>	<i>5</i>
Total points for criterion	60

From the table it is observed that the Resident engineer to be deployed during the supervision phase is assigned 15 marks, the highest marks for personnel and it represents 25% of the total marks for personnel (60). This is a clear indication of the importance, and rightly so, that the Public Body attaches to this position.

3. Clause 8.0 (pg 72) of Section 5 – Terms of Reference defines the profile of the key personnel to be provided by the Consultants as follows:

“The Consultant must have suitably qualified and experienced personnel to fill the positions given in the table below. The key personnel to be provided should be high calibre professionals with at least 10 years of proven experience in assignments/ works of similar nature and complexity. The Team Leader/Highway Engineer, the Resident Engineer and at least 30% of the key personnel should have worked for the Lead Firm preferably for a minimum period of one year. However, the list given hereunder is the minimum requirement and the Consultant may submit better proposals.”

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<i>Position</i>	<i>Total experience (years)</i>	<i>In similar Assignments/ Works (years)</i>	<i>In position /equivalent position (years)</i>
<i>Feasibility and detailed engineering (Phases 1 & 2)</i>			
<i>1. Team Leader/Highway Engineer</i>	<i>15</i>	<i>10</i>	<i>3</i>
<i>2. Traffic Engineer</i>	<i>10</i>	<i>5</i>	<i>2</i>
<i>3. Structural engineer</i>	<i>10</i>	<i>5</i>	<i>2</i>
<i>4. Material Engineer</i>	<i>10</i>	<i>5</i>	<i>2</i>
<i>5. Transport Economist</i>	<i>10</i>	<i>5</i>	<i>2</i>
<i>6. Environmental Specialist</i>	<i>10</i>	<i>5</i>	<i>2</i>
<i>7. Qualified Surveyor</i>	<i>10</i>	<i>5</i>	<i>2</i>
<i>Phase 3-Supervision Phase</i>			
<i>8. Resident Engineer</i>	<i>15</i>	<i>10</i>	<i>5</i>
<i>9. Assistant Resident Engineer (Highways & Bridges)</i>	<i>15</i>	<i>10</i>	<i>5</i>
<i>10. Qualified Surveyor</i>	<i>10</i>	<i>5</i>	<i>5</i>

4. The selected bidder has proposed Mr A. K. Roy for the position of Resident Engineer and this is confirmed by the evaluation report of the Public Body. Mr Roy, according to the report, scores of 13.5 marks out of the maximum 15 marks assigned for this position. Mr Roy does not score for post graduate qualifications (0.75 marks) and for experience in the region (0.75 marks). The CV of Mr Roy is provided in FORM TECH-6 dated 24 November 2008 and is signed by Mr L. Ajit Kumar, his authorised representative. The following observations can be made from the CV of Mr Roy as provided in the bidding documents:

- (i) He holds a Diploma in Civil Engineering, awarded by the State Country for Technical Education, Govt. of West Bengal (India), 1963. This clearly is not a degree in Engineering and as such he does not qualify to work as an Engineer in Mauritius. To exert as a Resident Engineer in Mauritius, he will have to register with the Council of Registered Professional Engineers of Mauritius and Section 13 of Part III of the Act stipulates that “No person shall be registered as a Professional Engineer under this Act unless he holds a degree in Engineering granted by one of the University of the U.K. and Northern Ireland or a degree, diploma or Certificate in Engineering from any other University, Technical Knowledge, Institution or Society approved by the Council as being of satisfactory standard, and satisfies the Council that

he has at least two years experience in the practice of Engineering. The Diploma of Mr Roy is considered as sufficient qualification for admission on the degree programme in Engineering. This is illustrated by considering the CV of Mr D. V. Chame the Proposed Team Leader of the selected bidder. He was awarded a Diploma in Civil Engineering from a Board of Technical Education and then was admitted to study for a degree in Civil Engineering.

- (ii) The employment record of Mr Roy seems to indicate that the only time he acted as Resident Engineer was during the period 2004-2006, i.e. when in the employment of the bidder. In general, he has been employed by Government of India undertakings.

Upon being confronted with the certificate from Council of Registered Professional Engineers of Mauritius, Mr S. Lallah of Counsel for the Public Body stated that he would advise the Public Body to effect his replacement as soon as possible. The Panel considers that on the basis of the documentary evidence available Mr Roy does not satisfy the conditions laid down in the bidding documents to occupy the key position of Resident Engineer on this Consulting Project.

- 5. The selected bidder has proposed Mr Ravin Tupsy for the position of Qualified Surveyor. This is also a very important position in the consultancy team during both the feasibility and detailed design phase and the supervision phase. Thus, a total of 10 marks is allocated for this position. There is no doubt that Mr R. Tupsy is a qualified Surveyor of more than 25 years experience. However, in his CV, Mr R. Tupsy indicates that he has worked as Land Surveyor with Transinvest Co. Ltd for the first Highway Project during the period 1986 – 2005. The duration of this project, nearly 20 years, appear to be on the high side and the Public Body could have easily verified the validity of this information. It had to be ascertained that Mr R. Tupsy has the required experience as defined for both phases of the project. The information in section of the CV on work undertaken that best illustrates capability to handle the tasks assigned (for last 10 years) is not compatible with the requirements defined for this key position.
- 6. In the clarifications issued following queries from bidders it is observed that a lot emphasis is laid by the Public Body on the EIA report to be proposed and submitted to the competent authority. The bidding document requires that the Environmental Specialist

- should have five years experience in similar assignments/works. The selected bidder has proposed Mr C. Chutoori as Environmental Specialist. However, from the CV provided it is observed that he has never been involved with similar assignment/works. As such, Mr C. Chutoori does not qualify for this assignment.
7. The selected bidder has proposed Dr. Srinivas Reddy for the position of Traffic Engineer. Dr S. Reddy is a highly qualified professional and has been made life member of several Professional Institutions in India. This by itself is an achievement and reflects highly on the professional. However, from his employment record, it is observed that during the period 1991 to 2005, Dr S. Reddy has been in the area of academia. He moved full time to consultancy firms as from May 2005 and has been employed by the bidder since July 2007. The Panel considers that the involvement of Dr S. Reddy in the projects referred to by him for the period prior to May 2005 needed to have been clarified further. Dr S. Reddy may have a cumulative proven experience of more than five years in assignments/works of similar nature and complexity. However, this is not obvious from his CV.
 8. The Panel considers that the other key staff proposed by the selected bidder have the competence and appropriate experience for this assignment. Form Tech 5 gives the team composition and task assignments and Form Tech 6, the CV for proposed professional.
 9. However, the Panel considers unequivocally for reasons given above that both Mr A. K. Roy and Mr C. Chutoori do not qualify for the positions they have been nominated for. As regards Mr Reddy and Mr R. Tupsy, the Panel notes that they are both highly qualified professionals but the information provided by them are incomplete and it is difficult to conclude in their adequacy and suitability or otherwise for the positions they have been nominated with respect to the experience required.
 10. The letter of award dated 11 March 2009 and issued on 16 March 2009 to the selected bidder does not have any reference to key staff proposed by the selected bidder. This is in accordance with the recommendations of the Bid Evaluation Committee which considered both Mr A. K. Roy and Mr C. Chutoori responsive for the position they were proposed. However, the non-eligibility of both of them for their positions proposed has a serious impact on the results of the technical evaluation and the overall evaluation.

The impact will worsen if adjustments are made to the marks scored by Mr R. Tupsy and Dr S. Reddy respectively.

11. The Panel considers that if the technical score of the selected bidder is reduced by a minimum of 15.5 (marks scored by Mr A. K. Roy and Mr C. Chutoori) then its overall score as per table 4 of the evaluation report would be reduced to 84.4 from the 96.80 awarded by the Bid Evaluation Committee. Thus, Frischmann Prabhu (I) Pvt. Ltd should not be considered as the winning consultant.
12. On the basis of evidence available and for reasons explained above the Panel considers that there has been a serious breach of the duty imposed on the Public Body. A Resident Engineer lacking the basic engineering qualification to act in this position and an Environmental Specialist short of the required experience have been found adequate for the key positions. To make matters worse the Public Body has certified that urgent public interest considerations require the procurement proceedings to proceed, leaving no suitable and effective remedy for the Panel to cure such significant defect in the procurement proceedings. As the certificate is binding on the Panel, it will not comment on the grounds given. The Panel wonders how the shortcomings with respect to the two key personnel can be cured. Paragraph 6.4 (pg 27) of Section 2 – Instruction to Consultants, defines the conditions under which substitutions of staff will be considered. Furthermore, the letter of award dated 11 March 2009 to the selected bidder does not refer to any reservations in respect of experience and qualifications of the proposed staff. Had the contract not already been awarded for urgent public interest reasons, the Panel would strongly recommend annulment in whole of the decision to award to the selected bidder.

The Panel finds that there is merit in the application. The staff proposed by the aggrieved bidder (as defined in Form Tech 5 and 6 respectively) satisfy all the requirements of the Public Body as defined in the bidding documents.

13. Pursuant to Section 45(9) of the Public Procurement Act 2006 the Panel awards to the aggrieved bidder compensation in the amount of Rs100,000 representing the recovery of the costs of bid preparation and participation in the procurement proceedings. The Panel considers that if it restricts itself to this remedy, it will

be condoning a serious breach of duty imposed upon the Public Body.

In these circumstances, the Panel invites the Public Body to take urgently appropriate legal actions at its end to cure the said serious breach of duty.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 23rd of April 2009