

## **INDEPENDENT REVIEW PANEL**

**In the matter of:**

**Desai & Associates Ltd**

**(Applicant)**

**v/s**

**National Housing Development Company Limited**

**(Respondent)**

**(Cause No. 30/11/IRP)**

### **Decision**

#### **A. Background**

1. Proposals were invited by the National Housing Development Company Limited in July 2011 to appoint a Project Consultant to make an audit report, design and supervise works for the water reticulation in the NHDC complexes with high rise buildings. Ten short listed Consultancy Firms were invited to submit their proposal for the consultancy Services on 21 July 2011. The short listed consultancy firms included

- (i) Desai & Associates Ltd and
- (ii) Gibb (Mauritius) Ltd

The closing date for the receipt of proposals was 25 August 2011 not later than 14.00 hrs with the opening at 14.30 hours on the same day.

2. A pre bid meeting was held on 05 August 2011 and the notes of the meeting were submitted to all the short listed firms.

3. Prior to the deadline for submission of bids, three addenda were issued and the validity period of the submission was extended by 90 days to 23 November 2011.
4. A hearing was held by the Panel on 08 February 2012 and the selected bidder was invited to attend.

## **B. Grounds for Review**

The Grounds for Review are as follows:

*“NHDC launched two consultancy services projects in July 2011, one for the wastewater project, viz. RFP NHDC/1103 and the other for the water project, viz. RFP NHDC/1104 and for both the projects, we understand that the award is being made to GIBB (Mauritius) Ltd.*

*The outcome of the technical and financial evaluation for the project, NHDC/1104 as announced at the opening of the financial proposals was as follows:*

- *GIBB (Mauritius) Ltd – Technical Score 78.7% - Financial Offer – MUR 4,556,000.00*
- *Desai & Associates Ltd - Technical Score 90.2% - Financial Offer – MUR 8,560,000.00*
- *Sceneries Ltd - Technical Score 87.7% - Financial Offer – MUR 17,430,000.00*

*We, Desai& Associates Ltd, however contest the award being made to GIBB (Mauritius) Ltd, in particular, for the Project NHDC/1104 on the following grounds:*

1. *We suspect that GIBB may have provided the same key resource persons for both the projects and the fact that both the projects are intended to run concurrently, we consider that this is at the prejudice of the other bidders and in particular ourselves for the “water project”.*

*We therefore consider, unless an undertaking has been obtained from GIBB (Mauritius) Ltd, prior to award, that they would provide alternate acceptable key personnel for the water project they should be disqualified on technical grounds.*

2. *We also suspect that the lower price quoted by them will ultimately entail additional cost to the NHDC as they will seek to recover some of the costs from the NHDC at a later stage or through the Construction Contracts by including provisions for site staff office, office equipment and transport.*

*Under Clause 3.6 of the Data Sheet in the RFP Document for Project NHDC/1104, it was clearly stated that no expense shall be reimbursed by the Client. All costs shall be deemed to be included in the lump sum for the project.*

*Unless a firm undertaking has been obtained from GIBB (Mauritius) Ltd that they would not avail of any cost recovery in the future, after award of the consultancy services, we consider that their offer is not the most technically and financially compliant offer.*

3. *We also understand that clarifications have been sought from GIBB (Mauritius) Ltd after the announcement of the Technical Scores and this is contrary to the procedures laid in the Procurement Act 2006.*

*The bidder to whom such clarifications are being sought is already aware of his privileged position and will therefore tend to satisfy the issues raised by NHDC in order not to forfeit his chance of winning the project.*

*Consequently, we consider that appropriate clarifications should have been sought from all the bidder(s) before finalizing the Technical Score. The fact that the bidder to whom the award is being considered is requested to clarify on technical issues after the opening of the Financial Bids causes prejudice to the other bidders. We therefore consider that the procedure followed has advantaged GIBB as they would unlikely contradict the issues that are raised by the NHDC.*

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

A three member Bid Evaluation Committee was set up by the National Housing Development Company Ltd. to evaluate the four bids received by the closing date of 25 August 2011. The four bids included that of

- (i) Desai & Associates Ltd and
- (ii) Gibb (Mauritius) Ltd

A two stage evaluation methodology was adopted. This was based on “Quality Cost based Selection” (QCBS method) which meant that the quality was evaluated first and then the costs.

The evaluation of the proposals received was done in accordance with the clauses of the bid document as depicted below:

- “(a) Preliminary examination to determine eligibility and compliance to the Request for Proposal (RFP)*
- (b) Technical Evaluation to determine the capacity and response of the consultants.*

The Bid Evaluation Committee ensued that the technical analysis was undertaken in full compliance of the Section 5 of the Terms of Reference and it also “took cognizance of the technical evaluation criteria provided in the data sheet at item 5.2 (a) “and subsequently modified in the addendum 2 and 3 for sub criteria concerning the professional staff and the marks allocated to each.

*The sub criteria were further divided for the purpose of detailed technical evaluation.*

*The BEC noted that the criteria for assessment of the key professional staff qualifications and competence for the assignment were not defined in the Instruction to Consultants (ITC).”*

The BEC also set specific professional requirements for the assessment of the key professional staff qualifications.

Each consultant’s proposal was assessed and marked as per the detailed evaluation criteria agreed by the Bid Evaluation Committee.

Based on these detailed evaluation criteria, the proposals which obtained 70 points or above and had passed the technical evaluation were listed as follows:

<b>Proposal no.</b>	<b>Name of consultant</b>	<b>Technical Score Obtained</b>
1.	<i>Gibb Mauritius Ltd.</i>	78.7
4.	<i>Scene Ries Consult Ltd.</i>	87.7
3.	<i>Desai &amp; Associated Ltd.</i>	90.2

The Bid Evaluation Committee then proceeded with the Financial and Overall evaluation of the above three bids. The overall ranking

together with the corrected bid amount (excluding VAT) as indicated in the Evaluation Report (pg 4) is as follows:

<i>Consultant</i>	<i>Overall Score</i>	<i>Overall Ranking</i>	<i>Corrected Bid Amount (Excl. VAT) (Rs)</i>
<i>Desai &amp; Associates Ltd</i>	<i>84.40</i>	<i>1</i>	<i>7,443,478.26</i>
<i>Gibb Mauritius Ltd</i>	<i>82.96</i>	<i>2</i>	<i>4,556,000</i>
<i>Scene Ries Consult Ltd</i>	<i>75.39</i>	<i>3</i>	<i>17,436,000</i>

The Bid Evaluation Committee then goes on to add that “*The BEC has been informed that the budgetary provision for professional services for the contract is Rs8 Million. The best evaluated proposal of Desai & Associates Ltd has obtained 84.40 marks. The corrected financial amount of the proposal is Rs7,443,478.26 is within the budgetary provision and considered to be fair and reasonable.*”

#### **D. Submissions and Findings**

1. Mr M. Gobin of Counsel for the Applicant stressed on the fact that the recommendation of the Bid Evaluation Committee was to award the contract to the aggrieved bidder being given that it ranked first having scored 84.4 in the overall evaluation compared to Gibb Mauritius Ltd which reaches 82.96. He did not press on the other grounds of appeal.
2. Mr O. Madhub, Assistant Solicitor General, in his written submission conceded that with regards to the evaluation, the Applicant came first in the technical evaluation as well as in the overall evaluation. However, Gibb Mauritius Ltd came first in the financial aspect and is still responsive. He added that the Board of the National Housing Development Company Ltd, because of the obvious financial interest, in its wisdom, awarded the contract to Gibb Mauritius Ltd for the sum of Rs4,556,000.
3. The Panel has heard both parties. The contention of Mr B. Madhub, though highly attractive because of the considerable financial gains which would accrue to the National Housing Development Company Ltd, cannot stand in Law. All the parties involved in this bidding process knew beforehand of the evaluation criteria and methodology which would result in an overall evaluation. The bidder ranking first overall would be awarded the contract and it is the criteria of the bidding process which would

prevail. If the Board found shortcomings in the technical evaluation report, it was duty bound to refer it back to the Evaluation Committee, but certainly not to decide in favour of the second ranked bidder based on its wisdom.

4. It is also significant to note that on 29 September 2011, the Bid Evaluation Committee submitted the Technical Evaluation Report to the Board of the National Housing Development Company Ltd recommending that the financial proposals of Gibb Mauritius Ltd, Scene Ries Consult Ltd and Desai & Associates Ltd be evaluated. It would appear that from then, the Board took cognisance of the Evaluation Report, approved its recommendation without identifying shortcomings in respect of the technical evaluation of Gibb Mauritius Ltd.
5. It is the view of the Panel that the Board should have at that stage i.e. on 29 September 2011 before the financial evaluation drew the attention of the Bid Evaluation Committee in respect of any identified shortcomings and requested a review of the report. The Panel draws attention to the fact that once the Technical Evaluation Report had been approved by the Board of the National Housing Development Company Ltd bidders were informed of their Technical Score. The same information was disclosed openly at the public opening of financial bids. If the Chief Executive Officer of the Board of the National Housing Development Company Ltd had serious reservation about the overall evaluation process the procurement exercise could have been cancelled as per the provisions of the Public Procurement Act 2006. But what the Board undoubtedly cannot do, more specially in the teeth of clear and specific criteria governing the procurement process is to act upon its own wisdom to decide to award the contract to Gibb Mauritius Ltd.
6. This would amount to sending the wrong signal to bidders of good faith and promoters if the Board could be allowed to bypass the criteria and methodology already laid down and known to all parties concerned with the bidding process.

For all these reasons, the Panel finds that there is merit in this application. However, since the suspension has been removed, pursuant to Section 45(9), the Panel awards the application a compensation of Rs50,000 which in our view represent the amount of cost incurred in the bid preparation and participation in the procurement.

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

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

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

**Dated: 22 March 2012**