

INDEPENDENT REVIEW PANEL

In the matter of:

GIBB (Mauritius) Ltd

(Applicant)

v/s

**Ministry of Public Infrastructure, National Development Unit,
Land Transport & Shipping**

(Respondent)

(Cause No. 11/12/IRP)

Decision

A. Background

1. The Ministry of Public Infrastructure, National Development Unit, Land Transport & Shipping using the open advertised bidding method invited Expression of Interest on 21 July 2010 from qualified consultancy firms with the appropriate experience and resources for the provision of Consultancy Services for Drains, Roadworks, Buildings, Infrastructure and Lighting Projects for National Development Unit. The closing date for the submission of Expression of Interest was 10 August 2010 and the Central Procurement Board completed the evaluation process by 27 August 2010. Five firms were short-listed and they were invited on 16 September 2011 to submit proposals on or before 18 October 2011 by 13.30 hrs (local time) at latest. The closing date for the submission of proposals was rescheduled on 12 October 2011 to 08 November 2011 at 13.00 hrs. Two addenda were issued during the bidding process.

2. A two envelopes bidding process was adopted and the following four proposals received by the closing date were opened in public on the scheduled date of 08 November 2011 at 14.00 hrs.
- Luxconsult (Mtius) Ltd in association with Ong Seng Goburdhun and Partners, Design Forum Ltd and Pro-five Ltd. (Luxconsult)
 - Servansingh Jadav & Partners Consulting Engineers Limited in association with P. Desai Architect, MC Mozart, V. Goburdhun and K. Seebarith (SJP)
 - Gibb (Mauritius) Ltd (Gibb)
 - Mega Design Ltd in association with Black Sun Architects Ltd, SEE Engineering Consultants, RM Doobory & Rago Associates Ltd. (Mega)

3. The overall evaluation process was completed by the Central Procurement Board and the Public Body informed accordingly on 08 March 2012. The Public Body notified all four bidders of the outcome of the bidding exercise on 26 March 2012.

Gibb (Mauritius) Ltd as an aggrieved bidder challenged the decision of the Public Body, through R. Unnuth of Counsel, on 30 March 2012.

After obtaining the relevant information from the Central Procurement Board the Public Body replied to the challenge on 18 April 2012. The aggrieved bidder still dissatisfied with the decision of the Public Body made an application for review to the Panel on 18 April 2012.

4. The Panel notified all parties concerned about the application for review on 19 April 2012 and on the same day suspended the procurement proceedings until the appeal was heard and determined. The Panel wrote to the Public Body on 20 April 2012 and requested:
- (i) all relevant information and documentation in respect to the Procurement Contract, and
 - (ii) comments on the application for review.

5. The Public Body provided the requested relevant information and documentation on 05 May 2012. However, comments on the application for review were only received on 16 May 2012.

A hearing was held by the Panel on 08 June 2012 in the presence of the two selected bidders.

Additional information was requested from the Public Body by the Panel on 21 June 2012 and were received on 25 June 2012.

B. Grounds for Review

Two of the Grounds for Review are as follows:

- “(a) It is strongly contended that in their financial offers, the Bidders retained for the award of the Contract, Servansingh Jadav & Partners in association with P. Desai, Architect, Mc Mozart, V. Goburdhun & K. Seebarith (SJP) for Lots 1 & 4 and Luxconsult (Mauritius) in association with Ong Seng Goburdhun & Partners, Design Forum Ltd & Pro-Five Ltd (LUX) for Lots 2 & 3 did not price for a capital budget of MUR 600 million for each zone for a period of 2 years as clarified under item 2.9 of the Notes of Meeting held on Tuesday 04 October 2011. Both Bidders have erroneously priced for a capital budget of MUR 300 million for two years.*
- (b) Mr S. K. Nunkoo was employed by the Ministry as Project Manager at the National Development Unit when the Request for Proposal (RFP) for Procurement Reference No. CPB/39/11 was being prepared. Accordingly, he had privileged information on this tender. The RFP was issued on 16 September 2011 to join Servansingh Jadav & Partners on a contract basis. Since joining this firm, he was involved in the preparation of the consultancy proposal in respect of the same contract as mentioned above. This constitutes a Conflict of Interest and in accordance with Clause 1.6 of the Instructions to Consultants, Servansingh Jadav & Partners in association with P. Desai, Architect, Mc Mozart, V Goburdhun & K Seebarith should be disqualified and award of contract for Lots 1 and 4 made in favour of GIBB (Mauritius) Ltd.”*

C. The Evaluation Process

1. The Central Procurement Board appointed a four-member Bid Evaluation Committee to evaluate the four bids received by 08
GIBB (Mauritius) Ltd v/s Ministry of Public Infrastructure, National Development Unit, 3
Land Transport & Shipping
(CN 11/12/IRP)

September 2011 the deadline for the submission of bids. The Bid Evaluation Committee submitted its final technical evaluation report on 13 February 2012. The technical score obtained by the bidders and their ranking are indicated as follows in the report.

BIDDER	TECHNICAL SCORE (St)	RANK
<i>SJP</i>	97.00	1 ST
<i>Luxconsult</i>	95.84	2 nd
<i>Gibb</i>	92.38	3 rd
<i>Mega</i>	82.00	4 th

The Bid Evaluation Committee recommended the opening of the financial proposal submitted by all four bidders as they had all scored above the minimum 70 marks required.

- The financial proposals submitted by the consultants were opened in presence of the consultants on 01 March 2012 and were then evaluated by the Bid Evaluation Committee in accordance to Clauses 5.6 and 5.7 of the Instruction to Consultants and Data Sheet.

The results of the financial score of the bidders following the evaluation of the financial proposals are given as follows in Table 5 and 6 of the final evaluation report.

	SJPCE	LUX	MEGA	GIBBs
<i>Zone 1</i>	18,500,000.00	27,000,000.00		40,537,500.00
<i>Zone 2</i>	18,500,000.00	21,750,000.00	31,500,000.00	36,800,000.00
<i>Zone 3</i>	18,500,000.00	25,250,000.00		40,537,500.00
<i>Zone 4</i>	18,500,000.00	27,000,000.00	31,500,000.00	37,892,500.00

Sf - Financial Score					
	Lowest Price (Fm)	SJPCE	LUX	MEGA	GIBBs
<i>Zone 1</i>	18,500,000.00	100.00	68.52	No Quote	45.64
<i>Zone 2</i>	18,500,000.00	100.00	85.06	58.73	50.27
<i>Zone 3</i>	18,500,000.00	100.00	73.27	No Quote	45.64
<i>Zone 4</i>	18,500,000.00	100.00	68.52	58.73	48.82

The combined technical and financial score of each bidder is given in Table 8 of the evaluation report.

	Technical and Financial Score - (0.7 x St) + (0.3 x Sf)			
	SJPCE	LUX	MEGA	GIBBs
Zone 1	97.90	87.64		78.36
Zone 2	97.90	92.61	75.02	79.75
Zone 3	97.90	89.07		78.36
Zone 4	97.90	87.64	75.02	79.31

3. On the basis of the evaluation of the financial offers the Bid Evaluation Committee concluded that:

- Servansingh Jadav & Partners Consulting Engineers Limited has scored the highest marks for all four zones
- No consultant will be awarded more than 2 zones as per provision of the bid document
- Luxconsult has scored the highest marks in zones 2 and 3 respectively.

The Bid Evaluation Committee then went on to recommend that:

- “1. the contract for Consultancy Services for Zones 1 & 4 be awarded to Servansingh Jadav & Partners Consulting Engineers Ltd for the sum of Rupees eighteen million and five hundred thousand only (Rs18,500,000/=) inclusive of VAT for each zone.
2. the contract for Consultancy Services for Zones 2 & 3 be awarded to Luxconsult (Mauritius) Ltd for the sum of Rupees twenty one million seven hundred and fifty thousand only (Rs21,750,000/=) inclusive of VAT and Rupees twenty five million two hundred and fifty thousand only (Rs25,250,000/=) inclusive of VAT respectively.”

D. Submissions and Findings

1. The consultant is required to fill in standard forms with respect to its technical proposal.

Form Tech-5: Team Composition and Task Assignments

Form Tech-6: Curriculum vitae (CV) for Proposed Professional Staff

Form Tech 7: Staffing Schedule

The Bidding document does not require the consultant to indicate the staff-month rate for the purpose of payment.

2. The consultant bidding for this contract is required to use “Financial Proposal Standard Forms” for the preparation of its “Financial Proposal” according to the instructions provided under paragraph 3.6 of Section 2.

Form FIN-1: Financial proposal submission form requires the bidder to quote fixed lump sum fee, VAT inclusive, for the different items of the consultancy services as follows:

Fixed Lump Sum Fee VAT inclusive						
	Drains (Rs)	Roadworks (Rs)	Buildings (Rs)	Infrastructure (Rs)	Lighting (Rs)	Total Amount (A+B+C+D+E)
	A	B	C	D	E	
Zone 1						
Zone 2						
Zone 3						
Zone 4						

Furthermore, the bidder has, by signing that form, undertaken to submit a “Performance Bond shall be valid for a period of 36 months to cover the whole duration of services”.

3. The Panel considers that there was no ambiguity with respect to either the duration of the contract or the cost estimates of the works contract to be executed – 24 months and Rs300 M annually. The selected bidders have quoted as they were requested to do on a lump sum basis.
4. Mr R. Unnuth, Counsel for the aggrieved bidder explained at the hearing that a Project Manager of the Public Body, Mr S. K. Nunkoo, took a leave without pay on 03 October 2011 to join Servansingh Jadav & Partners Consulting Engineers Limited on a contract basis. He went on to add that the Project Manager was still in the employment of the Public Body when the RFP for this

particular project was being prepared and as such had privileged information on the tender. According to his instructions the Project Manager was involved in the preparation of the consultancy proposal of Servansingh Jadav & Partners Consulting Engineers Limited for this contract. This according to him constitutes a conflict of interest and in accordance with Clause 1.6 of ITC the bid of Servansingh Jadav & Partners Consulting Engineers Limited should be rejected.

5. The Panel has examined the provisions of Clause 1.6 and considers that if the employment record of Mr S. K. Nunkoo is not examined in detail Clause 1.6.2 may appear to be of some relevance. There may be a perception of actual or potential conflict that impacts on the capacity of Servansingh Jadav & Partners Consulting Engineers Limited to serve the best interest of the Public Body.
6. The Public Body informed Mr S. K. Nunkoo on 30 September 2011 that he had been granted six months leave without pay with effect from 03 October 2011 to take up *“employment as Senior Civil Engineer at Servansingh Jadav & Partners Consulting Engineers Limited”*. On 21 February 2012 he applied for an extension of six months leave without pay period and same was approved on 20 March 2012. He subsequently, declined the extension and actually resumed duty on 02 April 2012.

The Panel, thus, notes that all stakeholders were fully aware of the movement of Mr S. K. Nunkoo and there was nothing for Servansingh Jadav & Partners Consulting Engineers Limited to disclose. Before submission of their bids, the bidders did not protest in relation to the employment of Mr S. K. Nunkoo at Servansingh Jadav & Partners Consulting Engineers Limited.

7. Section 74 of the Regulations made under the Public Procurement Act 2006 refers to – Restrictions outside employment and interests and stipulates that *“A public official involved in public procurement proceedings shall not directly or indirectly accept any type of employment from a bidder, or from a party to a procurement contract with the government.”* The records provided by the Public Body indicates that Mr S. K. Nunkoo was not involved in the procurement proceedings which were under the responsibility of a Quantity Surveyor and an Assistant Manager Procurement and Supply.

Furthermore, the bidding document used is a standard document issued by the Procurement Policy Office which was also used by the Public Body in 2010. The only difference is in the “Terms of

Reference”. Though it would be highly desirable that movement of public official involved in public procurement proceedings to the private sector should be more regulated, the Panel is of the view that the given circumstances surrounding the employment of Mr S. K. Nunkoo at Servansingh Jadav & Partners Consulting Engineers Limited is not a sufficient ground for the Evaluation Committee to reject the bid of Servansingh Jadav & Partners Consulting Engineers Limited.

For reasons given above, the Panel finds that there is no merit in the application which is set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 10 July 2012