

INDEPENDENT REVIEW PANEL

In the matter of:

Gibb (Mauritius) Ltd

(Applicant)

v/s

**Chief Commissioner's Office
(Rodrigues Regional Assembly)**

(Respondent)

(Cause Nos. 10/15/IRP)

Decision

A. History of the case

On the 23rd September 2014, the Chief Commissioner’s Office of the Rodrigues Regional Assembly issued an Invitation for Proposals for Consultancy Services bearing reference CCO/CAV/1 of 2014 as per the following extract of the RFP document:

Dear Sir/Madam

1. The *Chief Commissioner’s Office, Commission for Civil Aviation and Others* invites proposals to provide the following consulting services: **CONSULTANCY SERVICES FOR THE DESIGN , COST ESTIMATION AND TENDER DOCUMENT FOR THE EXTENSION OF THE RUNWAY AT SIR GAETAN DUVAL AIRPORT, RODRIGUES.** More details on the services are provided in the Terms of Reference.

2. This Request for Proposal (RFP) has been addressed to the following short-listed Consultants:

Sn	Name of Applicant	Address
1	Intercontinental Consultants and Technocrats Private. Ltd (ICT)	A-8, Green Park New Delhi – 11 00 16 INDIA
2.	AECOM RoA (Pty) Ltd	Block D, 333 Grosvenor Avenue Hatfield Pretoria SOUTH AFRICA
3.	Royal Haskoning DHV (Pty) Ltd	P.O Box 857, Gallo Manor 2052 Gauteng SOUTH AFRICA
4.	Egis Avia	195, Rue Jean Jacques Rousseau 92138 Issy-Les-Moulineaux Cedex RCS B 692 037 518 Siret 092 037 518100101– APE 7112B LA FRANCE

Sr	Name of Applicant	Address
5.	Sir Frederick SNOW and Partners Ltd.	Corinthian House, 17 Lansdowne Road Croydon CRO 2BX ENGLAND
6.	Aurecon South Africa Pty Ltd	Aurecon Centre Lynnwood Bridge Office Park 4 Daventry Street, Lynnwood Manor Pretoria SOUTH AFRICA
7.	Ténica Y Proyectos, SA (TYPESA) Consulting Engineers and Architects	Africa/Asia Department C/Balbino Marron s/n Edificio VIAPOL/A/4 & 5 41018 Sevilla SPAIN
8.	GIBB (MAURITIUS) LTD	71, Sayad Hossen Road Sollerino PO Box 22, Vacoas MAURITIUS
9.	PROINTEC, S.A (Spain)	Avda. de Burgos 12 28036, Madrid SPAIN
10.	Arab Consulting Engineers (ACE) Moharram – Bekhoum	5, El-Gornhouria El-Mottaheda Square Dokki, Giza P.O Box 62, Dokki EGYPT
11.	RITES AFRIKA (Pty) Ltd	P.O Box 403921 Gaborone BOTSWANA
12.	TECNICAS REUNIDAS S.A	Arapiles, 13 E28015 Madrid SPAIN

It is not permissible to transfer this invitation to any other firm.

3. A firm will be selected under **Quality and Cost Based Selection Method** and procedures described in this RFP, in accordance with the policies and procedures for public procurement in the Republic of Mauritius.

The letter of Invitation also requests bidders to confirm in writing whether they will submit a proposal alone or in association.

The RFP concerns *CONSULTANCY SERVICES FOR THE DESIGN, COST ESTIMATION AND TENDER DOCUMENT FOR THE EXTENSION OF THE RUNWAY AT SIR GAETAN DUVAL AIRPORT, RODRIGUES.*

The Letter of Invitation specifies that *“A firm will be selected under Quality and Cost Based Selection Method and procedures described in this RFP, in accordance with the policies and procedures for public procurement in the Republic of Mauritius.”* This is commonly known as the 2-envelope system whereby technical proposals are analysed and marked and only those proposals having attained a minimum technical score will participate in the financial evaluation.

On the 23rd April 2015, the Island Chief Executive informed Gibb (Mauritius) that:

“This is to notify that following a technical evaluation, your bid has not been retained for financial appraisal as your bid submitted does not meet the terms and conditions to the bidding document.

Consequently, your financial proposal will be returned to you unopened after completion of the selection process.”

B. The Challenge

On the 5th of May 2015, Gibb challenged this decision on the following grounds:

Specific Act or Omission in relation to the procurement:

The Public Body has informed us in writing that our bid has not been retained for financial appraisal as the bid we have submitted does not meet the terms and conditions to the bidding document. We are of the opinion that our bid fully meets the requirements of the bidding document insofar as the terms and conditions of the bidding document are concerned, on the grounds described in para 8 below and that the rejection of our bid is not founded.

8. Bidder's grounds for challenge:

i. The Public Body, under cover of their letter CCO/CAV/1/2013 dated 23 April 2015, copy attached herewith, has informed us that our bid does not meet the terms and conditions to the bidding document and has therefore not been retained for financial appraisal. We also note from the said letter that our Technical Proposal has not been given a technical score pursuant to Clause 5.4 of the Instructions to Consultants as set out in the bidding document issued under cover of RRA's letter dated 22 September 2014, Procurement Reference No CCO/CAV/1 of 2014.

ii. As we have not been informed of the ground(s) on which our Technical Proposal has not been retained and in the absence of a technical score to our Technical Proposal, we have assumed that our bid may have been considered as containing material deviation or deficiencies from the requirements of the bidding document and hence may be non-responsive.

iii. Further to the Public Body's letter of 23 April 2015 mentioned in para i. above, we have carried out a thorough review of our Technical Proposal to check for any material deviation from the terms and conditions to the bidding document. This exercise has confirmed that our bid is fully responsive and meets all terms and conditions to the bidding document as all required documents have been included in our submission.

iv. However, we have noted that information pertaining to the RFP date and the name of the Consultant with whom we have associated have inadvertently not been mentioned in the Technical Proposal Submission Form - Form Tech 1. Nevertheless, according to Directive No 4 - Bid Submission Format and Directive NO.3 - Determination of Responsiveness of Bids issued by the Procurement Policy Office pursuant to Section 7(b) of the Public Procurement Act, the information missed out in Form Tech 1 is not classified as material information or major deviations/omissions that could constitute valid ground(s) for the rejection of our bid.

v. Furthermore, the information concerning the date of the RFP was already known to the Public Body while the information pertaining to the Consultant

we have associated with and with whom we have been prequalified for the present bidding exercise, could have easily been ascertained from the cover of our submission as well as from the Section of our Technical Proposal immediately after Form Tech 1, which contains the Letter of Association dated 12 December 2014 between GIBB (Mauritius) Ltd and TPS UK. Copies of the Directives and the Letter of Association mentioned above are enclosed herewith for ease of reference.

vi. Based on the foregoing, we are of the opinion that the rejection of our bid by the Public Body due to the fact that our bid does not meet the terms and conditions of the bidding document is unfounded.

vii. From the foregoing, we believe that our bid should have been retained for further evaluation and should not have been rejected.

There was no reply to this challenge. Consequently, on the 13th May 2015, Gibb made an Application for review with the IRP.

C. Grounds for Review

On 13th May 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

i. Further to an Invitation for Expressions of Interest (EOI) issued by the Public Body with respect to Consultancy Services for the Design of Runway Extension & Ancillary Works at Sir Gaetan Duval Airport, Plaine Corail, Rodrigues Island on 23 September 2013, GIBB (Mauritius) Ltd in association with TPS UK, the Applicant, submitted an Expression of Interest to provide the required services as stipulated in the EOI document issued by the Public Body.

ii. The Applicant was informed by the Public Body vide RRA's letter Ref. CCO/CAV/1/2013 dated 19 August 2014 that GIBB (Mauritius) Ltd was among one of the 12 shortlisted firms for this project.

iii. On 23 September 2014, the Public Body issued a Request for Proposal document for Selection of Consultant for CONSULTANCY SERVICES FOR THE DESIGN, COST ESTIMATION AND TENDER DOCUMENT FOR THE EXTENSION OF THE RUNWAY AT SIR GAETAN DUVAL AIRPORT, RODRIGUES, REPUBLIC OF MAURITIUS – Procurement Reference CCO/CAV/1 of 2014. The Applicant was invited to submit a proposal, being one of the short-listed Consultants for this project.

IV. In response to the invitation from the Public Body, the Applicant submitted a bid compliant with the requirements of the Request for Proposal document.

v. Under cover of RRA's letter CCO/CAV/1/2013 dated 23 April 2015, copy attached herewith, the Public Body informed the Applicant that its bid does not meet the terms and conditions to the bidding document and had therefore not been retained for financial appraisal. The Applicant also noted from the said letter that its Technical Proposal had not been given a technical score pursuant to Clause 5.4 of the Instructions to Consultants as set out in the bidding document issued under cover of RRA's letter dated 22 September 2014, Procurement Reference No CCO/CAV/1 of 2014.

vi. As the Applicant was not informed of the ground(s) on which its Technical Proposal had not been retained and in the absence of a technical score to our Technical Proposal, the Applicant assumed that its bid may have been considered as containing material deviation or deficiencies from the requirements of the bidding document and hence may be non-responsive.

VII. Further to the Public Body's letter of 23 April 2015 mentioned in Para i. above, the Applicant had carried out a thorough review of its Technical Proposal to check for any material deviation from the terms and conditions to the bidding document. This exercise confirmed that the Applicant's bid is fully responsive and meets all terms and conditions to the bidding document as all required documents had been included in our submission.

viii. However, the Applicant had noted that information pertaining to the RFP date and the name of the Consultant with whom it has associated had inadvertently not been mentioned in the Technical Proposal Submission Form - Form Tech 1. Nevertheless, according to Directive No 4 – Bid Submission Format and Directive No. 3 - Determination of Responsiveness of Bids issued by the Procurement Policy Office pursuant to Section 7(b) of the Public Procurement Act, the information missed out in Form Tech 1 is not classified as material information or major deviations/omissions that could constitute valid ground(s) for the rejection of our bid.

ix. Furthermore, the information concerning the date of the RFP was already known to the Public Body while the information pertaining to the Consultant we have associated with and with whom we had been prequalified for the present bidding exercise, could have easily been ascertained from the cover of our submission as well as from the Section of our Technical Proposal immediately after Form Tech 1, which contains the Letter of Association dated 12 December 2014 between GIBB (Mauritius) Ltd and TPS UK. Copies of the Directives and the Letter of Association mentioned above are enclosed herewith for ease of reference.

x. Based on the foregoing, the Applicant was of the opinion that the rejection of our bid by the Public Body due to the fact that our bid does not meet the terms and conditions of the bidding document is unfounded. The contention of the Applicant was that its bid should have been retained for further evaluation and should not have been rejected.

xi. The Applicant therefore challenged the decision of the Public Body on 05 May 2015 under Section 43 of the Public Procurement Act 2006 and provisions made under Section 48(3) of the Public Procurement Regulations in the prescribed manner.

xii. As the Public Body has failed to issue a decision within the prescribed time period of 7 days from the filing of the application for challenge, the Applicant is applying to the Independent Review Panel to review the

procurement proceedings as provided for under Section 45(1)(a) of the Public Procurement Act 2006.

The Applicant therefore requests the Panel to give *Directions ... to the Public Body to declare the Technical Proposal of the Applicant as responsive and therefore be retained by the Public Body for further evaluation* and to:

- a) *To declare that the ground on which the decision not to retain the bid of the Applicant is unfounded, and*
- b) *To retain the bid of the Applicant for further evaluation.*

D. The Hearing

There was a single Hearing held on 25th of June 2015, attended by:

For the Applicant :

1. Mr. Ravi Rutnah, Barrister.
2. Mr. M. Patté, Director.
3. Mr. A. Ramah, Project Director.

Respondent:

1. Mr. I. Cooshna, Barrister.
2. Mr. Perrine J. Nachaniel, Engineer/Senior Engineer.

During the hearing, the Respondent confirmed that the sole reason of the elimination of Gibb from further technical appraisal was their omission of the correct entries in the fields provided for the *date* and the *name of the associate* in the **Form Tech 1: Technical Proposal Submission Form** (reproduced below)

“To: *[Name and address of Client]*”

Dear Sir/Madam:

(a) We, the undersigned, offer to provide the consulting services for **CONSULTANCY SERVICES FOR THE DESIGN, COST Estimation AND TENDER**

DOCUMENT FOR THE EXTENSION OF THE RUNWAY AT SIR GAETAN DUVAL AIRPORT, RODRIGUES in accordance with your Request for Proposal dated **[Insert Date]** and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope¹.

(b) We are submitting our Proposal in association with:

(c) We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

(d) If negotiations are held during the period of validity of the Proposal, i.e., before the date indicated in Paragraph Reference 1.14 of the Data Sheet, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

(e) We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in Paragraph Reference 7.5 of the Data Sheet.

(f) We have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption as per the principles described hereunder, during the bidding process and contract execution:”

The Respondent confirmed that this was the only reason for the elimination of the Applicant. It also came out at the hearing that:

1. Mr Perrine had participated in the technical evaluation
2. The BEC relied exclusively on an advice from the PPO on its own Directive No 4 to reach the decision to eliminate the Applicant.
3. The evaluation exercise had not yet been completed, and financial envelopes had not yet been opened.
4. The field marker/place holder for the date should have been deleted, and the date of the RFP inserted in its place. Likewise, the wording “(b) We

are submitting our Proposal in association with:” should either be deleted, in case there is no intended associate, or the appropriate space filled in case there is one.

5. In the technical proposal of Gibb the correct date was not inserted, but neither was the place holder deleted. Likewise, the name of the associate was not inserted in (b), but the phrase “(b) we are submitting our Proposal in association with:” was not deleted as it should have been if there was no intended associate.

Moreover, in his submission of 18th May 2015, the Respondent clearly indicated that: “On technical evaluation of bids, the Technical Evaluation Committee has noted the following discrepancies for the bidder.

- i. Referring to Form TECH 1 of the RFP Document submitted by the bidder, it is noted that mention was not made to the date of the RFP. Same was required as per the RFP document.

- ii. Referring to the Form TECH 1 Technical Proposal Submission Form at paragraph (b), it is noted that the clause “*we are submitting our proposal in association with*’ has been left blank, indicating that there is no association is as per footnote of form TECH 1 of the RFP document (refer to attach copy of Form Tech 1). **However as per the Expression of Interest, the shortlisted Consultant clearly indicated of his intention to enter into an association for the purpose of the RFP.**

In addition, in Form Tech 2, Consultant's Organisation and Experience, the consultant has submitted details of the consortium that comprises the consultancy team which includes the associate firm shortlisted at EOI stage.

Note: The Associate firm has submitted a letter of association confirming that he will associate with the Lead Consultant for this project. (Emphasis is ours).

E. Findings

Directive No 4 is reproduced below:

PROCUREMENT POLICY OFFICE

**Directive No. 4 – Bid Submission Format
issued pursuant to section 7 of the Public Procurement Act**

"The Standard Bidding Documents for goods, works and other services issued for Open Advertised Bidding and Restrictive Bidding methods as well as those issued for Request for Sealed Quotations' contain each a Bid/Quotation Submission Form for submission of bid/quotation, as applicable, in a pre-determined manner.

2. A bid/quotation is therefore legally binding only if accompanied by:

(a) a duly signed Bid Submission Form, Letter of Bid or Quotation Sheet, as applicable; and,

(b) the Bid Submission Form/Letter of Bid/Quotation Sheet that is substantially identical to the format provided in the bidding document, and filled in with all material information such as bid price, bid validity etc...

3. Failure to submit a signed Bid Submission Form/Letter of Bid/Quotation Sheet, as applicable, and any missing material information required therein shall therefore constitute valid grounds for rejection of a bid/quotation."

It is therefore incumbent upon the Panel to determine whether the omissions of the Applicant from the Form Tech 1 constitute "**missing material information required therein**".

It is not proposed to comment on the advice of the PPO, as the Panel is not aware of the information given to that Office on which it based its advice. *In fine*, it was the decision of the Respondent to eliminate the Applicant from further participation in the procurement process, and he has to bear the sole responsibility therefor.

- a. The missing date: the purpose of this information is just to identify the RFP:

“We, the undersigned, offer to provide the consulting services for **CONSULTANCY SERVICES FOR THE DESIGN, COST Estimation AND TENDER DOCUMENT FOR THE EXTENSION OF THE RUNWAY AT SIR GAETAN DUVAL AIRPORT, RODRIGUES** in accordance with your Request for Proposal dated *[Insert Date]* and our Proposal”

There is no other purpose for the date to be inserted. In our considered opinion, the RFP is otherwise adequately identified, so that the omission of the date does not alter the substance of the bid. This omission cannot be considered material.

- b. The Missing Associate: the Respondent has admitted that: “*However as per the Expression of Interest, the shortlisted Consultant clearly indicated of his intention to enter into an association for the purpose of the RFP.*

In addition, in Form Tech 2, Consultant's Organisation and Experience, the consultant has submitted details of the consortium that comprises the consultancy team which includes the associate firm shortlisted at EOI stage.

Note: The Associate firm has submitted a letter of association confirming that he will associate with the Lead Consultant for this project.”

The intent of the bidder has always been clear. There is ample evidence that the Applicant was submitting his proposal in association with TPS Consult Ltd. This was even stated on the cover of the proposal from Gibb, which is evidence that at no time did the

Applicant wish to mislead the Respondent, or for any other reason hide the fact of his association with Messrs TPS Consult.

- c. The Missing Fields: the Applicant did not fill the required fields for the date and the name of the associate, but neither did he delete the place holders in each case. This is further evidence that these omissions were in fact clerical mistakes. Furthermore, these omissions did not have the effect of withholding information from the Respondent, nor did they mislead the latter in any way, as the information missing from these fields in Form Tech 1 were at all times known to the Respondent.

These omissions no doubt represent serious mistakes, but not material deviations. A tender exercise is not an examination whereby candidates are penalised for mistakes. The aim is to identify the best proposal, and the unwarranted elimination of any one tenderer deprives Government of a potentially good bid.

F. The Decision

The Panel therefore considers that these omissions cannot be considered as material deviations, and should have been clarified with the bidder.

The Panel therefore orders:

1. The annulment of the decision to eliminate the Applicant from further participation in the evaluation process,
2. That the omissions in Form Tech 1 should be corrected through clarifications
3. That the technical proposal of the Applicant should be evaluated and that the evaluation process should be completed in the normal manner for reasons set out above.

(R. Lauloo)
Chairperson

(Mrs. C. Sohun)
Member

(R. Ragnuth)
Member

Dated 22 July 2015