



**Independent Review Panel**

**Decision No. 36/16**

**In the matter of:**

**JV KAPPERER ARCHITECTS CC., DESIGN FORUM LTD AND  
CHUTTUR AND PARTNERS**

**(Applicants)**

**V/S**

**Ministry of Agro Industry and Food Security**

**(Respondent)**

**(CN 29/16/IRP)**

**Decision**

## **A. Background**

### **A.1 Objective of the Request for Proposal**

This project aims to appoint local and International Consultants, either solely or in form of joint ventures / consortium /association for the provision of Global Consultancy Services for the implementation of the Management, Design and Supervision for the new Slaughterhouse for Cattle, Pig, Ovine and Rabbit.

### **A.2 Invitation of Bids**

The Ministry invited sealed bids through the Open Advertisement Bidding Method on 28 March 2016.

### **A.3 The Bidding Process**

Eligible and qualified bidders were initially invited to submit their bids on or before Wednesday 04 May 2016 up to 13 30hrs (Local Time) at latest to the Permanent Secretary, MO A IFS level 8, Renganaden Seeneevassen Building, Port Louis. The deadline of submission of bids was then extended till Wednesday 25 May 2016 at same time and place as per Addendum No 1 dated 29 April 2016.

Eight (8) consulting firms have responded to this Open Advertised R.F.P exercise, as follows:





S/N.	Company	Address
1.	JV Kapperer Architects CC Design Forum Ltd and Chuttur and Partners Ltd	C/O Chuttur and Partners Ltd Level 4, ELP Building, club Road, Vacoas, Mauritius
2.	INGAL Engineering and Consulting	C. Pau Claris, 95 Entlo 3a 08009 Barcelona (Spain) Royal Road, St. Paul/ Mesnil, Phoenix, 73551, Mauritius
3.	J.A. Beer Ltd., T/A Beer and Associates	Ballyshancarragh, Kildavin, Bunclody, Co Wexford, Ireland
4.	Synergy International SCRL & GIBB (Mauritius) Ltd	28 Rue des Trois Ports, 1160 Brussels, Belgium
5.	Break Thru Projects	PO Box 13820, Vorna Valley 1686, South Africa
6.	GHD Pty Ltd	52, the Square, Palmerstone North, 4410, New Zealand 5a, Brown Sequard Avenue, Quatre Bornes 72253
7.	Pravin Desai Architect	Cnr. Royal Road & Solferino no. 4, Mon Desir, Vacoas
8.	Strategic Networking Partners & Consulting Ltd Consortium	26, De Courcy Street, Port Louis

## B. Evaluation

### B.1 Bid Evaluation Committee

The Bid Evaluation Committee was composed as follows:

<i>Chairperson</i>	
Mr. B.B.S Lutchmeea	Deputy Director, Agricultural Services
<i>Members</i>	
Dr. B. Neerunjun	Principal Veterinary Officer, Agricultural Services
Mr N. Peeroo	Ag. Lead Architect, MPI
Mr. M. Balloo	Ag. Lead Engineer (Civil), MPI
Mr. J. Parmanum	Mechanical Engineer/ Senior Mechanical Engineer, MPI
Mr R. Bhagloo	Quantity Surveyor / Senior Quantity Surveyor, MPI
Mr S. Jingree	Lead Engineer (Electrical), ESD
Mr P. Buldee	Ag. Administrative Secretary, MMA
<i>Secretary</i>	
Mr. B. Ponnusawmy	Senior Technical Officer



## **B.2 Detailed Criteria**

The Bid Evaluation Committee noted that:

*“Prior to start the detail evaluation, the BEC discussed and worked out a breakdown of the marking criteria as laid down in Section 2 - Instruction to Consultants - Data Sheet.*

*The points allocated to each criteria [sic] and sub-criteria have been further sub-divided [---] to allow the BEC to mark each consultant's technical proposals in all fairness.*

*The minimum technical score required to pass is 70 points.”*

## **B.3 Eligibility**

In regard to eligibility, the Bid Evaluation Committee noted minor deviations from various bidders, including the Applicant, and one major deviation:

*BreakThru Projects has not submitted CIDB provisional certificate for all partners as stated at Section 2 - Instruction to consultants- Data sheet at paragraph reference 1.8.1 that "The client shall not consider a proposal from a consultant which do not satisfy the registration requirements as spelt out in this clause".*

*The BEC considers this as material deviation hence, BreakThru Projects has not been retained for further consideration.*

## **B.4 Substantial Responsiveness**

In regard to substantial responsiveness, the Bid Evaluation Committee noted:

Both the Applicant and the Selected Bidder were substantially responsive to all criteria. However, *“INGAL Engineering and Consulting and Strategic Networking Partners & Consulting Ltd Consortium have not submitted information regarding general and specific experience, hence the BEC cannot evaluate the two bidders. BEC considers the missing information as material deviation, therefore the bidders have not been retained for further evaluation.*

*Synergy International SCRL & GIBB (Mauritius) Ltd and Pravin Desai Architect have not handled any project regarding the construction of a slaughterhouse of*



*similar size and complexity. The BEC considers this as a major deviation hence Synergy International SCRL & GIBB (Mauritius) Ltd and Pravin Desai Architect have not been retained for further evaluation.”*

### **B.5 Technical Marking**

The Bid Evaluation Committee ended its technical evaluation with the following marks attributed to the surviving bidders:

S/N	Consultancy Firms	Points	JV Kapperer Architects CC Design Forum Ltd	J.A.Beer Ltd., T/A Beer and Associates	GHD Pty Ltd
1	Specific Experience relevant to the Assignment	10	8	6	4
2	Adequacy of the proposed technical approach, methodology, work plan and organisation and structure	50	47	46	17.5
3	Key Professional Staff Qualification and Competence for the Assignment	40	32.0	30.4	30.0
<b>Total</b>		<b>10</b>	<b>87.0</b>	<b>82.4</b>	<b>51.5</b>

The Bid Evaluation Committee further noted that:

#### ***“(a) JV Kapperer Architects CC Design Forum Ltd***

*(i) The proposed Architect (Mr Peter Willem Adrianan Steiyn) has not demonstrated specific professional experience in slaughtering plants and/ or in food industry complying to HACCP norms.*

*(ii) The proposed Slaughterhouse Veterinary Expert (Mr Tertius Bergh) has no specific professional experience in slaughtering management procedures and operations.*

#### ***(b) J.A.Beer Ltd., T/A Beer and Associates***

*(i) The proposed Slaughterhouse Veterinary Expert (Mr Alan R. B. Clarke) has no specific professional experience in slaughtering management procedures and operations.*





(ii) *The proposed HACCP Certification Specialist (Mr Padraig Furlong) has a certificate in science (Agriculture) and a Diploma in Quality Assurance instead of a bachelor degree in Engineering or Veterinary Services as per Section 5 - Term of Reference sub-Section 'A Bachelor's Degree in Engineering or Veterinary Sciences[---]'*

### **B.6 Financial Evaluation**

The Bid Evaluation Committee did not find any arithmetical errors in the 2 bids retained for financial evaluation, and therefore figures used for evaluation were those submitted with the tenders, except that the foreign component of the bid of the Selected Bidder was converted to Mauritian Rupees at the selling rate on the date of tender, as communicated by the Bank of Mauritius. As a result, the following marks were allotted to each of the 2 bidders in respect of financial evaluation:

S/N	Consulting Firms	Amount Quoted MUR	Financial Score $S_f = 100 \times F_m / F$ (100 points)
1.	JV Kapperer Architects CC design Forum Ltd and Chuttur and Partners Ltd	30,344,385.00	75.83%
2.	J.A.Beer Ltd., T/A Beer and Associates	(12,852,170.90 + 10,158,470.00) = 23,010,640.90	100%

This yielded a combined evaluation score of:

S/N	Consulting Firms	Technical Score based on 80% of $S_f$	Financial Score based on 20%	Combined Score	Ranking
1.	JV Kapperer Architects CC design Forum Ltd and Chuttur and Partners Ltd	69.60	15.17	84.77	2
2.	J.A.Beer Ltd., T/A Beer and Associates	65.92	20.00	85.92	1



### C. Notification of Award

The Ministry of Agro Industry and Food Security through a letter dated 04 November 2016, informed the Applicant of the particulars of the successful bidders as follows:

<i>Name of Bidder</i>	<i>Address</i>	<i>Contract Price</i>
<i>Messrs Beer and Associates</i>	<i>Kildavin, Bunclody, Co Wexford, Ireland</i>	<i>Euro 318,990.00 + MUR 10,158,470.00 exclusive of 15% VAT</i>

### D. The Challenge

On 11 November 2016, the Applicant challenged the award on the following grounds:

*“We, as Project Managers within the Construction Industry forming part of Bidding Evaluation Committee for various projects of the Public Sector, are of the opinion that our markings for our Technical Submission ought to be 95.0 Marks in lieu of 87.0 Marks as assessed by the Bid Evaluation Committee (BEC). Our assessment as detailed in our report “Evaluation of Technical Bid Submission – In House Assessment” as evaluated by the Bidder’s Team is enclosed.”*

### E. The Reply to Challenge

On 21 November 2016 the Public Body made the following reply to the challenge:

*“You would wish to note that the evaluation of technical proposals and allocation of technical markings have been made by an Evaluation Team comprising of Architect, Civil Engineer, Mechanical Engineer, Quantity Surveyor, Electrical Engineer and Veterinary Officer. The evaluation exercise has been carried out strictly as per criteria set in the Request for Proposal documents and was done on a consensus and comparative basis, whereas your assessment is in-house and stand-alone. Consequently, the technical marks of 87.0 allocated to your company [sic] is justified and is being maintained.”*



## **F. Grounds for Review**

On 25 November 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

*“We, Project Managers, within the Construction Industry forming part of Bidding Evaluation Committee for various projects of the Public Sector, are of the opinion that our markings for our Technical Submission ought to be 95.0 Marks in lieu of 87.0 Marks as assessed by the Bid Evaluation Committee (BEC). Our assessment as detailed in our report “Evaluation of Technical Bid Submission – In House Assessment” as evaluated by the Bidder’s Team is enclosed.*

*We are not satisfied with the response of the Employer submitted to us vide their letter dated 21 November 2016.”*

## **G. The Hearing**

Applicant filed its Statement of Case on 29 November 2016 and the Respondent replied to the Statement of Case on 12 December 2016 and followed by a Rejoinder by the Applicant to the Reply of the Respondent on 14 December 2016.

Hearings were held on 06, 15 and 20 December 2016.

The Applicant was represented by Ms N. Behary Paray, Counsel instructed by Mr J. Gujadhuř, Senior Attorney whereas the Respondent was represented by Ms A. Ombrasine, Senior State Counsel.

## **H. Preliminary Objections**

On the 12<sup>th</sup> December 2016, along with its “reply to the Statement of Case”, the Public Body submitted the following “Preliminary Objections”:

*“STATEMENT OF CASE IN REPLY*

### ***Preliminary Objections***

*a. The Respondent moves that the said application be dismissed in as much as Chuttur and Partners Ltd which purports to represent JV Kapperer Architects CC, Design Forum which is a foreign company, has authority to*



*sign documents correspondence, tender proposals and agreements on behalf of the joint venture with regards to the Provision of Consultancy Services for the Management Design and Supervision of a new Slaughter House for cattle, pig, ovine and rabbit in Mauritius (Procurement Ref: - MOAIFS/Q151 /2015-2016/RFP-OAB), but not for THE challenge and/or review procedure.*

*b. The present application cannot validly proceed as the prayers sought by the Applicant as set out in the Statement of Case dated 29th November 2016 are ultra vires.*

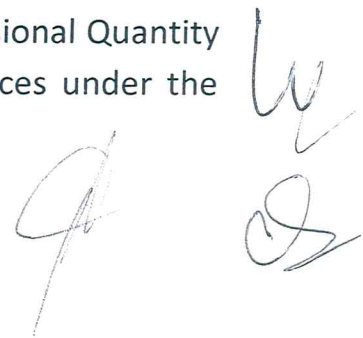
*c. The Applicant is seeking to introduce some new issues in paragraphs 24 and 27 which have not been raised in the challenge outside the applicable time period. The Respondent therefore objects to the Applicant raising these new issues before this forum.”*

These objections were considered by the Panel, and a written Ruling was issued on the 20<sup>th</sup> December, 2016

## I. Issues

In his Application for Review, the Applicant had first raised the issue of faulty evaluation. However, in subsequent submissions, he also raised the following issues:

- That the figure used for financial evaluation of the Selected Bidder's tender was not the one announced at the financial opening, and that there was a discrepancy in the Selected Bidder's submitted forms Fin-1 and Fin-2
- That the preferred bidder has failed to comply with the other requirements of the request for proposal, more particularly, that the Selected Bidder has not secured Temporary Registration with the Construction Industry Development Board (CIDB)
- That the preferred bidder is not registered with the Professional Quantity Surveyors Council (PQSC) to be able to provide the services under the procurement contract;



The Applicant has also queried the credentials of eventual local associates, without whom, he believes, it would not be possible for the Selected Bidder to perform the services.

## **J. Findings**

### **J.1 Discrepancy in Figures**

The Panel has verified figures in forms Fin-1 and Fin-2, and has found them to be identical, showing a bid price of € 318 990.00 + MUR 10 158 470.00. Moreover, the Panel is satisfied that the Euro component was properly converted to Mauritian Rupees to allow comparison of bids. The Panel fails therefore to understand the issue raised by the Applicant.

The Respondent has admitted to a mistake in reading out the figures at financial bid opening, and this is apparently the source of the Applicant's concern. The Panel wishes to make it clear that such mistakes should not have any effect on the evaluation, nor on the results thereof.

### **J.2 Failure to Comply With Requirements of RFP**

The Applicant did not submit any evidence in support of his claim. Nevertheless, the Panel has checked the Bid Evaluation Report and the bid from the Selected Bidder, and has found that the Messrs J A Beer Ltd have been granted provisional registration by the CIDB both as Consultants in Architecture, and in Project Management in Construction. Moreover, the bid of the Selected Bidder also includes registration certificates of local associates who have undertaken to provide services to the bidder.

It may be important to mention that the Power of Attorney given by the Board of Directors of J A Beer Ltd to Mr Robin Beer also mentions that the firm trades under the name of Beer Associates.

### **J.3 Not registered with the Professional Quantity Surveyors Council (PQSC)**

The Selected Bidder intends to entrust Quantity Surveying Services to a local firm, registered with CIDB *inter alia* as a Consultant in the field of Quantity Surveying.

The Panel usually allows much latitude to Applicants, and makes it a point to investigate all allegations made in respect of the evaluation. However, it



expects that Applicants would only make such allegations when in presence of definite information that may legitimately generate doubts. The casting wide of nets, while on a fishing expedition, in the hope of catching something, only serves to cast doubts on the seriousness of purpose of Applicants, and in the end, loses the time of the Panel and delays Decisions.

#### **J.4 Alleged Faulty Evaluation**

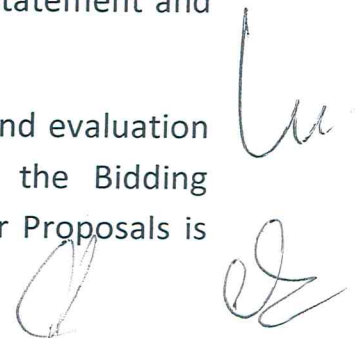
**J.4.1:** The issue of alleged faulty evaluation was raised in the Challenge, the Application for Review and canvassed during the Hearing, and is the only issue which, after examination, may have some substance.

The Panel wishes to stress at the outset that it is not in presence of the “self-evaluation” undertaken by the Applicants, nor has it been influenced by the results of this “self-evaluation” as communicated in the Application for Review and the Statement of Case. The Panel agrees to some extent with the Respondent that such “self-evaluation” will necessarily be subjective. However, a bidder can generally assess the merits of his bid, and may be genuinely surprised when his technical score falls beneath an expected bracket.

**J.4.2:** It is necessary, in assessing the methodology used in technical evaluation, that the Panel should recall briefly what should be expected of a technical evaluation within a quality and cost based system. Such a system, with 80% weightage given to the technical quality of proposals, is designed to favour quality rather than price, more than a cost based bidding exercise could achieve.

Fielding of more qualified experts would necessarily cost more money. Thus, if adequate score is not given to the bidder with more qualified or more experienced experts, he would be disadvantaged as compared to a competitor with experts who just meet the minimum criteria, and therefore less expensive. The same reasoning may be applied to the method statement and other criteria.

Moreover, bidders should know how their bids will be judged, and evaluation criteria, with the score allotted to each, should appear in the Bidding Documents. In this case, what was published in the Request for Proposals is the following:





<b>5.2 (a)</b>	<i>Criteria, sub-criteria, and point system for the evaluation of Full Technical Proposals are:</i>	
		<u>Points</u>
	(i) Specific experience of the Consultants relevant to the assignment:	10
	(ii) Adequacy of the proposed methodology and work plan in responding to the Terms of Reference:	
	a) Technical approach and methodology	20
	b) Work plan	20
	c) Organization and staffing	10
	Total points for criterion (ii):	50
	(iii) Key professional staff qualifications and competence for the assignment:	
	a) Team Leader	6
	b) Architect	5
	c) Civil/Structural Engineer	4
	d) Mechanical Engineer	4
	e) Electrical Engineer	4
	f) Quantity Surveyor	3
g) Slaughterhouse Veterinary Expert	5	
h) Geologist, Environmental Engineer	4	
i) HACCP Certification Specialist	5	
Total points for criterion (iii):	40	
<i>The number of points to be assigned to each of the above positions or disciplines shall be determined considering the following two sub criteria and relevant percentage weights:</i>		
1) General qualifications	40%	
2) Adequacy for the assignment	60%	
Total weight:	100%	
Total points for the three criteria:	100	
<i>The minimum technical score St required to pass is: 70 Points</i>		

The above does not allow the Bid Evaluation Committee to allocate marks. For example, in regard to the first item on the list: (i) *Specific experience of the Consultants relevant to the assignment*, there is no indication how the score of the bidder will be determined in respect of that criterion. The 10 marks may be allocated according to the number of projects undertaken, or the number of years of experience in the specific field.

If the Request for Proposals documents do not specify detailed marking criteria, the next best thing would be for the Bid Evaluation Committee to agree on them **before the opening of bids**. In this case, the chairman of the Bid



Evaluation Committee has confirmed at the Hearing that this was the case, and the Panel has no reason to doubt that the detailed marking criteria were at least objective.

**J.4.3:** However, examination of the detailed evaluation of bids has revealed inconsistencies with normal practice. The Bid Evaluation Committee has adopted a methodology more consistent with pass/fail criteria, consistent with cost based tenders, rather than a marking scheme designed to bring out quality proposals, as is more appropriate to a quality and cost based tender. The Panel has considered the following examples:

S/N	Consultancy Firms	Breakdown of the 6 Points	JV Kapperer Architects CC Design Forum Ltd	J.A.Beer Ltd., T/A Beer and Associates	GHD Pty Ltd
L	<b>Criteria</b>	<b>6</b>			
	<b>Key expert 1: Team Leader</b>				
	<b>Qualification and skills</b>				
	Bachelor's Degree in Architecture or Engineering registered with the relevant recognized professional bodies	1.0	1.0	1.0	0.0
	at least 15 years of professional experience in Architecture Engineering in the areas of engineering and / or architecture design with specific knowledge of slaughtering plants and /or in food industry complying to HACCP Norms.	1.4	1.4	1.4	0.0
<b>Specific professional experience</b>					
Experience as Team Leader in at least one project of similar size and complexity in the areas of design and supervision of slaughterhouse construction.	3.6	2.0	3.0	0.0	
	<b>Sub Total</b>		<b>4.4</b>	<b>5.4</b>	<b>0.0</b>

In regard to academic and professional qualifications, as well as general experience, the Bid Evaluation Committee has adopted a 0/1 or all or nothing approach. Those who meet the minimum criteria get full marks, and there is no



additional advantage given to those who possess more than the minimum qualifications or experience. One would expect that, at least in respect of general experience, where it is specified that the expert should have *at least 15 years of professional experience* [---], those who just meet the minimum criteria would be given the pass mark of 70% as score, and those who possess more than the minimum qualifying criteria be given more marks.

In regard to specific experience, marks seem to have been distributed at random, as no basis could be found for the respective scores in the Bid Evaluation Report.

The same comments may be made in respect of the next table in the Bid Evaluation Report:

S/N	Consultancy Firms	Breakdown of the Points	JV Kappereer Architects CC Design Forum Ltd	J.A. Beer Ltd., T/A Beer and Associates	GHD Pty Ltd
ii.	<b>Key expert 2: Architect</b>	<b>5</b>			
	<u>Qualification and skills</u>				
	Bachelor's Degree in Architecture registered with the relevant recognized professional bodies;	1.0	1.0	1.0	1.0
	minimum of 10 years of post-registration experience;	0.5	0.5	0.5	0.5
	Specific knowledge of slaughtering plants and /or in food industry complying to HACCP Norms;	0.5	0.0	0.5	0.5
	<u>Specific professional experience</u>				
	have handled at least one project of similar size and complexity during the past 10 years	1.5	1.5	1.5	1.5
	shall have specific knowledge of slaughtering plants and /or in food industry complying to HACCP Norms.	1.5	0.0	1.5	1.5
	<b>Sub Total</b>		<b>3.0</b>	<b>5.0</b>	<b>5.0</b>



In addition, however, specific experience appears in both “*Qualification and Skills*” and “*Specific Professional Experience*”, or, in terms more readily accessible to Counsel and other legal representatives of both sides, a bidder would be rewarded or punished twice for exhibiting or failing to exhibit the same qualification.

**J.4.4:** The principles adopted by the Bid Evaluation Committee in technical evaluation are therefore not compatible with a quality and cost based tender. Whether a more rational approach would have altered the outcome of the evaluation remains to be determined. From the Bid Evaluation Report alone, it is not possible to predict such outcome, as essential information on the qualification of each bidder in regard to each criterion is missing. It is neither the duty, nor the inclination of the Panel to delve into each bid to conduct a detailed analysis. However, it does have to verify certain facts, failure of Public Bodies to transmit documents to the Panel, as required by Law, causes embarrassment and delays.

**J.4.5:** One of the facts the Panel wished to verify arose out of the bizarre specifications for the Environmental Specialist. It is supposed that this staff member will have the responsibility to draft the EIA Report, although this is not explicitly stated in his Terms of Reference. The profile description does specify that he has to be either a geologist or an Environmental Engineer. The Mauritian Legislation does specify expertise required to produce EIA Reports, and the list is much larger than the narrow fields specified in the Request for Proposals. Even if, to be charitable, one assumes that there was a wish to combine tasks to limit the number of experts, this would not explain why Soils Mechanics experts, Civil Engineers, Architects, etc. are excluded. And Environmental Engineers are not more qualified than any of the above to carry out geo-technical investigations. However, no bidder has raised this issue before submission of tenders, and the Panel shall not make an issue out of it. But it did check the CV of the expert retained for the part by the Selected Bidder, and found that it is not mentioned specifically therein whether he has carried out at least one Environment Impact Assessment. This could have been easily clarified, the more so as EIA Reports are published.



**J.4.6:** Two experts proposed by the Selected Bidder did not meet the required standards:

*“The proposed Slaughterhouse Veterinary Expert (Mr Alan R. B. Clarke) has no specific professional experience in slaughtering management procedures and operations.*

*The proposed HACCP Certification Specialist (Mr Padraig Furlong) has a certificate in science (Agriculture) and a Diploma in Quality Assurance instead of a bachelor degree in Engineering or Veterinary Services as per Section 5 - Term of Reference sub-Section 'A Bachelor's Degree in Engineering or Veterinary Sciences; and'”*

The following questions have therefore been raised and remain unanswered:

1. Can an expert who does not fully respond to requirements, leading to his rejection, be nevertheless awarded a score?
2. Can a bidder be allowed to replace experts who have been found wanting?

In regard to the second issue, the chairman of the Bid Evaluation Committee informed the Panel that the Request for Proposals documents make provision for such replacement. The Panel has not been able to see such provision. Such replacement may constitute a change in the substance of a tender. Also, it would seem that the Public Body has agreed to new experts being fielded, without having seen their CV's, and has expressed its intent to award simply on promises made by the Selected Bidder.

## **K. Decision**

For the above reasons, Panel finds that there is merit in the application, and hereby orders a re-evaluation of the bids, preferably by a new Bid Evaluation Committee.





**(M. Reshad Laulloo)**  
**Chairperson**



**(Mrs Christelle Sohun)**  
**Member**



**(Virjanan Mulloo)**  
**Member**

**Dated 28 December 2016**

