Independent Review Panel

Decision No. 05/17 ~~05/16~~

**In the matter of:**

**Mega Design Ltd**

**(Applicant)**

**v/s**

**National Housing Development Company Limited**

**(Respondent)**

**(Cause No. 01/17/IRP)**

# Decision

## A. History of the case

On the 18 August 2016, the National Housing Development Company Limited (hereinafter referred to as the Respondent) through an open advertising bidding process, invited bidders for proposals for global consultancy services for the design, management and supervision services for the construction of 950 housing unit with associated infrastructure works and 11 serviced plots on 10 sites.

Addendum No 1 to the bidding documents was issued to all prospective bidders on the 23rd September 2016, wherein it was required that the bids be submitted for the 3 lots with lot 1 and lot 2 comprising of 3 sites each and lot 3 comprising 4 sites.

Mega Design (hereinafter referred to as the Applicant) purchased the bidding document on the 21st September 2016.

The Respondent notified the bidders of the award on the 27th December 2016. The Applicant challenged the Respondent's decision on the 3rd January 2017 and on the 11th January 2017 the Applicant applied for review at the Independent Review Panel.

## B. Notification of Award

The National Housing Development Company Limited through a letter dated 27 December 2016, informed the Applicant of the particulars of the successful bidder as follows:

| ***Item No.*** | ***Description*** | ***Selected Bidder*** | ***Address*** | ***Contract Price (MUR)*** |
|---|---|---|---|---|
| *1* | *Global Consultancy Services for the Design, Management & Supervision for the Construction of some 950 Housing Units with Associated Infrastructure Works on 11 Services Plots on 10 Sites – OAB No. NHDC/0816/Lot 1* | *Servansingh Jadav & Partners Consulting Engineers Limited* | *7, Remy Ollier Street, Beau Bassin* | *15,457,000.00* |
| *2* | *Global Consultancy Services for the Design,* | *Luxconsult (Mtius) Ltd* | *23, Stevenson Avenue, Quatre* | *15,442,000.00* |

| | | | | |
|---|---|---|---|---|
| | *Management & Supervision for the Construction of some 950 Housing Units with Associated Infrastructure Works on 11 Services Plots on 10 Sites – OAB No. NHDC/0816/Lot 2* | | *Bornes* | |
| *3* | *Global Consultancy Services for the Design, Management & Supervision for the Construction of some 950 Housing Units with Associated Infrastructure Works on 11 Services Plots on 10 Sites – OAB No. NHDC/0816/Lot 3* | *Desai & Associates Ltd* | *88 Pope Hennessy Street, Beau Bassin* | *12,850,000.00* |

## C. The Challenge

On 03 January 2017, the Applicant challenged the award on the following grounds:

*"The bidder considers having submitted a complete and comprehensive proposal and requests a written decision with reasons behind rejection of the proposal."*

## D. The Reply to Challenge

On 05 January 2017, the Public Body made the following reply to the challenge:

*"1. As per Clause 5.2 of the Data Sheet, the minimum technical score to pass in 80 points.*

*2. Your technical proposal, being responsive, was evaluated and the following shortcomings were observed:*

- *The Methodology demonstrated a lack of understanding of important issues of the Terms of Reference (TOR) and some requirements have not been discussed in depth. As a result of the above, it was noted that the Client would have to incur additional costs where same issues could have been clarified before the bid submission.*
- *Some of the key personnel did not satisfy the minimum requirement of being in employment with the respective consulting*

*firm for the last five years. Moreover, one expert did not have the specific experience in individual housing units of size and complexity of similar nature.*

- *The proposed number of supervisory staff was short of the requirements of the TOR.*
- *Among the CV's submitted, it was observed that one proposed key personnel has been working with two different employers on two different projects for the same period.*

*In the light of the above, your technical proposal did not meet the minimum score of 80 points and was not retained for financial analysis."*

## E. Grounds for Review

On 11 January 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

*"Not satisfied with decision of Public Body."*

## F. The Hearing

Hearings were held on 17 and 31 January and 13 February 2017. Written submissions were made on 26 January and 13 February 2017 by Respondent.

The Applicant was represented by Miss T. Choomka, Counsel whereas the Respondent was represented by Mrs G. Topsy-Sonoo, Assistant Solicitor General together with Miss K. Domah, State Counsel.

## G. Findings

After taking into consideration all evidences on record and submissions of Counsel the Panel observed the following:

In relation to Tech 4, (Applicant's proposal) where comprehensiveness of methodology was being assessed the Panel noted that the Applicant has assumed that they shall be shown the site corner and boundary pegs as installed by the client in compliance with the description of the title deed.

However, as far as the Site Boundary Bench Mark is concerned (pages 85 and 87), it clearly stipulates that "*fixing and any re-fixing to be carried out by the small land surveyors and he has proposed that boundary survey peg as installed by the client*". The Panel therefore notes that the Applicant's proposal is completely different from what the Respondent has requested.

In relation to Supervising Agents, the Applicant had to deploy at least 2 supervising agents per site for this project. This can be evidenced at page 81 of the bidding document. The Applicant has proposed support staff instead of Supervising Agents. The Panel took note that Mr Sooredoo was very inconsistent in his reply during cross examination on this issue. Mr Sooredoo stated that the Supervising Agent is a Clerk of Work. He referred the Panel to his organization chart at page 426. However, the Panel noted that there were no mention of Supervising Agents nor Clerk of Work. Further, Mr Sooredoo stated that he referred it as Site Inspector. When question was put to him that his organization chart made no reference to Site Inspector, Mr Sooredoo's reply was that it was Inspector of Work. Finally he stated that it was not Inspector of Work but Site Inspector. The requirement of the Respondent was very specific that is the bidder must provide at least 2 Supervising Agents not Support Staff, Clerk of Work, Work Inspector nor Site Inspector.

As far as Supervising Agents are concerned the Panel took note that the Applicant has provided only 4 Supervising Agents. The Panel is of the firm view that the tasks assigned to Mr Sooredoo was to carry out site visit but not Inspection of Works. There is a material difference between a site visit and Inspection of works. The Panel took note that in fact Messrs Dabydeen, Pavaday, Bott and Ramasamy were Inspectors of work as stipulated in the Applicant's bidding documents. A question which needs to be posed at this juncture is that if Mr Sooredoo had to carry out Inspection of works, why the Applicant had inserted site visit in his tasks and not Inspection of works?

As far as Clause 7(e) of the Term of Reference it is undisputed that members forming part of the key personnel must have five years' experience in the same consulting firm. The Panel observed that the Applicant conceded to the fact that its Quality Control Engineer does not meet this criteria.

It is also noted by the Panel that according to the Curriculum Vitae (CV) submitted by the Applicant, the proposed Quality Engineer was employed as Project Manager at the National Development Unit from 2013 to 2015 and he was also the Engineer/Quality Control Expert on two housing projects for the Respondent from 2013 ongoing. It was further stated in the same CV that the Quality Control Engineer was employed by the Applicant as from 2016 as at date. The Panel observed that the employment record of the said expert is very ambiguous in as much as he cannot be in employment in two different places at the same time.

The Panel therefore concludes that the application for review has no merits and is therefore set aside.

INDEPENDENT REVIEW PANEL MAURITIUS

**(A. Kallee)**
***Vice-Chairperson***

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

**(Rajsingh Ragnuth)**
***Member***

**Dated 13 March 2017**