



# Independent Review Panel

**Decision No. 17/17**

**In the matter of:**

**Data Communications Ltd**

**(Applicant)**

**v/s**

**Ministry of Technology, Communication and Innovation**

**(Respondent)**

**(Cause No. 09/17/IRP)**

**Decision**

## A. History of the case

The present Application for review relates to the procurement of Framework Agreement for connectivity services for the **Skygovnet Project 2017-2020 bearing procurement reference No MTCI/04/2016-2017**

Data Communications Ltd (hereinafter referred to as “the Applicant”) submitted its bids to the Ministry of Technology, Communication and Innovation (hereinafter referred to as the “Respondent” on 15 December 2016.

The Respondent sent the notification of award to the Applicant on 14 March 2017 wherein it was stated that Mauritius Telecom was the selected bidder.

The Applicant challenged the award on 17 March 2017 and subsequently the Respondent replied to the challenge on 21 March 2017.

Feeling aggrieved of the decision of the Respondent the Applicant applied for review at the Independent Review Panel pursuant to section 45 of the Public Procurement Act.

## B. Notification of Award

The Ministry of Technology, Communication and Innovation, through a letter dated 14 March 2017, informed the Applicant of the particulars of the successful bidder as follows:

<b>Name of Bidder</b>	<b>Address</b>	<b>Contract value (MUR)</b>
<i>Mauritius Telecom</i>	<i>Telecom Tower, Edith Cavell Street, Port Louis</i>	<i>141,558,192.00</i>

## C. The Challenge

On 17 March 2017, the Applicant challenged the award on the following grounds:

- “(a) Data Communications (DCL) was the cheapest (lowest) compliant bidder (LC1)*
- “(b) Data Communications Ltd (DCL) was fully compliant to the technical specifications and requirements as requested in the RFP*

- (c) *All the pre-qualification as well as evaluation criteria have been met*
- (d) *There are no other hidden fees*
- (e) *A turnkey compliant working solution was proposed.”*

#### **D. The Reply to Challenge**

On 21 March 2017, the Public Body made the following reply to the challenge:

- (i) *Pursuant to Section 2 – Clause at ITS 4.1 (b) [Instruction to Service Providers with regard to Eligibility Criteria] of the bidding document, it is clearly stipulated that:  
  
“Service Provider should hold a valid a valid ISP Licence in accordance with Section 24 of ICT Act 2001”*
- (ii) *The ISP Licence which Data Communications Ltd submitted along with its bid had already expired on 01 April 2016 while the closing date was 15 December 2016.*

*In view of the above major deviation your bid was declared non responsive and was not retained by the Bid Evaluation Committee.”*

#### **E. Grounds for Review**

On 27 March 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. Applicant is the lowest substantially responsive bid;*
- 2. Applicant was fully compliant with the technical specifications and requirements as requested in the RFP;*
- 3. All the pre-qualification as well as evaluation criteria have been met by applicant;*
- 4. There are no other hidden fees;*
- 5. A turnkey compliant working solution was proposed by applicant;*
- 6. The applicant is aggrieved by the decision of the Chief Executive Officer of the Public Body through response to its challenge dated 17 March 2017 that DCL did not have a valid Internet Service Provider License as from April 2016;*
- 7. The Applicant had applied for the renewal of its license which came to an end in April 2016 but the authority has taken their time due to issues at their level including change of officers, chairman and boards;*



8. *The applicant confirms and avers that technically and legally it is still an ISP (Internet Service Provider) and is legally bound to carry on providing such services in the public interest while awaiting the renewal process;*
9. *The tender was awarded to a bidder whose price was higher than DCL's offer;*
10. *DCL's offer was the lowest bid and cheaper than the awarded bidder by a significant amount namely Rs5,025,312.00."*

## **F. The Hearing**

Hearings were held on 30 March, 03 and 13 April 2017. Respondent's Reply was made on 07 April 2017 and Applicant's reply was made on 11 April 2017.

The Applicant was represented by Mr V. Reddi, Counsel whereas the Respondent was represented by Ms D. Beesoondoyal, Senior State Counsel.

## **G. Findings**

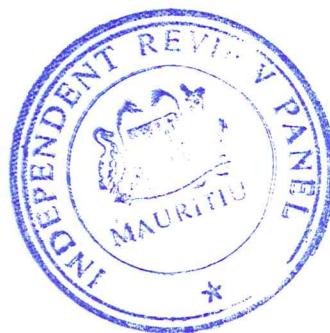
The core issue in this review is whether the Applicant had a valid licence at the time of the submission of its bid. After taking into account evidence on record and submissions of Learned Counsel for both parties the Panel concludes the following:

The Applicant's Internet Service Licence which was issued by the Information and Communication Technologies Authority (ICTA) expired on 01 April 2016. Referring to clause 2.4 of the Internet Service Licence the Panel notes that it is mandatory for any company to submit a written request for renewal of its licence "*at least (1) year prior to the date on which the Licence is to expire*". It is on record that the Applicant's application form for renewal of a commercial licence (annex 3 of the SOC) is dated 01 April 2016 that is the date on which the said licence expired. Moreover, Clause 4.1(b) of the Instruction to Service Providers (Eligibility Criteria) clearly stipulates that "*service providers should hold a valid ISP licence in accordance with Section 24 of the ICT Act 2001.*" Clause 9.1(n) of the

Instruction to Service Providers made it clear that bidders were required to submit a *“valid Internet service Provider licence from the ICTA”*. Section 24(1) of the ICTA 2001 provides that *“no person shall operate an information and communication network or service including telecommunication network or service unless he holds a licence from the Authority”*.

During cross examination, the representative of the Respondent conceded to the fact that his company’s licence had already expired on 02 April 2016. To a pertinent question put to the representative of the Applicant by a Panel Member as to whether he can assert as to whether the said licence was renewed, the latter replied in the affirmative but he could neither give a date nor a copy of the renewed licence. All that was said by the Applicant was that they *“were informed verbally a couple of weeks ago”*. The Representative of the Respondent stated that after the Applicant had submitted its bid, the Bid Evaluation Committee carried out verification in particular on the issue of licence. Further stated that Applicant’s company was not listed as a licensee on the ICTA website.

In the light of the above, the Panel has no alternative than to conclude that at the time of the submission of its bid, the Applicant did not have a valid Internet Licence contrary to clause 4.1(b) of the Instruction to Service Providers. The Application for review is therefore set aside.





**(Arassen Kallee)**  
***Vice-Chairperson***



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



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

Dated 20 July 2017

