

Independent Review Panel

Decision No. 04/19

In the matter of:

HaskoningDHV Nederland B.V/Mega Design Ltd

(Applicant)

v/s

Ministry of Housing and Lands

(Respondent)

(Cause No. 03/19/IRP)

Decision

A. History of the case

1. The Ministry of Housing and Lands (Public Body) invited open international bids for the Procurement of Consultancy Services for the Review of the National Development Strategy for the Republic of Mauritius on 12th October 2018 for submission by Thursday 13th December 2018.
2. Place Dynamic ME LLC (Dubai, UAE) was retained as the Successful Bidder for the sum of MUR 72,367,000.00.
3. Applicant was among the four bidders and it was not retained.
4. The Applicant applied for a challenge with grounds but the Public Body did not retain the grounds of challenge.
5. The Applicant under the provision of Section 45 of the Public Procurement Act applied for review.

B. Evaluation

The financial opening took place on 28th January 2019 and the following details were read:

	Technical Score	Technical Score weighted @ 75%	Bid Price	Financial Score weighted @ 25%	Overall Score
2. Place Dynamic ME LLC (Dubai, UAE)	92.14	69.105	MUR 72,367,000	14.431	83.536
4. Royal HaskoningDHV Nederland B.V / Mega Design Ltd	78.14	58.605	EURO 1,055,000 (MUR 41,772,830.50)	25.000	83.605

Based on the weights and exchange rate the following results ensued:

	Technical Score	Technical Score weighted @ 75%	Bid Price	Financial Score weighted @ 25%	Overall Score
2. Place Dynamic ME LLC (Dubai, UAE)	92.14	69.105	MUR 72,367,000	14.431	83.536
4. Royal HaskoningDHV Nederland B.V / Mega Design Ltd	78.14	58.605	EURO 1,055,000 (MUR 41,772,830.50)	25.000	83.605

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C. Notification of Award

Through a letter dated 11 February 2019, the Ministry of Housing and Lands notified the Applicant that its bid has not been retained for award and the particulars of the successful bidder are given hereunder

Item: Consultancy Services for Review of the National Development Strategy for the Republic of Mauritius

Name of Successful Bidder: Place Dynamic ME LLC/Luxconsult

Address: Studio 1405,
Jumeirah Bay, X3 Tower
Jumeirah Lake Tower,
Dubai UAE

Contract Price: MUR 72,367,000.00 (Mauritian Rupees Seventy-Two Million Three Hundred and Sixty-Seven Thousand only excluding VAT)

D. The Challenge

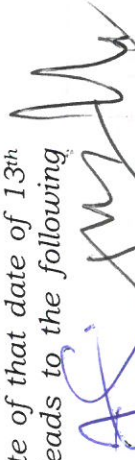
The Applicant challenged the Public Body through a letter dated 14th February 2019 under the following grounds:

(a) **“Based on the Instruction to Bidders Clause 5.7 of the RFP, providing the formula for calculating the final score, and the Addendum 1 as part of the Clarification 1 to Bidders, determining the currency conversion rules, Bidder achieved the highest score and should therefore have been declared the successful bidder.**”

Explanation:

In the instruction to Bidders of the RFP, Clause 5.7 it reads how the final score is computed. $Sf = 100 \times Fm / F$, in which Sf is the financial score, Fm is the lowest price and F the price of the proposal under consideration.

The price in MUR is part of this quotation. In Addendum 1 as part of the Clarification 1 to Bidders, it is written that “Bidders may quote in Mauritian Rupees, USD, EURO or Pound Sterling. The evaluation will be based on the Exchange Rate prevailing as at closing date for Submission of Proposals” Using the correct currency conversion rate of that date of 13th December issued by the Bank of Mauritius, this leads to the following calculation:



	Bidprice	fin 25%	tech	total
RHDHV	MUR 41786334,5	25	75% 58,605	83,605
Place Dynamix	72367000	14,43556	69,105	83,540

In deviation from the foregoing, Place Dynamix was declared the successful bidder.

So the Public Body either:

- i. Used a currency conversion rate higher than the selling rate of exchange issued by the Bank of Mauritius on 13th December 2018, modifying the ranking of the proposals at the prejudice of the Bidder, or***
- ii. Unilaterally adjusted upward the financial proposal of the Bidder without seeking clarifications.***

In both cases, the Bidder objects and believes this should be rectified.

(b) The Public Body refused to communicate the estimated number of professional staff months or the budget for executing the assignment in contradiction to clause 3.3(b) of the Instructions to Consultants.”

E. The Reply to Challenge

Through a letter dated 20 February 2019, the Public Body replied to the Challenge of the Applicant.

“With regard to your ground for challenge (a) you may wish to note that in line with the principle of certainty, the strict requirements and exigencies of the Invitation for Proposals are clearly spelt out in Clause 3.6 whereby “The Financial Proposal shall be prepared using the attached Standard Forms (Section 4). It shall list all costs associated with the assignment, including (a) remuneration for staff (foreign and local, in the field and at the Consultants’ home office), and (b) reimbursable expenses indicated in the Data Sheet. If appropriate, these costs should be broken down by activity and, if appropriate, into foreign and local expenditures. All activities and items described in the Technical Proposal must be priced separately; activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.”

The use of Standard Forms submissions is precisely geared towards achieving the maximum possible level of certainty in the presentation of proposals, as well as maximum objectivity in the assessment of proposals.

The Instructions to Consultants lay strong emphasis on the need to review carefully the RFP documents and on the consequences for a bidder of having been deficient in the provision of requested information. Reference is made in particular to Clause 3.2 which stipulates that “In preparing their Proposal, Consultants are expected to examine in detail the documents comprising the RFP. Material deficiencies in providing the information requested may result in rejection of a Proposal”

Clause 1.4 of the Data Sheet, states inter alia that: “**The Consultant shall make its own arrangements for office accommodation and facilities (photocopying, scanning, printing preparation of plans, computers).**”

Again, Clause 3.6 of the Bid Data Sheet stress upon bidders of the need to submit an all-inclusive proposal, with an itemised list, the prices of which should be included in the proposed Lump-sum price:

The Consultant shall include the items mentioned hereunder in its Lump sum price.

- (1) per diem allowance in respect of Personnel of the Consultant for every day in which the Personnel shall be absent from the home office and, as applicable, outside the Client’s country for purposes of the Services;
- (2) cost of necessary travel, including transportation of the Personnel by the most appropriate means of transport and the most direct practicable route;
- (3) cost of office accommodation, investigations and surveys;
- (4) cost of applicable international or local communications such as the use of telephone and facsimile required for the purpose of the Services;
- (5) cost, rental and freight of any instruments or equipment required to be provided by the Consultants for the purposes of the Services;
- (6) cost of printing and dispatching of the reports to be produced for the Services;
- (7) cost of organizing two workshops with some 100 participants from various local stakeholders for each workshop;
- (8) other allowances where applicable and provisional or fixed sum (if any);
- (9) costs of insurance (if any); and
- (10) cost of such further items required for purposes of the Services not covered in the foregoing.”

It is noted that the lump sum proposed by Royal Haskoning DHV Nederland B.V/ Mega Design Ltd (Netherlands) amounting to Euro 1,055,000 comprised only of remuneration of its staff and does not comprise any other costs. No breakdown of costs in respect of reimbursable expenses has been made by the Bidder to account for items as specified at paragraph 3.6 of the Data Sheet- a mandatory requirement.

The BEC has in accordance with paragraph 4.2 of section 4 of the Bid Evaluation Guideline for Consultancy Services, estimated the costs of the reimbursable to account for the items listed at clause 3.6 of the Bid data sheet on the basis of submission made in Form FIN-5-Breakdown of Reimbursable Expenses.

In light of the above, the Bid Evaluation Committee adjusted the gross financial proposal amount quoted by Bidder 4 – Royal Haskoning DHV Nederland B.V/ Mega Design Ltd (Netherlands) as follows:

SN	Details	Net Evaluated Financial Proposal (Euro)
1.	Lump sum quoted in gross financial proposal	1,055,000.00
2	Estimated reimbursable cost of items other than remuneration	171,000.00
3	Gros Evaluated Financial Proposal	1,226,000.00

Based on the above, the total score observed by the bidder is 83.605 against 85.875 for the selected bidder. It should be noted that the price quoted by the selected bidder is inclusive of reimbursable expenses.

Besides, the financial proposal contains twice the page in respect of the breakdown of cost for Task 1-Mobilization and Data Collection (Form FIN-3: Breakdown of Costs by Activity) for an amount of Euro 110,000 but no cost has been accounted for **Task 8: Action Plan/Programme for Implementation**.

The Exchange Rate for conversion of the financial proposal of Royal Haskoning DHV Nederland BV is the exchange rate prevailing on the **13 December 2018**, strictly as per:

- Clause 5.6 of the Invitation for Proposals, whereby “Prices shall be converted to Mauritian Rupees using the selling rates of exchange issued by the Bank of Mauritius, prevailing on the deadline for submission of proposals”; and
- Addendum No. 1 issued by the Public Body on 30 November 2018, which confirmed that “The evaluation will be based on the Exchange Rate prevailing as at closing date for Submission of Proposals”.

As to your challenge (b), you may wish to note that according to **Clause 3.3** of the Instructions to Consultants, while preparing the Technical Proposal, **Consultants** must give particular attention to the following:

- (a) Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies.

In case of a joint venture, all partners shall be jointly and severally liable and shall indicate who will act as the leader of the joint venture.

For a Joint Venture to qualify for this assignment the lead member of the Joint Venture shall individually satisfy the experience criteria related to this assignment as defined by the Client.

The Client shall not require Consultants to form associations with any specific firm or group of firms or include any particular individual in their proposals, but may encourage association with qualified national firms.

- (b) The estimated number of Professional staff-months or the budget for executing the assignment shall be shown in the Data Sheet, but not both. ~~However, the~~

Proposal shall be based on the number of Professional staff-months or budget estimated by the Consultants.

- (c) Alternative professional staff shall not be proposed, and only one curriculum vitae (CV) may be submitted for each position; and*
- (d) Documents to be issued by the Consultants as part of this assignment must be in English. It is desirable that the firm's Personnel have a working knowledge of English.*

*In the light of the above, it is therefore clear that it is the responsibility of the Consultant and **not the Client** to estimate the number of Professional staff-months or the budget for executing the assignment.”*

F. Grounds for Review

On 25 February 2019, the Applicant seized the Independent Review Panel for review on the following grounds:

- (i) Not satisfied with the decision and the response of the Public Body*
- (ii) The reasons not to declare the Applicant as the successful bidder are irrelevant and irrational and ought not to have been taken into account*

G. The Hearing

Hearing was held on 21 March 2019. Written submissions were made on 22 March 2019 by the Respondent and the Applicant on 23 March 2019 and on 25 March 2019 a reply to the written submissions of the Applicant was filed.

The Applicant was represented by Mr Didier Dodin, Counsel whereas the Respondent was represented by Ms S. Gareeboo, Assistant Parliamentary Counsel.

The Successful Bidder was represented by Mr Hansraj B. Sunasee, Barrister.



H. Findings

This Panel had its first proforma date on 07 March 2019 then postponed to 15 March 2019 for the case to be in shape. On 15 March 2019, the Panel had the statement of case of the Applicant already on record and that of the Respondent.

On 15 March 2019 it was agreed that the Application be fixed to 21 March 2019 at 2.30 p.m for hearing and in the meantime written submissions if any, be filed.

On 21 March 2019 there were no written submissions but the parties agreed to file same after the hearing.

The Panel did not object but informed the parties that according to the provisions of the Law it has to file its determination within a delay and that delay was on 26 March 2019.

It was also pointed out to the parties that the Public Body may proceed with the award of the contract in case the Panel does not determine the application for review within the prescribed delay.

The Panel, because of the short delay between the submissions and determination, invited the Public Body for an undertaking with the possibility of not proceeding with the award until its determination.

The Public Body refused to give such undertaking.

As regards the merits of the case the Panel has gone through the statement of reply to the statement of case, written submissions from both parties and the bidding documents available at this office.

True to say that the Applicant has quoted EUR 1,055,000 this can be grasped from the Form FIN 1: Financial Proposal submission form but according to the Respondent the amount quoted by the Applicant in FIN 3 does not reflect value for both remuneration and reimbursable expenses.

The Panel has had an opportunity to examine Form FIN 3 which deals with Breakdown of Costs by Activity. In this form we observed under item “reimbursable expenses”, a note in bold that this is “**Not Applicable**”. The Applicant in its written submission on this issue stressed that the words “**Not Applicable**” was inserted by the Respondent. The Applicant in its written submissions mentioned that it did so by having its reimbursable expenses in-built in its remuneration and accounted for in the lump sum.

The Panel takes note that the figure of the Eur 1,055,000 as quoted by the Applicant represents the Total Cost of Financial Proposal according to Form FIN-2, which includes the reimbursable expenses.



The Panel feels that it was not necessary for the BEC to adjust the Gross Financial Proposal of the Applicant to make it a total of Eur 1,226,000.

Apart from what is provided in Bid Evaluation Guide Circular 8 of 2012 issued by the Procurement Policy Office, that in case of ambiguity between the Bid Evaluation Guide and the documents used by the procuring entities, the latter shall prevail. However, this Panel refers to Section 37 (1) of the Public Procurement Act where it stipulates as follows:-

“S.37(1) The Board, in the case of a major contract, or a Public Body may seek clarification during the examination of bids from any bidder or facilitate evaluation, but is shall neither ask nor permit any bidder to change the price or substance of his bid”

In this particular case, the Panel is of the view that this exercise at least should have been done that is call upon the bidder for clarification because the Law prevails over any guidelines.

It is also noted by this Panel that the successful bidder has been retained on an amount of MUR 72,367,000 compared to the Applicant’s quotation for MUR 41,772,80.50. The difference is in the sum of approximately MUR 30,000,000.

I. Recommendations

In the light of the above observations made by this Panel it is recommended that a re-evaluation of the bids be carried out.


Vice-Chairperson
Mr H. GuneSh


Member
Mr A. Gathani




Member
Mr V. Mulloo

Dated: 26.03.2019.....