



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

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MEDIA RELEASE

STATEMENT FROM THE CONTRACTOR GENERAL WITH RESPECT TO THE OUR'S RESPONSE TO THE OCG SPECIAL INVESTIGATION INTO THE RIGHT TO SUPPLY 360MW OF POWER TO THE NATIONAL GRID

The OCG has noted that the OUR has issued a formal document directed to several State Authorities which challenges certain Findings and Conclusions of the OCG's Special Investigation Report concerning the Right To Supply 360MW of Power To The National Grid.

The OCG in its introduction section of the Report, asserted the importance of this project to National Development, and highlighted the need to create a balance between Economic Development and probity in Government of Jamaica (GOJ) transactions of this nature. Indeed the OCG had asserted that it was "*aware that the generating capacity must be scheduled to meet future demand, but more importantly, **solutions must be developed to ensure that value for money and probity is considered a priority and is achievable***"

In striking that balance, the OCG was left with no other alternative but to consider two courses of action which it could have recommended to the OUR; (1) Given the untidy, inappropriate and irregular state of affairs and the poor handling of a very significant project of such National Interest, the process is to be aborted in its entirety or (2) Rely on certain fundamental principles and tenets attendant to certain provisions of the GOJ Procurement Guidelines and the Contractor General Act, in an effort to preserve the integrity of the process, since the OUR was acting inconsistent with GOJ Policy.

In the National Interest and to maintain a balance without compromising the integrity of the process, the OCG chose the latter.

Instead of accepting the OCG's recommendation which was made in its letter dated May 21, 2013, mentioned in the Report, where the OUR was advised not to accept the EWI proposal, the OUR sought the counsel of the NCC. Whilst it is the OUR's right to seek such counsel as it deems fit, the OUR cannot rely on the NCC to legitimise its actions, while circumventing the said instructions which have been prescribed by the said NCC. The OUR cannot have it both ways.

The OCG considered the account of the OUR concerning the process that it had embarked upon, during Judicial Proceedings, however given the patent and material divergence of the OUR's account from the documented evidence, the OCG rejected the OUR's account and sought to primarily rely upon the correspondences in its possession to form the basis of its Conclusions.

It has been clearly established that the OCG concluded that **the process which was undertaken by the OUR was inconsistent with Government Policy**. The OCG's Findings in this regard was to serve as a guide to the



fundamental principles which should be attendant to the handling of Expressions of Interest, which is intended to secure and preserve integrity and probity in the award of GOJ Contracts. It must be noted that the GOJ Procurement Guidelines does not make provision for any informal process.

The General principles applied in the use of this approach, is (a) a date is established for the cut off of receipt of Expressions of Interest, (b) the Interests are evaluated and assessed to determine which respondents appear to possess the capability and capacity and (c) thereafter those persons are invited to submit a proposal.

Those are the general principles which would have regularised the inept process whereby the Minister intervened and the consequent acceptance of the EWI proposal by the OUR after the established cut-off date and the conclusion of said proposals being evaluated by Mott MacDonald the duly engaged Consultant.

The OCG is of the considered view that the OUR's response has only sought to avoid the real issues associated with this transaction. In the circumstance, the OCG maintains the following:

1. The OUR has indicated that it had engaged into the receipt and acceptance of Unsolicited Proposals. However, the publishing of a Notice, the consequent receipt of other proposals after the published announcement clearly shows that there was solicitation. It was therefore on this basis that the OCG was unable to concur with the OUR that the process used was in keeping with the treatment of Unsolicited Proposals allowed for in the GOJ Procurement Procedures.
2. The process which the OUR adopted, after the established cut-off date of March 15, 2013, and the conclusion of the Evaluation of said proposals received prior to the cut-off date, to facilitate the acceptance of the EWI Proposal, was unfair and irregular and a clear breach of, *inter alia*, the Contractor General Act. This was clearly stated in the OCGs Special Report.
3. The OUR did not publish a new cut-off date to give any other interested proposer an opportunity to submit a proposal.
4. The acceptance of EWI's proposal, following the conclusion of an evaluation process, and not subjecting its proposal to the same rigours of that which was brought to bear on the other proposals is irregular and unfair.

The OUR itself took one day to evaluate the EWI proposal, not the contracted Consultant Mott MacDonald, **contrary to the NCC's instruction**. This action constitutes a clear circumvention of the NCC's instruction, the said body that the OUR is now relying on to legitimise its actions.

Dirk Harrison
Contractor General

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