

## INDEPENDENT REVIEW PANEL

In the matter of:

**Burmeister & Wain Scandinavian Contractor A/S**

**(Applicant)**

**v/s**

**Central Electricity Board**

**(Respondent)**

**(Cause Nos. 16/15/IRP)**

### **Decision**

#### **CPB/20/2015: Re-development of Saint Louis Power Station - Design, Supply, Installation and Commissioning of Diesel Power Plant of Capacity 60MW± 10%**

Burmeister & Wain Scandinavian Contractor A/S have made an Application for Review at the IRP dated 14 July 2015 in regard to the above tender, alleging the following acts or omissions:

*“The Public Body is launching a second tender for the supply of the same equipment at a time when the first tender for the same equipment is still the subject of:*

- (a) an application for review before the Independent Review Panel;*
- (b) two applications for Judicial Review before the Supreme Court:*
  - (i) challenging the decision to cancel the first bidding process; and*
  - (ii) challenging the purported decision of the Independent Review Panel dated 3rd July 2015.”*

The Applicant has given the following as grounds for the Application:

*“1. This tender cannot proceed in as much as the decision of the Public Body to cancel the first tender bearing reference number CPB/22/2014 is wrong in law and is the subject of Judicial Review proceedings before the Supreme Court;*

*2. Furthermore, the application for review of the decision of the Public Body to declare the bid of the Applicant unresponsive and therefore to cancel the bidding process has not yet been the subject of a lawful decision by the Independent Review Panel since the decision of the latter dated 3<sup>rd</sup> July 2015 is not a decision within the meaning of the Act to wit: the signatories of the purported decision did not constitute the lawful quorum of the Panel.*

*3. The present (second) tender has taken on board and made its own a number of proposals made by the Applicant in its original bid although those same proposals were termed "major deviations". In fact, no less than 26 purported "major deviations" have been made standard requirements in the second tender.*

*4. The present (second tender) exercise has been tailor made to suit specific suppliers, the more so as during the first bidding exercise no less than ten potential bidders applied at pre-qualifications stage which were based on four criteria:*

- (i) Eligibility;*
- (ii) Historical contract non-performance;*
- (iii) Financial situation and performance; and*
- (iv) Experience.”*

The Panel met on 06 August 2015 and decided as follows:

**Under Ground 1:**

The Applicant has not mentioned, and the Panel has failed to identify the specific sections of the Public Procurement Act that have been contravened. Furthermore, the cancellation of the first tender exercise of which the re-tender is a consequence, is already the subject of Judicial Review Proceedings before the Supreme Court, and the Panel cannot be asked to review acts or omissions which are the subject of proceedings still before the Supreme Court.

**Under Ground 2:**

The IRP is not the proper forum to decide whether or not its own decision is wrong in law. As the Applicant has stated that this decision of the Panel is the subject of Judicial Review Proceedings before the Supreme Court, the decision as to its legality is best left with the latter.

The Applicant cannot use two different fora to argue the same facts; this may be considered as making an abuse of the Review Process, and using the IRP to circumvent the Supreme Court.

**Under Ground 3:**

Any representation as to alleged copyright infringement should be made to the proper forum.

Any proposal would be termed a “deviation” if it does not conform to the specifications of a specific tender. If now, the Public Body includes those same proposals in the specifications of the new tender, that would ensure that those same proposals would no longer be “deviations”, but would on the contrary be mandatory, which would in fact give an advantage to the Applicant. Moreover, there was no injunction or other legal impediment to the launching of a fresh tender, with a review of the scope, which made it a different tender exercise than the first one launched in 2014.

**Under Ground 4:**

The Applicant’s allegations as to tailor made specifications are incompatible with his allegations at Ground 3.

Furthermore, out of the prequalified bidders of the first tender, only Burmeister & Wain Scandinavian Contractor A/S submitted a tender. The Respondent has therefore sought ways of avoiding the same result by elimination of a pre-qualification exercise and bringing amendments to the specifications. If there are still qualms about the latter, the Applicant should first challenge the present proceedings stating the exact specifications which he believe would favour other bidder/s, and give his reasons therefore.

For the above reasons, the Panel has found that this Application for Review is frivolous, and hereby sets it aside.

**R. Laulloo**  
***Chairperson***

**V. Mulloo**  
***Member***

**R. Ragnuth**  
***Member***

**Dated 17 August 2015**