



# Statement on Procurement of Additional Base Load Capacity



**The Office of Utilities Regulation (OUR) is conscious of ongoing public discussions regarding inter alia: the process, timetable and status of the captioned matter. The OUR considers it useful to give an outline of the principles and considerations that have guided its decision to date.**

The OUR also wishes to underscore that it has, at every relevant point in this process, diligently sought to provide updates, by way of frequent press releases to all stakeholders, including the public, the Office of the Contractor General, the National Contracts Commission (NCC), the Cabinet Office and the Ministry of Science, Technology, Energy and Mining. The current phase of the process also requires simultaneous and common disclosure to all participants and the OUR has scrupulously adhered to this requirement.

## Principles and Considerations Guiding the OUR's Decision

At all times the OUR has been guided by the following considerations in making decisions regarding the procurement process:

- The imperative to reduce the real cost of electricity to Jamaican consumers;
- The need to secure capacity in the shortest possible time;
- The advantage of having multiple participants in the process to reduce the risk of being held to ransom by any one bidder;
- The importance of ensuring that all the participants in this final stage of the selection process are given the same opportunities; and
- Ensuring that all stakeholders are given the same information and at the same time.

## Process to Date

The OUR, pursuant to the Amended and Restated All-Island Electric Licence, 2011, has responsibility for the regulation of the electricity sector, a critical part of which includes overseeing the procurement process for additional generating capacity. The following provides a chronology of the process to acquire the latest round of base load generation to date:

### December 2010 – April 29, 2011

1. In December 2010, the OUR issued a Request for Proposals ("RFP") inviting applicants to submit proposals to provide new generation capacity amounting to 480MW net to the national grid of Jamaica on a Build Own and Operate Basis (BOO) to replace approximately 292 MW of inefficient aged plants with the remainder to provide for load growth. The Jamaica Public Service Company Limited (JPS), the sole bidder, submitted four proposals on April 29, 2011.

2. The evaluation of the proposals relative to the RFP was conducted with the assistance of an international consultant engaged by the Government of Jamaica, through the Ministry of Energy & Mining, under the World Bank's Energy Security and Efficiency Enhancement Project.

### October 2011- October 2012

1. Following the completion of the evaluation process and after consultation with the National Contracts Commission (NCC), negotiations began with the JPS in October 2011 for the procurement of 360MW of the 480MW of generation capacity originally tendered. This was with the proviso that if an agreement could not be arrived at, the OUR would proceed to re-tender for the generation capacity. The negotiations with JPS resulted in a negotiated agreement in December 2011.

2. From December 2011 to January 2013 the OUR, the JPS and its related parties sought to finalize the project agreements for the implementation of the project. This finalization, was among other things, hampered because of the delay in the procurement of Liquefied Natural Gas (LNG) and there was no indication that the search for a supply of LNG by Government of Jamaica was materializing. To this end, a number of extensions were granted to JPS for completion. In October 2012, the GOJ ceased its search for a gas supply and invited the JPS to provide its own gas for the plant.

### January 2013 – July 31, 2013

1. On January 30, 2013 the last day of what was the third (3rd) extension to the bid validity period, JPS requested a further thirty (30) day extension to clarify what it termed "fuel source and supply and the viability of the current plant configuration if that fuel source is not forthcoming". That request apart, JPS provided no further details that would have allowed the OUR to assess whether an extension would have provided any greater certainty as to the future of the project. Additionally, JPS also indicated that it was unable and/or unwilling to immediately fulfill the requirement of providing a current bid security (which had become outstanding) given the uncertainty of the gas supply, constraints of its loan covenants and the consequences of a default in the finalization of the project agreements. The result was that the OUR took the position that the RFP process for the procurement of 360 MW of generation capacity was terminated by reason of continued non-compliance with the RFP requirement and effluxion of time and so advised JPS.

2. On January 31, 2013, JPS submitted what in the OUR's judgment could only be deemed the summary of an alternative proposal for the provisioning of electricity generating capacity which could not be considered in the RFP process. Immediately following the termination of the RFP process, a number of other entities also expressed interest in providing a solution for Jamaica's electricity needs.

3. Given its cognizance of the need to finalize a solution in the shortest possible time, uncertainties regarding the level of participation and the likely outcome of a new open competitive process, the OUR gave a commitment to review JPS' and any other proposal to supply additional generation capacity to the national grid submitted to it by March 15, 2013. The OUR also indicated that all such submissions would be treated as unsolicited proposals (since the process did not meet the requirements of a tender process) and that the objective of its review would be to determine if any of the submissions provide a sufficient basis for a recommendation to the GOJ that as a matter of policy, it ought to consider other options than competitive tender to satisfy the country's electricity needs.

4. At the close of business on March 15, 2013, the OUR received five (5) unsolicited proposals. Of the five, the preliminary recommendation was that only three entities made proposals that could provide a basis for further discussions and negotiations. The OUR was of the view that none of the unsolicited proposals was complete and ready for immediate implementation and if we were to proceed it would require significant negotiations to arrive at an acceptable proposal.

5. Subsequent to the conclusion of this initial analysis, the OUR received notification from the Cabinet Secretary that the Government had received an expression of interest from another entity which it wishes the OUR to consider.

6. After consulting with the NCC on the way forward the OUR took the decision that the most efficient and judicious way to proceed was to invite the selected entities to make further submissions on the basis of a common set of criteria established by the OUR and by a set date. It was also determined that since all the entities would be competing on the same basis going forward, any submission of interest that met the minimum threshold used to select the entities chosen to make further submission would be included. Additionally one of the initial entities that had provided unsolicited proposal appealed its exclusion arguing that it was now in a position to offer a firmer source of fuel. The OUR, after due consideration, determined that no harm would be done to the process by re-admitting that entity to the process.

7. The OUR's document designated, Instructions For Final Proposal (IFFP), inviting further submissions and indicating inter alia: terms and conditions, bid requirements, timetable and proposed assessment criteria (which are based on international best practices) was published to five selected entities on May 27, 2013 with return date initially established for June 17, 2013. Prior to the issuance of the IFFP the OUR invited and utilizing appropriate technology where applicable, met all the selected entities and clearly outlined the process that would be embarked on and the rationale for same. The representatives of the various entities expressed no objections regarding their continued participation in the process as outlined.

8. The procedures set out in the IFFP includes provision for the selected entities to request clarifications, propose amendments and pose questions to the OUR on condition that all such correspondence would be published to all participants. It also allowed the OUR to make amendments to the IFFP with appropriate notice to the participants.

9. All selected participants have utilized this process to request changes and clarification and to pose questions to the OUR over the period of the IFFP. Responding to various requests from the selected entities, the OUR has, after careful consideration of all the relevant circumstances and the merits of the requests, issued clarifications and three (3) Addenda to the selected entities amending various aspects for the IFFP. The last such was issued on July 25, 2013 extending the date for submission to August 8, 2013 and amending the requirement for the posting of a Security Bond at the date of submission of the proposals to requiring the posting of the said Bond within fifteen (15) days after a bidder has been notified by the OUR of 'preferred bidder status'.

10. The OUR notes however that of the five selected entities, four has over the period of the IFFP requested changes to the requirement for posting the 'Bid Security'. Such requests have varied between its complete removal, posting after notification, to substantially reducing the amount required.

11. Initially, the OUR took the view that the requirement would not be changed as it is consistent with good practice and was important as an indicator of investor commitment. Taking a number of matters into consideration however, notably:

- a) The number of selected entities that insisted that this was an onerous requirement in the face of current market and financial environment globally and the Jamaica situation;
- b) The persistence of the request. The last three of such request were received on July 22 and 23, 2013;
- c) Feedback from representative stakeholder groups ironically including some of those who are now expressing concerns about the changes; and
- d) The OUR's own intelligence from the market place.

12. The decision was taken to only require the posting of the Security Bond after notice of preferred bidder status. Significantly, the OUR also acceded to similar requests during the RFP process for 115MW of Renewable Capacity bid which closed on June 3, 2013. As the decision to vary the Bid Security Requirement would have been made just days before the due date, it was necessary to adjust the date for final submission to allow appropriate notice. Thus the date was adjusted to August 8, 2013.

The OUR remains cognizant of its responsibilities and of its duty to obtain efficient generating capacity at the lowest cost transparently in the discharge of its overarching obligations to the public and national interests.

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