

FOR IMMEDIATE RELEASE

OUR to Release Mott MacDonald Report after Project Agreements are Signed

(KINGSTON, Jamaica; November 7, 2013): The Office of Utilities Regulation (OUR) will release the complete evaluation report compiled by Mott MacDonald on the Base Load Capacity Project Evaluation Report after the signing of the project agreements. The utilities regulator cannot now release the report as it would be acting in breach of confidence and contrary to Government Procurement Rules as well as provisions of the Access to Information Act (ATI).

The OUR has received requests for the full evaluation report compiled by Mott MacDonald as part of the selective tender process for the supply of base load generating capacity to the national grid. Last month, the OUR released a summary of the report, and this protected the confidentiality of information of the bidders' proposals, and as such did not compromise the on-going procurement process. On the other hand, the detailed report contains and discusses confidential financial, commercial and technical information which was given and received in confidence from the bidders.

“Although a preferred bidder has been selected, the process is still on-going in that the Project Agreements are yet to be finalized. The process also contemplates that there may be need to have further resort to other bidders in line”, says Director, Consumer and Public Affairs, Yvonne Nicholson, through whose office ATI requests are made. She further explained that, “this means it would compromise the integrity of the competitive process, were the OUR to disclose at this stage the available options in the event that negotiations with the current bidder were to falter. “

Sections 33 and 20 of the Access to Information Act (ATI Act) provides that: “(1) *Nothing in this Act shall be construed as authorizing the disclosure of any official document-*

- (a) containing any defamatory matter; or*
- (b) the disclosure of which would be in breach of confidence or of copyright.”*

Section 20 of the ATI Act provides that: “(1) *Subject to subsection (2), an official document is exempt from disclosure if its disclosure would reveal:*

- (i) trade secrets;*
 - (ii) any other information of a commercial value, which value would be, or could be reasonably be expected to be, destroyed or diminished if the information were disclosed.*
- (a) It contains information (other than that referred to in paragraph (a)) concerning the commercial interests of any person or organization (including a public authority) and disclosure of that information would prejudice those interests.*
 - (2) Subsection (1) shall not apply where the applicant for access is the person or organization referred to in that subsection or a person acting on behalf of that person or organization.”*

A disclosure of the report with the detailed contents would amount to a breach of confidence.

Further, Regulation 35 of the Public Sector Procurement Regulations, 2008 provides that public officers should maintain the secrecy and confidentiality of the procurement process. It says: *“For greater certainty it is declared that in accordance with section 24 of the Act all transactions relating to all aspects of the procurement process shall be treated by the public officers concerned with any public sector procurement as secret and confidential.”*

Finally, the OUR’s Instructions for Final Proposals (IFFP) dated May 27, 2013 indicates that the evaluation report would be released after the execution of the Project Agreements. It states that:

All documents submitted by the Entities and marked confidential will be treated as confidential except in instances where technical data is required for the Power Purchase Agreement, systems analysis and interconnection considerations, in which event they will be shared with the grid operator. Notwithstanding the foregoing, the OUR shall be at liberty to release any or all information submitted by the entities to the National Contracts Commission, the Contractor-General, or as may be required by law. (98th.)

The OUR is not obliged to return the original nor copies of any Proposal submitted by an Entity, once it has been opened. The evaluation report will become a public document after execution of all Project Agreements.”(100th)


Over all the information contained in the report, if disclosed, would diminish or destroy the value of the information and would compromise the procurement process. Further, the disclosure of the information could reasonably be expected to prejudice the competitive position of the bidders in the procurement process or interfere with the contractual or other negotiations (actual or potential) with the bidders given where the OUR is in the procurement process. It should also be noted that the report contains information concerning the commercial interest of persons and organizations, the disclosure of which would prejudice those interests.

The OUR is committed to delivering on its mandate in a transparent and timely manner while operating within the confines of the relevant regulations.

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