

**CONTRACT FOR THE SUPPLY OF THERMAL EQUIPMENT/POWER  
FOR IMMEDIATE AND MEDIUM TERM BY INCOME ELECTRIX LTD  
(IEL)**

**BACKGROUND**

In fulfillment of the President's proclamation to provide electricity to the Western Area by 20<sup>th</sup> December 2007, two distinct procurement processes were initiated by both the World Bank and the Government of Sierra Leone (GOSL). The World Bank undertook part funding of US\$7 million for the provision of a 15MW of power equipment through an international competitive bidding, while Government of Sierra Leone committed US\$25 million to the 15MW project and undertook the provision of an additional 25 MW of thermal power through a process which seemed to involve a combination of both competitive and sole sourcing procedures.

The procurement of the 15MW was deemed to have gone through the set criteria for standard procurement practices in accordance with the World Bank procedures. The contract is therefore said to have been awarded to the most responsive bidder, the Global Trading Group (GTG).

In his address to Parliament on the 5<sup>th</sup> October 2007, His Excellency the President identified the challenge of inadequate electricity in Sierra Leone as a national priority deserving immediate attention. Therefore, the Presidential Energy Emergency Task Force (PEETF) was formed to institute emergency measures to restore the supply of electricity. The PEETF had the following membership:

:

- Dr. Lancelot Ayo Lake - Chairman
- Prof. Jonas A.S Redwood-Sawyerr - Member
- Dr. Abdul Jalloh - Member
- Dr. Ramadan Dumbuya - Member
- Mr. Tani Pratt - Member
- Mr. Raymond A Bola Williams - Member

## ***Faulty Lines in a Flawed and Costly Contract***

The terms of reference<sup>1</sup> were as follows:

1. To prepare periodic reports identifying and suggesting ways to address key institutional, technical, economic and policy issues associated with the provision and maintenance of reliable electric power supply in Freetown and the Provinces;
2. Provide advice on the procurement process for emergency power;
3. Review existing energy sector policy and make recommendation for its adoption and
4. Define and facilitate measures for improving the energy sector performance which includes:
  - (a) (1) Cost reductions including fuel purchase management and excess staff capacity;
  - (2) Improving maintenance performance;
  - (3) Improving recovery rates via improvements in transmission distribution;
  - (4) Improving recovery rates on commercial operation;
  - (5) Provide advice on the process for restructuring NPA including management contract and privatization.
  - (b) Evaluate current proposals that fall outside of the current World Bank bidding process and formalize IPP.
  - (c) Evaluate and facilitate the completion of Bumbuna in a timely manner.

In order to procure the additional emergency thermal power and as a fall back arrangement in the event the World Bank support delayed, the Presidential Energy Emergency Task Force then set up the Working Group#1 with the following membership:<sup>2</sup>

---

<sup>1</sup> PEETF Working Group Terms of Reference

<sup>2</sup> Working Group #1 Final Report on the Sole sourcing of Thermal Power for the Intermediate and Medium Term

## ***Faulty Lines in a Flawed and Costly Contract***

- Prof J. S.A. S. Redwood-Sawyer - Coordinator
- Abdul Jalloh -Coordinator
- Mr. Farid Alghali – National Public Procurement Authority
- Mr. Sahr L. Jusu – Ministry of Finance and Development and Economic Planning
- Mr. Abdul Mansaray – National Commission for Privatization (NCP)
- Mr. John Kabia - National Power Authority (NPA)

The Terms of Reference were as follows:

1. To review proposals submitted to the GoSL for the supply of emergency thermal equipment.
2. To make recommendations to Presidential Energy Emergency Task Force (PEETF) for the sole sourcing of thermal equipment, its installation, commissioning and operations.

The contract for the supply of the 25MW was awarded to Income Electrix Limited on the 23<sup>rd</sup> November 2007 amidst alleged controversies as was evident in Messrs Tani Pratt and Professor Jonas A.S.Redwood-Sawyer's letter of "Concerns on recent development in respect of decisions taken by the Task Force" and of non adherence to professional advice on financial and technical matters relating to the said contract as was also recommended in the PEETF Working Group#1's Final Report. This contract was co-signed by the Minister of Energy and Power and the General Manager of the National Power Authority (NPA).

### **METHODOLOGY**

The Anti-Corruption Commission held series of discussions with officials of key institutions that were involved in one way or another in the process of awarding the said contract to Income Electrix Limited for the provision of an additional 25MW of thermal power to the Western Area. The list of people interviewed is attached as annex 1 to this report. The report examines the extent to which the

## ***Faulty Lines in a Flawed and Costly Contract***

procurement process was complied with and the processes and procedures involved in the award of the energy contract to Income Electrix Limited.

In the conduct of this exercise the Commission was guided by its mandate as provided in the following sections:

Subsection 1 of section 5 of the Anti-Corruption Act (2008) which states that:

*“the object for which the Commission is established is to investigate instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention, whether by complaint or otherwise and to take such steps as may be necessary for the eradication or suppression of corrupt practices”.*

Sub section (2)(a) and (b) of section 5 of the said Act provides that it shall be the functions of the Commission to examine the practices and procedures of Government ministries, departments and other public bodies, in order to secure a revision of those practices and procedures which, in the opinion of the Commissioner, may lead to corrupt practices, and to advise the heads of such ministries, departments and other public bodies thereon and to instruct, advise and assist any person or authority on ways in which corrupt practices may be reduced or eliminated.

### **CHRONOLOGY OF EVENTS:**

1. The Working Group completed and submitted their final report to the PEETF on the 20<sup>th</sup> November 2007.
2. The proposal submitted to the NPPA for ‘No Objection’ which according to the Chief Executive Officer had no financial commitment from Government was given on the 6<sup>th</sup> of November 2007.<sup>3</sup>
3. Letter of Commitment, which the Minister of Finance and Development describes as a letter of comfort issued to Income Electrix Limited 6<sup>th</sup> of November 2007.
4. The World Bank contract to Global Trading Group was signed on 17<sup>th</sup> November, 2007 in which Income Electrix Limited participated and failed.

---

<sup>3</sup> CEO, NPPA letter to the Permanent Secretary and Chairman of Procurement Committee, Min. of Energy and Power, 6<sup>th</sup> Nov.2007 and 12<sup>th</sup> December 2007

## ***Faulty Lines in a Flawed and Costly Contract***

5. The contract with Income Electrix Limited was signed on the 23<sup>rd</sup> November 2007, barely six days after they lost their first bid in the energy sector.
6. The Ministry of Finance was asked for a 'No Objection' to the signing of the contract on the 29<sup>th</sup> of November 2007, five days after the contract had been signed.
7. The National Power Authority Board gave its approval to the contract between National Power Authority and Income Electrix Limited on 31<sup>st</sup> January 2008 – over 60 days after the contract was signed. This practice has very serious implications for corruption in public sector management.

### **THE PROCUREMENT PROCESS AND SOLE SOURCING PROCEDURE**

The method of procurement requested by the PEETF for sole sourcing and the manner in which it was applied left a lot to be desired and seems to suggest that there was a premeditated plan to award the contract to Income Electrix Limited even before the bidding process had commenced. A number of factors led us to this conclusion. For example, the Working Group#1's Final Report considered Income Electrix's "conditions as being very unfavourable to GoSL/NPA", and therefore did not even recommend that further discussions be held with them. In spite of this professional advice, Income Electrix was considered and eventually awarded the contract.

#### **Sole-Sourcing or Competitive bidding?**

The terms of reference prepared by the PEETF for the Working Group suggest that the sole sourcing procurement method should be adopted at all cost even when this is contrary to the procurement regulations.

The provisions of the Public Procurement Act 2004 dealing with sole sourcing provide as follows:

*"46. (1) Public procurement by means of the sole-source procurement method is permitted only in the following circumstances:-*

### ***Faulty Lines in a Flawed and Costly Contract***

*(a) when only one supplier has the exclusive right to the manufacture of the goods, carry out the works, or perform the services to be procured and no suitable alternative is available;*

*(b) for additional deliveries of goods by the original supplier which are intended either as parts replacement for existing goods, services or installations, or as the extension of existing goods, services or installations where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;*

*(c) when additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works or services from the initial contract would be difficult for technical or economic reasons;*

*(d) in cases of extreme urgency, provided the circumstances which gave rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;*

*(e) when the services require that a particular consultant be selected due to his unique qualifications, or when it is indispensable to continue with the same consultant.*

*(2) Use of sole-source procurement on the grounds referred to in paragraphs (b), (c), (d), and (e) of section (1) is subject to prior approval by the procurement committee."*

The Public Procurement Regulations 2006 dealing with sole sourcing provides as follows:

*"45. (1) A procuring entity may use the sole-source procurement method source where:*

### ***Faulty Lines in a Flawed and Costly Contract***

*(a) only one supplier has the technical capability or capacity to fulfill the procurement requirement within the time required by the procuring entity or a particular supplier has exclusive rights in respect of the goods, works or services and no reasonable alternative or substitute exists;*

*(b) for additional deliveries of goods by the original supplier which are intended either as parts replacement for existing goods, services or installations, or as the extension of existing goods, services or installations where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of inter-changeability with already existing equipment or services;*

*(c) when additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works or services from the initial contract would be difficult for technical or economic reasons;*

*(d) in cases of extreme urgency, provided the circumstances which gave rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;*

*(e) when the services require that a particular consultant is selected due to his unique qualifications, or when it is indispensable to continue with the same consultant.*

*(2) Procurement under the sole source procurement method shall be subject to prior approval by the Procurement Committee."*

In examining the provisions of the Act and the Regulations in relation to this contract the Commission notes the following:

- The procurement should be direct and not based on an open competitive bidding. As the name suggests sole sourcing usual refers to one and only one source that possesses a unique product having singular characteristics or performance capability. In procurement terms, it is the award for supply of a

## ***Faulty Lines in a Flawed and Costly Contract***

good or service that can only be purchased from one supplier because of its specialized or unique characteristics. This requirement was negated as proposals were requested from several companies and evaluated.

- The entity requesting the sole-sourcing of procurement should secure a specific waiver to sole source from a supplier without competition.<sup>4</sup> However this was not the case with this contract as there was the Working Group sought and received responses from seven companies. These were Emieola Group (Sierra Leone)/Delamore and Owl Group, Matelec Group, Duncan Trem, Aggreko, Euroelettra Sistemi, Eurodiesel and Jacobsen Elektro.
- In the case of extreme urgency, the circumstances which gave rise to the urgency should not have been foreseeable by the procuring entity nor the result of dilatory conduct on its part. It is clear that even if the circumstances in this specific case were considered as a case of an extreme emergency, the circumstances were foreseeable. An unforeseen circumstance could occur when there is an abrupt disruption in the supply of electricity that was not envisaged.
- Only one supplier should have the technical capability or capacity to fulfill the procurement requirement within the time required by the procuring entity or a particular supplier has exclusive rights in respect of the goods, works or services and no reasonable alternative or substitute exists. This was not so in this case as there were other suppliers available based on proposals submitted.

The above arguments clearly explain how even the sole sourcing procedure purportedly adopted was a misnomer. It is clear from these arguments that the provisions of the Public Procurement Act 2004 and the Public Procurement Regulations 2006 were either inapplicable or were not complied with in this case.

### **Procurement or Investment?**

The opinion expressed by the National Public Procurement Authority (NPPA) indicated that this contract was not under the purview of procurement but rather an investment transaction that should not have any financial implication for Government

---

<sup>4</sup> Clause 6.5 Public Procurement Manual First Edition 2006 page 35

## ***Faulty Lines in a Flawed and Costly Contract***

or any Government agency because the suppliers are Independent Power Producers (IPPs) and are private investors. The guiding principle emphasized by the Ministry of Finance and Economic Development and Planning was that IPPs being private investors would not have recourse to the Government for any financial support or commitment.<sup>5</sup> Their establishment, production and sale of electricity should be financed by themselves as in the case of telecommunications service providers such as Celtel, Comium, Tigo and Africell. As was noted by the NPPA in its letter to the Secretary to the President dated 14<sup>th</sup> March 2008 IPPs being private investors and since there was no financial commitment on the part of Government, they did not fall under the purview of the Public Procurement Act 2004. However, since the reality was that there was a huge financial commitment on the part of Government, they clearly fell within the purview of the Act.

### **Manipulation of the Procurement Process**

The Commission is of the view that the inclusion of Income Electrix Limited amongst the recommended companies for the supply of thermal electricity was manipulated. The Working Group appointed by the PEETF recommended two companies who were deemed to have the technical and financial capacity to satisfy the requirements of the Government of Sierra Leone. These companies were Emieola Group and Matelec Group. According to the Final Report of the Working Group#1, Income Electrix Limited presented a proposal that had **unfavorable financial implications for Government** and as a result they were not recommended.

However, in spite of these facts the Chairman of the PEETF, Dr. Lancelot Ayo Lake, in his letter of 20<sup>th</sup> November 2007 addressed to the Honorable Minister of Energy and Power for the attention of His Excellency the President went ahead and included Income Electrix Limited amongst the companies recommended by the Working Group. Further to this, two members of the PEETF, Messrs Tani Pratt and Prof Jonas A S Redwood Sawyer, wrote a strongly worded letter dated 30<sup>th</sup> November, 2007 to the Chairman of the PEETF expressing grave concerns about certain anomalies relating to the signing of contracts without due consideration for the financial implications to Government. Even the supervising agency, the National Commission

---

<sup>5</sup> Chief Executive Officer's Correspondence to the Secretary to the President, 14<sup>th</sup> March 2008

## ***Faulty Lines in a Flawed and Costly Contract***

for Privatization (NCP) was not informed of the signing of the contract with Income Electrix until February 2008.

Further still, the chronology of events leading to the eventual award of the contract to Income Electrix Limited portrays a determination by the PEETF to ensure that Income Electrix Limited gets the investment contract against all professional and technical advice. It must also be noted that Income Electrix Limited had failed a similar bid with the World Bank procurement process for the supply of the 15MW of thermal power for the same entity.

### **The Commission's findings**

Based on its investigations, the Commission has concluded as follows:

1. That competitive bidding was the procurement method used but that this was misrepresented by the use of the term sole source. That this misrepresentation was done so as to prevent full compliance with the provisions of the Public Procurement Act 2004 and Public Procurement Regulation 2006.
2. Technical advice was disregarded and manipulated. This was clearly done in the case when the Working Group's recommendation to the PEETF that Income Electrix Limited's proposal had unfavorable financial implications for Government was ignored and their name was added to the list and they were ultimately awarded the contract.
3. There was a deliberate effort by the PEETF to award the contract to Income Electrix Limited as seen in the retrospective efforts undertaken to legitimize their action. Board approval and the consent of the National Commission for Privatisation was only sought after the contract had been signed.
4. There was misrepresentation of facts between the NPPA and the Ministry of Energy and Power (NPA) on the one hand, and the Ministry of Finance

## ***Faulty Lines in a Flawed and Costly Contract***

and Economic Development on the other on the issue of non-financial implications to Government.

5. The proposals presented for review to the NPPA show that the Income Electrix Limited proposal as with other proposals does not require any financial commitment from the Government since the projects are Build Operate and Manage (BOM).<sup>6</sup> The commitment on Government was later built into the contract at the time of the signing without any further reference to National Commission for Privatisation<sup>7</sup> and the National Public Procurement Authority or even the Board of the National Power Authority.
6. The presence of representatives of the National Commission for Privatization, the National Public Procurement Authority and the Ministry of Finance in the Working Group does not waive the fact that the consent of these institutions ought to have been sought before the contract was approved.
7. At a meeting in the Ministry of Finance and Economic Development (MOFED) of both the Ministers of Energy and Power and MOFED, the submission made by the Minister of Energy and Power was that there was no financial implication to Government on the aforesaid proposals. However the contract carries enormous financial implications to the disadvantage of Government as against Income Electrix Limited as buttressed by the Finance Minister's response to the contract agreement submitted.<sup>8</sup> It is the opinion of the Commission that the Minister of Energy and Power, Haja Mrs. Hafsatu Kabba, played a key role in getting

---

<sup>6</sup> CEO, NPPA- Correspondence for the attention of the President, Sole Sourcing of Independent Power Producers, 14<sup>th</sup> March 2008

<sup>7</sup> In the National Privatisation Act No 12 of 2002, the Commission replaced the Minister of Energy and Power as the main power responsible for the management of the Authority and its object include to remove interference in the management of the NPA from the Ministry. The National Power Authority Act No. 3 of 1982 was amended to this effect.

<sup>8</sup> Minutes of Meeting held between MOF and MEP

National Commission for Privatization (NCP), comments on Income Electrix Electricity Generation Contract, 25<sup>th</sup> February 2008

### ***Faulty Lines in a Flawed and Costly Contract***

the Minister of Finance and Economic Development to make a joint financial commitment on behalf of Government to Income Electrix Limited even before the signing of the contract. In addition, the Minister, despite the caution by the Minister of Finance and Development and Economic Planning about the huge financial implication to Government amounting to about US\$ 65.5 M if this contract should go ahead, went ahead and signed the contract.

8. There was an apparent inconsistency as the Minister of Finance and Economic Development signed a letter of commitment on the 6<sup>th</sup> November 2007 with the Minister of Energy and Power to Income Electrix Limited stating that “the Government of Sierra Leone will guarantee the obligations of the National Power Authority (NPA) as stipulated in the final negotiated contract” even before the signing of the contract on the 23<sup>rd</sup> of November 2007. The Minister of Finance and Economic Development later highlighted weaknesses of the contract on the 14<sup>th</sup> of February 2008 in terms of the financial implications on Government. This seems to indicate that had the Ministry known the full financial implications of the contract they would not have signed the letter of commitment.
9. Also, whilst the letter of commitment to Income Electrix was being signed, another letter was sent on the same date of 6<sup>th</sup> of November 2007 by the Ministry of Energy and Power requesting a ‘No Objection’ from the NPPA on two proposals, including Income Electrix which do not contain any financial commitment from the Government.
10. The process of awarding the contract to Income Electrix Limited by Ministry of Energy and Power against the recommendation of the Technical Committee clearly manifests the degree of interest and manipulation done in favour of the company. The complete non-adherence to procurement procedures and failure to take into account the financial burden of awarding the contract to Income Electrix, results

### ***Faulty Lines in a Flawed and Costly Contract***

in huge financial loss to not only NPA but the Government, moreover Government will be obliged to meet huge costs for the entire plant whether it is operational or not. The real cost of the contract could reach US\$100 million a year, when penalty charges are levied on unpaid amount due to Income Electrix Limited

11. The arbitrary decision of Dr. Lancelot Lake and the Minister of Energy and Power, Mrs. Haja Afsatu Kabbah, to overturn the professional recommendation of the Technical Committee resulted in Professor Redwood- Sawyerr and Mr. Tani Pratt writing a strongly-worded letter to complain about the same and it clearly manifests the gross abuse of executive authority resulting to loss of public funds.
12. Based on our investigation, even though the contract is for 25MW, up till now, only 10MW has been installed and commissioned on February 12, 2008. Of the 10 MW installed capacity, only about 2-3 MW has been working since commissioning date although the contract stipulates that Government/NPA should pay for 25MW capacity charges.

### **ONEROUS TERMS OF THE CONTRACT**

The contract signed with Income Electrix Limited on the 23rd November 2007 contains a number of terms and conditions that are onerous to the Government of Sierra Leone. The analysis of some of the terms and conditions of the contract below clearly illustrates this. In order to illustrate this point even further it is necessary to compare the same with the Global Trading Group contract for which the World Bank carried out the procurement process.

In a letter to the Minister of Energy and Power written by the former Chairman of the NCP dated 25<sup>th</sup> February 2008, the following concerns were raised regarding the terms of the contract:

## ***Faulty Lines in a Flawed and Costly Contract***

**Clause 1** - The contract is for the provision of 25MW of continuous power to be delivered at two sites designated by National Power Authority. Given the current state of National Power Authority transmission and distribution system, it may not have the capacity to evacuate such a big amount on top of the 15MW already committed through the Global Trading Group (GTG) contract. In the likely event that National Power Authority cannot utilise all the power provided by Income Electrix Limited the contract provides that National Power Authority will still incur the capacity charges (the flat charge for the rental of the generating plant). The GoSL is liable for any default in payments by National Power Authority to Income Electrix Limited. On the basis of Income Electrix Limited's own calculations, total payments owed to Income Electrix Limited over the term of the contract could amount to more than US\$ 180 million.

**Clause 2.1.3** The date of commissioning the plant is defined as the date when the power station is connected to the National Power Authority system, not when it is actually operational. Normally under such contracts the commission date is when the plant has been tested and certified by the utility as being capable of providing the full contract amount.

**Clause 2.3** The contract is for a period of three years. If it is terminated for any reason, the capacity charge is payable for the entire period of the contract. This is estimated to amount to US\$ 21.021 million.

**Clause 2.5** The capacity charge is levied "**irrespective of the operational capacity of the plant**" and is payable from "the day that the equipment (an undefined term) is delivered to Freetown Port." Normally in such contracts the capacity charge is levied from the date the plant is commissioned and is only payable if the plant is fully operational. In the case of the Global Trading Group contracts, liquidated damages are payable to National Power Authority if the plant is not capable of delivering the required capacity and it is not commissioned on time.

**Clause 2.7** The Energy Charge (to cover the cost of maintenance, etc) is based on the actual energy consumed or the minimum daily off take, which is defined as the

### ***Faulty Lines in a Flawed and Costly Contract***

full contracted amount of electricity (that is the plant running at full capacity for 24 hours per day for the full contract period), whichever is greater. This will amount to a minimum of US\$9.5265 million over the term of the contract. Such a position is not unusual except that the minimum daily off take is normally set at quite a low level, nowhere near the full contracted amount. In the case of the Global Trading Group contract, there is no minimum daily off take so there is no energy charge levied unless power is being delivered.

**Clause 5.1.5** The cost of mobilization and installation of the two plants, which must be met by National Power Authority, is US\$2.45 million. The corresponding figure for the 15MW GTG plant is US\$538,862.

**Clause 5.1.6** The demobilization and removal charges, which must be met by National Power Authority, are US\$2785, 000 “or the current market price”. The contract does not specify, but presumably it is whichever figure is higher. The corresponding figure for the Global Trading Group contract, which is a set amount, is US\$420,580.

**Clause 5.1.8** The cost of site preparation, which must be met by National Power Authority, is US\$179,000. There is no corresponding cost under the Global Trading Group contract where National Power Authority must just provide a suitable site.

**Clause 5.1.18** Metering is undertaken by the Income Electrix Limited alone. Normally such contracts provide for a set of check meters which are used to verify that the main meters are operating properly. This is the case in the Global Trading Group contract.

**Clause 6.8** All duties, taxes, fees and charges and “any legislative modification with financial implications on the contract shall be waived by NPA/GOSL”. This is a very sweeping and ill defined provision which could have serious financial consequences for the Government as it appears to provide a duty waiver on the importation of fuel. This sets a bad policy precedent (other people using diesel for electricity generation could ask for duty waiver) and the duty free fuel could easily

## ***Faulty Lines in a Flawed and Costly Contract***

be diverted to other uses. GTG was provided a waiver on import duties on plant and machinery only.

**Clause 6.10** This clause provides that “supply of fuel has been separately charged and it is stipulated in table two”. Unfortunately table two, which appears to have been lifted directly from Income Electrix Limited’s bid for the World Bank funded Emergency Plant, does not specify how the fuel charge will be calculated. The clause also specifies “the price of fuel is subject to fluctuation”. Again, neither the clause nor table two specifies how the fluctuations are to be taken into account in calculating the fuel charge. As the fuel charge is by far the largest cost component under the contract in the order of US\$50 million per year, these are serious omissions.

The GTG contract includes detailed provisions as to how the fuel charge will be calculated and, most importantly, relates the fuel charge not to any claim fuel usage but rather to the amount of fuel that should be used to generate the amount electricity delivered given the efficiency of the plant that was specified in GTG’s bid. That is, if the plant is running inefficiently the additional cost incurred are a charge to GTG not National Power Authority.

**Clause 7.9** National Power Authority is required to take “minimum energy..... Which is 100% load of the continuous power being supplied.....” On the fact of it this seems to mean that National Power Authority has an obligation to take, and therefore pay, all the cost of running the plant at full capacity. The cost of running the plant at full capacity (in excess of US\$60 million per year) regardless of how much power is actually taken. However, paying for fuel which has not been used is clearly so outrageous that it is doubtful the Income Electrix Limited will try and interpret this clause that way. Most likely the clause will be taken to mean that all the other the charges (capacity, energy, etc.) must be paid in full regardless of the amount of the power actually taken.

**Clause 7.10** This clause provides that “NPA shall provide logistics charges for fuel storage and transportation charges...” However, nowhere is it specified what these

## ***Faulty Lines in a Flawed and Costly Contract***

charges are and how they are to be calculated. Typically such charges are included in the energy charge.

**Clause 8.1** National Power Authority is required to “establish two confirmed irrevocable letters of credit for the full amount payable to Income Electrix Limited annually with a reputable international bank acceptable to Income Electrix Limited.” According to Income Electrix Limited’s calculations, this requires the establishment of two letters of credit by National Power Authority with a combine value in excess of US\$60 million. Under the GTG contract, a single letter of credit to the value of US2 million was required to guarantee fuel payment.

**Clause 8.2.6** The penalty for late payment National Power Authority is LIBOR plus 7.3%. This is a very high penalty rate. The equivalent rate in the GTG contract is LIBOR plus 1.5%. However it is unclear how late payment by National Power Authority could occur as it would seem the Income Electrix Limited can meet all payment due to it by calls on the letters of credit describe above.

**Clause 8.3.** The capacity charge is paid monthly in advance and the energy charge monthly in arrears. The fuel charge is paid monthly in advance but with two months being paid “at the inception of the contract...” (This is close to US\$9 million for initial two months). It is not clear exactly how the value of the advance fuel payment can be determined as the value varies depending on the fuel price and, depending on the interpretation of Clause 7.9 on the amount fuel used.

**Clause 8.4** In addition to the general guarantee provided by GOSL under Clause 1 and the letters of credit established by NPA under Clause 8.1, the government is required to issue a bank guarantee to Income Electrix Limited to ensure payment of any amount unpaid by National Power Authority and outstanding for more than 60 days. The value of this bank guarantee appears not to be specified.

**Clause 8.5** National Power Authority is guaranteed “a moratorium” for five months after commission on all charges due to Income Electrix Limited except on

## ***Faulty Lines in a Flawed and Costly Contract***

fuel charges. It is not specified, but presumable all outstanding amounts become due at the end of five months.

**Clause 11** National Power Authority is required to pay for insurance for Income Electrix Limited personnel and equipment. The estimated cost is US\$250,000. This is a most unusual provision. Insurance is normally the responsibility of the owner and the operator of the equipment. This is the case of GTG contract.

**Clause 14.3** If the contract is terminated for any reason, National Power Authority must pay the capacity charge to Income Electrix Limited for the remainder of the contract. In total, the capacity charges are in excess of US\$21 million. This appears to apply regardless of which party terminates the contract. Although it is usual to have penalties for termination to cover loss of income, payment usually depends on the circumstances of the termination and which party invokes the termination. Payment of the entire remaining capacity charge is excessive as if the termination occurred early in the contract the plant could easily be shifted to another earned rental income.

**Clause 14.4-14.7** NPA is allowed to terminate the contract only in the case of a delay in commissioning the plant in excess of 12 weeks after the plant is delivered to the site in the case of force majeure. NPA has no general right to terminate the plant if for example the plant is no longer needed because of the commissioning of Bumbuna.

**Clause 19** Income Electrix Limited's obligations under the contract are dependent on NPA obtaining approval from its Board for the contract, confirmation that authorization to import all equipment has been obtained and the establishment of the two letters of credit required under Clause 8.1. It is not clear that all these conditions precedent have yet been met.

## **CONCLUSION**

The Commission notes that one of the President's post-election priorities was to restore electricity supply to the country. The President has been quoted on a number of occasions including his inaugural address to parliament on 5<sup>th</sup> October

## ***Faulty Lines in a Flawed and Costly Contract***

2007 as saying “Our priority in terms of development is energy. We believe it is only when you have energy that you will be able to unlock the other economic activities.”<sup>9</sup> The Commission is also cognisant of the fact that the Minister of Energy and Power was under immense pressure to deliver power supply to Freetown by Christmas. Despite this immense pressure, the Commission is of the view that the proper process ought to have been complied with. The World Bank procurement process which led to the award of the contract to Global Trading Group commenced almost around the same time as this process. If they were able to comply with the proper process and meet the deadline, it is our view that the same could also have been done in this case.

Mis-procurement and the failure to comply with procurement laws and regulations immediately raises the red flag and suggests that corrupt practices have taken place. Although the Commission has not been able to find any evidence of the commission of an offence under the Anti-Corruption Act 2000 in this specific case, the Commission will remain seized of the matter and if there is any evidence of a breach of the provisions of the Act the necessary action will be taken by the Commission.

### **RECOMMENDATIONS**

The following are recommended by the Commission:

- Government should seriously consider **terminating** the contract with immediate effect within the requisite legal framework to avoid further costs and embarrassment;
- In the **alternative**, the provisions of the contract must be thoroughly reviewed by the Attorney-General and Minister of Justice with a view to advising Government on how the same ought to be avoided or at the very least renegotiated by Government for more favourable terms that will minimize the fiscal impact as well as the monetary burdens on the nation's economy.
- **Substantially violating procurement procedures** and awarding the contract without prior approval from legally authorised institutions, is in itself, **grossly improper**. Individuals who sign contracts on behalf of Government

---

<sup>9</sup> <http://www.thecommonwealth.org/news/172936/>

## ***Faulty Lines in a Flawed and Costly Contract***

and without complying with the procurement laws and regulations must be held personally liable for whatever loss is incurred by Government.

- The rules and regulations according to the Public Procurement Act 2004 and the Public Procurement Regulations 2006 should be **scrupulously followed** at all times. Now that the NPPA and the Anti-Corruption Commission have organized a workshop for cabinet there can be no further excuse for a breach of the provisions of the law. Regular refresher courses must be conducted to ensure that Ministers, Deputy Ministers and senior staff in all MDAs are kept abreast with the law.
- The Public Procurement Act 2004 must be amended to include a provision that will clearly spell out the consequence of mis-procurement or failure to comply with the provisions of the Act. The Commission is of the view that **blatant disregard** for the law must in certain instances invalidate the contract ab initio. Although the provisions of the Anti-Corruption Act No 12 of 2008 does not apply to this contract, had it been in force at the time of the signing of this contract the provisions of subsection (2) (b) of Section 48 would have applied. This provides that *"Any person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property commits an offence if he willfully or negligently fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures;"*
- The process of committing Government to contracts must be clearly spelt out and Ministers must comply with the same. The Government of Sierra Leone should come up with a **white paper** on the signing of contracts making it **mandatory** for all MDAs to secure the expressed approval in writing of the Ministry of Finance and the Office of the Attorney General and Minister of Justice within the threshold of National and International Competitive Bidding. For example, it must be a requirement that the Ministry of Finance and Economic Development must provide a signed certificate of approval before any contract that has any financial implications for Government is signed.

## ***Faulty Lines in a Flawed and Costly Contract***

- The Attorney-General and Minister of Justice, being the principal legal adviser to Government, must advise on the legal implications to Government on any contract before it is signed. The Ministry must be given the capacity to provide this advice or alternatively lawyers should be attached to all MDAs to provide legal assistance in the signing of contracts. This will help to forestall the signing of more onerous agreements like the contract with Income Electrix Limited.
- The role of the National Commission for Privatisation vis-à-vis the role of the Minister of Energy and Power in administering the National Power Authority must be clearly spelt out and all three institutions must strictly adhere to their respective roles as defined in the National Power Authority Act No. 3 of 1982 and National Privatisation Act No 12 of 2002.
- The Anti-Corruption Commission continues its investigations into the award of the contract to determine whether there was a breach of the provisions of the Anti-Corruption Act 2000 which was the Act in force at the time this transaction took place.

### **People Interviewed**

#### **1. National Public Procurement Authority**

Alfred H. Kandeh – Chief Executive Secretary

Farid Alghali – Legal Affairs Specialist

#### **2. National Commission for Privatisation**

Abu Bangura – Chairman, NCP

Bruce Carrie – Senior Advisor, NCP

Abdul Mansaray – Financial Analyst, NCP

#### **3. Ministry of Finance and Economic Development**

Sahr L Jusu- Head Public Debt Unit

- A draft copy of this report was sent to inter alia the Secretary to the President, Minister of Finance and Economic Development and Minister of

## ***Faulty Lines in a Flawed and Costly Contract***

Energy and Power. Both responded in writing and their comments were taken into consideration.