CONFIDENTIAL

MINISTRY OF POWER & RENEWABLE ENERGY

CABINET MEMORANDUM

Tender Awarding of 300 MW Combined Cycle Dual Fuel Natural Gas Power Plant at Kerawalapitiya (No. CEB/AGMP/HFO-LNG/Kerawalapitiya/1)

Background

1. According to Long Term Generation Plan of the CEB, it has been planned to establish a 300 MW combined cycle dual fuel power plant at Kerawalapitiya in order to face the electricity deficit likely to happen in 2019. This power plant has been planned to be established through private sector investments, on Build-Own-Operate-Transfer (BOOT) basis. Accordingly, international bids were called for selecting an investor through a paper advertisement published on 16.11.2016. A pre-bid meeting was held on 11.01.2017 at 10.00 a,m. at the BMICH for explaining the details of the tender to the bidders. 39 bidders had purchased the tender documents, and 7 lists of explanation were presented by the bidders amidst the bidding period.

2. In response to the above call for bids, only 8 bidders had submitted bids, and those bids were opened by a bid opening committee on 21.04.2017 at 11.00 a.m. Details of the 8 bidders are given below.
   - (i) The Consortium of Samsung C&T, Komipo & GS Energy
   - (ii) The Consortium of Sojitz Corporation
   - (iii) CGNPC International Ltd.
   - (iv) Consortium of Gel, Windforce & Renewgen
   - (v) Korea Southern Power Co. Ltd.
   - (vi) Lakdanavi Ltd.
   - (vii) Hyflux Ltd.
   - (viii) Consortium of Summit Power International Pte. Ltd.

3. As the Technical Evaluation Committee (TEC) required to obtain certain clarifications from the bidders, TEC had requested approval of the Standing Cabinet Appointed Procurement Committee (SCAPC) to obtain clarifications through TEC report dated 18.05.2017. Out of the clarifications expected by the TEC, the SCAPC granted approval to call clarifications subject to which will not make impact on price and only those comply to the Government tender procedure. **(SCAPC report dated 19.05.2017 is Annexed as Annexure 01.)**

4. The 8 bids were evaluated by the TEC after obtaining the clarifications required by the TEC. All the 8 bids were commercially responsive, however, TEC recommended to reject the bid submitted by Hyflux Ltd. on technical grounds due to not submitting the Minimum Functional Specifications (MFS). Meanwhile, the bid of Korea Southern Power Co. Ltd. was rejected considering it as a conditional bid as the particular bid had been submitted subject to the condition of the land which will be provided for the project.

5. Through the same TEC report, the TEC had reported that altogether 7 bidders including the above 2 bidders had not submitted the details of the necessary equipment mentioned in the Minimum Functional Specifications (MFS) which are needed to operate the power plant on RLNG. However, the TEC had recommended to accept the bids of 5 bidders except the 2 bidders mentioned in section 4 above and to negotiate with the particular bidder if one of those 5 bidders is selected for awarding the tender. **(TEC report dated 06.06.2017 is Annexed as Annexure 2)**

6. On considering the TEC report, the CAPC decided that the TEC recommendation to reject some of the bidders who had not submitted the Minimum Functional Specifications and to accept some of the bidders subject to conditions cannot be accepted. The CAPC decided that, if the lapses in technical aspects are not considered in order to increase the competitiveness, the particular opportunity should be given to the 2 bidders who had not submitted the details of the necessary equipment mentioned in the MFS which are needed to run the power plant on RLNG. The CAPC decision was to reject all the 7 bids who had not submitted the minimum technical specifications and to evaluate only the bids which had fulfilled all the technical specifications.

The main reason given by the Procurement Committee is that, overall costs of the bidders who have not enlisted some of the equipment are lower than those who have met the overall technical requirements. Specially, at the stage of bidding, bidders had queried whether the equipment for running the plant using LNG would be required at the beginning or it is adequate to have it in two years as the power plant is operated using diesel in the first 2 years. In response to this, the CEB had informed all the bidders that the particular equipment would be required at the beginning in order that the plant could be operated using LNG within the period that the plant is operated using diesel. Only one bidder had submitted the bid going by this answer, making it feasible for the plant using LNG within the period it is operated using diesel, and the other 7 bidders had not done accordingly.

The CAPC was of the view that submitting the particular equipment at the beginning is a mandatory requirement according to the terms of the tender, and it can directly affect the bid price. Even though it is appropriate to accept the bids of which some of the equipment are not included in order to create competition, if it affects the bid price it is a violation of the tender conditions. Thus the SCAPC instructed the TEC to reconsider the TEC report. **(SCAPC report dated 23.06.2017 is Annexed as Annexure 3.)**

The TEC resubmitted its recommendation mentioning that the bids of 5 bidders out of the bidders who had not submitted minimum technical specifications should be accepted subject to negotiation with agreeing the condition of not changing the price

7. The opinion of the Procurement Committee was that conditional awarding of tenders as proposed by the TEC is not appropriate. If it is agreed to award the tender subject to certain conditions, all the bidders have to be given that opportunity. But, accepting only 5 bids subject to the condition that the prices will not be changed through negotiations will create a situation of not giving equal opportunity to the other two bidders. If it will give opportunity to the particular 5 bidders to include the necessary equipment or changing the conditions, there is no difficulty to provide the same opportunity to the other two bidders as well. Accordingly, as it is required to perfectly follow the tender conditions and also as there is no provision to come to conclusions through negotiations on any conditions making impact on the bid price according to the Government procurement guidelines, the Procurement Committee finally decided that only of the bids complying with all the specifications the price proposals should be opened and evaluated.

8. In this instance, as there was a media dialogue highlighting conflict of interest as the General Manager – CEB is a member of the Board of Directors of LTL Holdings, he resigned from the SCAPC and Mrs. Dhammika Thilakasena, AGM (Generation) was appointed as a member of the SCAPC. This is due to the Lakdhanavi Ltd., which is one of the bidders, is a subsidiary of LTL Holdings.

9. Writ Case No. 213/2017 in the Appeal Court on this Tender

   Just after opening the tender, even before starting the evaluation, Ven. Battaramulle Seelaratnana Thero filed a petition in the Appeal Court asking for cancelling the tender.

10. This writ case No. 213/2017 was called in the Appeal Court on 23/06/2017, and the lawyers had requested to cancel this tender as it was being processed without transparency. Later it was withdrawn.

11. In the mean time, as there were various media allegations on this tender, Chairman of the SCAPC, Secretary to the Ministry and the General Manager, CEB were called upon the Cabinet Committee on Economic Management (CCEM). After these discussions, as it is not appropriate to influence procurement committees, the CCEM informed the SCAPC to take the decision. The SCAPC, after reconsidering the matter, decided that there is no change in its decision, and decided to open the financial bids of only qualified bidder. **(SCAPC decision dated 04.07.2017 is given in Annex 4.)**

12. Accordingly, bid of only qualified bidder was opened on 11.08.2017. On the grounds that the bid documents were not properly signed, printed copies of bids were not available and the soft copies could not be opened, the TEC had rejected the particular bid. SCAPC approved the TEC decision to reject the bid, and recommended to call fresh bids from 8 bidders and evaluate to select suitable bidder. **(SCAPC decision dated 16.08.2017 is given in Annex 5.)**

13. Meanwhile, as a result of a letter submitted to the CCEM by Lakdhanavi Ltd., Chairman of the SCAPC and the Secretary to the Ministry were called upon, and it was decided that the SCAPC should implement the original recommendations of the TEC. **(Cabinet Memorandum submitted by the Hon. Prime minister is annexed as Annexure 6 and Cabinet Decision No. 17/1858/702/049 dated 29.08.2017 is given in Annexure 7)**

14. Thereafter, the SCAPC resigned and a new SCAPC comprising of the following was appointed by the Department of Public Finance.
    1. Mr. Upali Marasinghe, Secretary, Ministry of Petroleum Resources Development
    2. Dr. B.M.S. Batagoda, Secretary, Ministry of Power and Renewable Energy
    3. Mr. Chinthaka S. Lokuhetti, Secretary, Ministry of Industry and Trade
    4. Mrs. D. Thilakasena, Additional General Manager (Generation), CEB
    5. Mr. N.M.D. Nawarathne, Chief Accountant, Ministry of Finance and Media

15. The new SCAPC directed the TEC to act according to the above Cabinet Decision, and accordingly bids of the following bidders were opened on 18.09.2017.
    (i) The Consortium of Sojitz Corporation
    (ii) CGNPC International Ltd.
    (iii) Consortium of Gel, Windforce & Renewgen
    (iv) Lakdhanavi Ltd.
    (v) Consortiumof Summit Power International Pte. Ltd.

16. After that, the SCAPC Chairman Mr. Upali Marasinghe, Secretary to the Ministry of Petroleum Resources Development resigned due to his busy schedules, Mr. Pathmasiri Jayamanna, Secretary to the Ministry of Justice was appointed as the Chairman of the CAPC on 30.11.2017.

17 The TEC, having evaluated the bids of the 5 bidders, recommended the Ladhanavi Ltd. as the lowest bidder through the TEC report dated 12.10.2017 and further recommended to negotiate on the project agreements according to section 7.7 of the bid document, and if this negotiation fails, to carry out negotiations with the second lowest bidder.

However, the matters to be negotiated was not indicated therein.

This report indicated the Project estimates and the levelized tariffs given by the bidders as shown below.

Bidder No.	Bidder's Name	Estimated Cost	Levelized Tariff (LKR/kWh)
2	The Consortium of Sojitz Corporation, Shikoku Electric Power Co. Inc. and Aitken Spence PLC	USD 356 Mn	16.79754546
3	CGNPC International Ltd.	USD 463 Mn	18.09925716
4	Consortium of Gel, Windforce & Renewgen	USD 307 Mn	15.97580891
6	Lakdhanavi Ltd.	USD 175 Mn	14.9890465
8	Consortium of Summit Power International Pte. Ltd., General Electric (Switzerland) GmbH, Daelim Energy Co. Ltd.	USD 299 Mn	16.33084262

On consideration of the above TEC report, the SCAPC observed that there are serious issues in the recommendations given in chapter 4. In these recommendations, following major issues were observed.

1. The total estimate of Lakdhanavi Ltd. was USD 175 million, and that of the second lowest bidder was USD 299 million.
   The engineering estimate was USD 300 million, and therefore the estimate of Lakdhanavi Ltd. was 58% of the engineering estimate.
2. Lakdhanavi Ltd. had planned to obtain a loan of USD 22 million for Working Capital with grace period of 22 years from a local bank. Even though the working capital should be included in the overall estimate, Lakdhanavi Ltd. had not included in the overall estimate; only the loan interest was included.

Other bidders have included the working capital in their project estimates, therefore, there was an issue in comparing bids with the bid of Lakdhanavi Ltd. Granting of 22 year grace period was also an issue.

3. Even though the project estimate given in the bid of Lakdhanavi Ltd. was USD 175 million. Their lending institution. KFW Ipex Bank has reported the following.

(ii) The overall estimate of the project is USD 330 million
(iii) The EPC contract value of the project is USD 265 million
(iii) Value of only the equipment to be purchased from Germany is USD 190 million

Estimating the project value as USD 175 million by Lakdhanavi Ltd. along-with above conditions is a serious issue.

(iv) Ladhanavi Ltd. had mentioned that, in the electricity tariff calculation it had expected to obtain VAT and NBT exemptions from the Government during the construction period. According to the current regulations, VAT and NBT exemptions are not given for these project, and therefore inclusion of the particular terms in the bid is an issue.

Even though it had been indicated that the TEC had considered these facts, the SCAPC has observed that these need to be considered in context of the terms given in the bid document. (TEC report dated 12.10.2017 is given in Annex 8.)

18. Accordingly, SCAPC through its report dated 30.10.2017 has informed the TEC to explain several major points. (SCAPC decision dated 30.10.2017 is given in Annex 9.)

Following facts were very important among them.

1. Lakdhanavi Ltd. having informed their bank the project cost as USD 330 million, considered in the bid that the project cost as USD 175 million is an issue.
2. As the working capital of LKR 3340 million going to be obtained as a loan by Lakdhanavi Ltd. with a grace period of 22 years, CEB will have to pay back the particular amount after the 22 year period. As the working capital has been included in the electricity tariff calculation by the other bidders, CEB will not have to incur any expenditure on working capital after the 20 year period.

   If the bid of Lakdhanavi Ltd. is accepted, CEB will have to find a working capital of LKR 3340 million after the 20 year period.
3. As Lakdhanavi Ltd. has planned to obtain VAT and NBT exemptions, submit explanations for not rejecting the bid of Lakdhanavi Ltd. based on the terms given in sections 8.1.1.3 volume 3, section 1.5 volume 1 and section 3.13 volume 1.
4. As the bid of Lakdhanavi Ltd. is lower than the other bids and also 42% lower than the engineering estimate, confirm that this project can be implemented at a cost of USD 175 million practically
5. Reconsidering the marks given in the financial evaluation. in consideration of the above.

As the bid price (Tariff calculation) of the Lakdhanavi Ltd. was not inclusive of VAT and the other bidders had included VAT in their bid price, there is no proper comparison, and therefore the necessity of having a common platform for the comparison of bid prices.

19. The TEC had expressed views through their report dated 04.12.2017 for the explanations required by the SCAPC mentioned above. Accordingly, the lending bank has confirmed the possibility of lending at the project cost of either USD 175 million or USD 330 million.

    Also the HNB Bank had confirmed the loan grace period of 22 years. Lakdhavi Ltd. had not mentioned whether they provide the cost of VAT, PAL, if they will not be granted VAT exemptions. Project can be implemented within the cost of USD175mn. Accordingly, recommended to negotiate those matters with the Lakdhanawi Limited. **(TEC report dated 04.12.2017 is given in Annexure 10)**

20. Having considered the facts given in the TEC report, the CAPC through its report dated 06.12.2017, has mentioned that the explanations given by the TEC are not adequate. However, the Treasury representative in the TEC has informed that expert advice should be obtained on the VAT exemptions entitled for this project, and therefore Secretary to the Line Ministry has requested instructions from the Treasury. In response to this, the Fiscal policy Department of the Treasury has clearly informed that VAT, PAL exemptions will not be given to this project, through the letter No. FP/06/20/2 (III) dated 05.01.2018 of the Department of Fiscal Policy. **(Department of Fiscal Policy letter is annexed as Annexure 11)**

    So, as it is confirmed that the tax exemptions will not be given, the TEC has been informed to provide clear recommendation on the whether it is possible to implement a 300 MW LNG power plant within the cost of USD175mn without tax exemptions.

    Accordingly, TEC has been informed to negotiate with the Lakdhanavi Ltd., if it is fairly and practically confident that this project can be implemented at a total project cost of USD 175 million, on the basis that all the taxes should be borne by the bidder :Lakdhanavi Ltd. **(SCAPC report dated 06.12.2017 is given in Annexure 12.)**

21. In response to these observations of the SCAPC, the TEC has reported through its report dated 20.12.2017, that the TEC cannot recommend that this project can be implemented for a total cost of USD 175 million including VAT. (**TEC report dated 20.12.2017 is given in Annexure 13)**

22. On consideration of the TEC report dated 20.12.2017, following decisions have been taken which are included in its report dated 26.12.2017.
    A. If the TEC cannot recommend that the project can be implemented for the proposed cost, the SCAPC cannot take a decision on this. Therefore, the SCAPC had

informed that the TEC should essentially give its recommendation on whether it is practically possible or not to implement this project at a cost of USD 175 million.

B. When the Treasury has clearly mentioned that VAT exemptions cannot be given for the project, there is no reason for the TEC to give any recommendation on this. Further, the opinion of the SCAPC was, expecting tax exemptions by Lakdhanavi Ltd. from the Government, the TEC should give fair reasons for not rejecting the bid under section 1.5 volume 1, section 3.13 volume 1 and section 8.1.1.3 volume 3 of the bid document and section 7.8.4 of Procurement Guidelines 2006.

23. In response to the above observations of the SCAPC, the TEC has recommended that the bid of Lakdhanavi Ltd. should be rejected and awarding of the tender should be negotiated with the next bidder, M/s Consortium of Gei, Windforce & Renewgen. **(TEC report dated 10.01.2018 is given in Annexure 14.)**

24. On consideration of the TEC report dated 10.01.2018, SCAPC has informed the TEC to consider the following documents received by the SCAPC at its meeting on 30.01.2018,.

    1. Letter No. FP/06/20/2(III) of the Department of Fiscal Policy of the Treasury sent to the bidder No. 6, Lakdhanawi

    2. Letter sent by bidder No. 6, Lakdhanawi to the CEB on 22.012018, the legal opinion of its lawyer on VAT and NBT release,

    3. CCEM decision dated 24.01.2018 informing the TEC and the SCAPC to evaluate the tender considering no VAT and NBT exemptions for this project.

    Secretary to the Treasury and the Additional General Manager of the CEB in the SCAPC have mentioned that considering the legal opinion sent by Lakdhanavi Ltd. by the SCAPC and through this submission of legal opinion it is observed that Lakdhanavi Ltd. is obtaining internal information of TEC and the SCAPC.

    Sending letters like this by a bidder to a procurement committee through the lawyer is an undue influence and misconduct. **(SCAPC decision dated 30.01.2018 is given in Annexure 15.)**

25. Having considered these observations of the SCAPC, TEC has recommended that the bid of Lakdhanavi Ltd. should be rejected under volume 1, section3.1.13 of the bid documents on submitting bids based on benefits from the Government. **(TEC report dated 15.02.2018 is given in Annexure 16.)**

26. At the SCAPC meeting held on 22.02.2018 has mentioned that the evaluation has not been carried out according to the CCEM instructions on VAT and NBT, and informed to evaluate all the bids under a common platform including VAT.

Mr. K.D.N. Ranjith, Secretary to the Ministry of Industries, member of the SCAPC has not agreed this decision and recommended that the bids should be evaluated excluding VAT.

17. TEC has recommended to obtain clarifications on the financial bids of Lakdhanawi Ltd and Consortium of Gel, Windforce & Renewgen through its report dated 15.03.2018, The SCAPC has approved it on 16.03.2018.

Thereafter, TEC has obtained clarifications from both the bidders. M/s Lakdhanavi Ltd. has agreed to implement the project without obtaining VAT and NBT exemptions from the Government. Accordingly, TEC has recommended in its report dated 03.04.2018 to issue Letter of Intent (LOI) for implementing the project to Lakdhanavi Ltd. **(TEC report dated 03.04.2018 is given in Annex 17.)**

After considering the recommendations of the TEC dated 03.04.2018, based on the Cabinet Decision No. 17/1858/732/09 dated 29.08.2017, the SCAPC has decided to recommend to issue LOI to Lakdhanavi Ltd. subject to the following conditions.

1. All tax cost (VAT, PAL & NBT) that arise during the construction period should be borne by Lakdhanavi Ltd.
2. Since the Lakdhanavi Limited has planned to obtain Rs. 3,341 Mn as a loan for working Capital on 22 Years grace period, the LOI must clearly state that this Rs. 3,341 Mn Loan should not be passed to the CEB when transferring the Power Plant to the CEB after 20 Year period.
3. The summery of the Tariff rates offered by M/s Lakdhanavi Ltd which should be read with bid proposal submitted by M/s Lakdhanavi is given as Annexure 1 of Annexure 18. Tariff should be calculate accordingly.

In giving these recommendations, even though the Cabinet has agreed to implement the TEC recommendations by the SCAPC. Secretary to the Ministry and the Additional General Manager of the CEB in the SCAPC have recommended that the recommendations of the TEC on financial aspects of the project cannot be accepted. Under the same note, according to the financial reports of the Lakdhanavi Ltd, it has been informed that paying VAT and the amount incurred on compressor which is around LKR 5 billion without receiving any benefits will be an issue. Accordingly, it is informed that, implementation of the project will be practically difficult, and in order to avoid an electricity deficit the CEB should have a close supervision on the project. **(SCAPC decision dated 04.04.2018 is given in Annex 18.)**

Representation made to Procurement Appeal Board

In accordance with the clause 8.3 of the Procurement Guidelines 2006 (Goods & Works), the SCAPC recommendation has been notified to the unsuccessful bidders on 06.04.2018 to make their representation to the Procurement Appeal Board (PAB) within one week. In response to this, following two bidders have made their representation to the PAB.

1. The Consortium of Samsung C&T, Komipo & GS Energy
2. Consortium of Gel, Windforce & Renewgen

Procurement Appeal Board inquired both appeals and decided to reject recommendations of Standing Cabinet Appointed Procurement Committee and recommend to accept the lowest responsive bid of Consortium of Gcl, Windforce & Renewgen at the levelised tariff of LKR/KWh 15.97580891 **(Procurement Appeal Board Report is annexed as Annexure 19)**

29. Recommendation of Ministry Secretary

Secretary agreed with the recommendations of Procurement Appeal Board and recommended their recommendations to the Cabinet of Ministers for approval.

30. Proposal

Having considered the recommendations of the Procurement Appeal Board, SCAPC and the Ministry Secretary on this tender, I agree with the recommendations of the Procurement Appeal Board and seek approval of the Cabinet of Ministers for following proposal.

30.1 To authorize the Ceylon Electricity Board to issue the Letter of Intent and enter in to agreement with the lowest responsive bidder M/s Consortium of GCL, WindForce and RenewGen for construction of 300MW combined cycle dual fuel Natural Gas power plant at Kerawalapitiya (No.CEB/AGMP/HFO-LNG/Kerawalapitiya/1) on Buld-Own-Operate-Transfer (BOOT) basis at the Levalised Tariff of LKR 15.97580891/kWh based on the price proposal of the bidder as attached as Annexure 20 and other conditions of the bid and the RFP.

31. Approval

Cabinet approval is sought for the proposal mentioned in above Clause 30.1

Ranjith Siyambalapitiya (MP)
Minister of Power & Renewable Energy

Ministry of Power & Renewable Energy
No 72, Ananda Coomaraswami Mawatha,
Colombo 07.
11th June 2018