

**MAURITIUS**

**Fifth National Assembly**

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**FIRST SESSION**

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**Debate No. 4 of 2011**

**Sitting of Tuesday 12 April 2011**

**The Assembly met in the Assembly House, Port Louis,**

**at 11.30 a.m**

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**ORAL ANSWERS TO QUESTIONS**

**BAGATELLE DAM PROJECT**

**The Leader of the Opposition (Mr P. Bérenger)** (*By Private Notice*) asked the Deputy Prime Minister, Minister of Energy and Public Utilities whether, in regard to the Bagatelle Dam Project, he will state the –

- (a) funding agencies that turned down requests for funding;
- (b) names of the bidders for consultancy services at the first closing date; giving details of the challenge of one of the unsuccessful bidders;
- (c) section of the Public Procurement Act under which tender documents were sent to only one contractor, and
- (d) value of the bid received, indicating the composition of the Evaluation and of the Negotiating Committees.

**The Deputy Prime Minister, Minister of Energy and Public Utilities (Dr. R. Beebeejaun):** Mr Speaker Sir, the Bagatelle Dam Project was initiated in 2000 to harness additional water resources to meet water demand for Port Louis, Lower Plains Wilhems and part of Black River district.

With your permission, Mr Speaker, Sir, I will reply to parts (b) and (c) of the question in the first instance.

With regard to part (b), the House may refer to my reply to Parliamentary Question B/29 wherein I stated that a first consultancy contract for the detailed design was awarded in August 2001 and the first phase of the feasibility report was submitted in August 2003. It recommended the construction of a dam across River Terre Rouge and River Cascade for storage of 15 million cubic meters of water. A site of an extent of 230 hectares was identified as being the most suitable site for the dam.

However, in April 2004, the then Government decided that the siting of the dam has to be reviewed because part of the site (90 hectares out of 230 hectares identified) was prime private land, owned by Mon Désert Alma Sugar Estate.

This decision which necessitated a review of the site caused an undue delay with financial and other technical implications.

Subsequently, a fresh feasibility study was initiated in June 2004 and completed in April 2006, recommending a dam with a storage capacity of 9 million cubic meters. The final feasibility study was submitted in May 2006 and approved by Government in September 2006. In December 2007, the approval of the Central Tender Board was obtained for the launching of the Consultancy services for detailed design and construction supervision.

Bids were launched on 04 January 2008 and proposals from six consultants were received on 14 May 2008. The bidders were -

- (i) Sogreah Consultants in association with Mega Design;
- (ii) National Engineering Services Pakistan (Pvt) Ltd in association with CES Consulting Engineer Salzgiter GmbH and Lux Consult (Mauritius) Ltd;
- (iii) Frischman Prabhu India Pvt Ltd in association with Dagon Ingenieur Conseil Ltée;
- (iv) C. Lotti and Associati Societa di Ingeneria S.P.A in association with Sceneries Consult Ltd;
- (iv) Coyne et Bellier Bureau d'Ingénieurs Conseils in association with Servansingh Jadav and Partners;
- (v) Ninham Shand in association with Gibb Mauritius Ltd.

On 19 November 2008, the Central Procurement Board approved the award of the contract to Coyne et Bellier Bureau d'Ingénieurs Conseils in association with Servansingh Jadav and Partners.

Following the notification of the award, one bidder Sogreah Consultants made representations on the grounds that during the opening of the financial bids on 06 October 2008 at the Central Procurement Board, the representative of Coyne et Bellier insisted on the bidders' legitimate right for the technical scores to be disclosed to bidders. Sogreah further averred that its request for same had been denied, thus depriving it of a means of ensuring that the scores meet the information and evidence of capabilities provided in the proposals.

On 15 December 2008, the Central Procurement Board informed my Ministry that -

- (i) the bidding document did not provide for the announcement of technical scores of bidders,
- (ii) the evaluation - technical and financial - has been carried out in accordance with the criteria spelt out in the bidding documents. The bid of Coyne et Bellier is the best evaluated proposal,
- (iii) Section 24(6) of the Public Procurement Act provides for public announcements of the result of the technical evaluation only, and
- (iv) my Ministry may wish to consider Regulation 48 issued under the Act whereby a challenge under Section 43 of the Act shall be made in the form set out in the Second Schedule and decide whether a challenge has been made in the proper manner.

On 18 December 2008, based on the advice of the CPB, my Ministry drew the attention of Sogreah Consultants to Section 43 of the Public Procurement Act 2006 and Regulations 48 of the Public Procurement Regulations which prescribed the procedures for submitting a challenge.

There was no formal challenge - I repeat, there was no formal challenge - to the award of the consultancy services contract, as prescribed under the Public Procurement Act.

Mr Speaker, Sir, I now come to part (a) of the question. With the delay encountered by the previous Government's decision to relocate the dam solely on SLDC land excluding

the prime private land of Mon Désert Alma Sugar Estate, mobilisation of funds and implementation of project were also consequently delayed.

The Bagatelle Dam project was presented for financing to Development Partners including, *inter alia*, World Bank, Agence Française de Développement, European Investment Bank, African Development Bank and European Commission as from 2006. At the Annual Business Plan meetings, there was no positive response for financing of the project.

Mr Speaker, Sir, during the visit of the Prime Minister to China in November 2006, the Chinese authorities offered to provide highly concessionary financing of an amount of RMB 800 m. Yuan for project financing.

Some RMB 220 m. Yuan has been committed as complementary finance for the Plaines Wilhems Sewerage project while the balance of RMB 580 m. Yuan would finance projects to be mutually agreed upon.

This concessionary financing would have expired by the end of 2009.

At the 8<sup>th</sup> Session of the Sino-Mauritian Joint Commission held in Beijing in September 2009, it was agreed that this balance of RMB 580 m. would be used to finance the Bagatelle Dam project.

The financing package offered by the Chinese Government was highly concessionary at 2% fixed rate basis as compared to around 4% prevailing rate. They further offered a moratorium of 5 years and repayment period of minimum 10 years negotiable for a longer period.

Mr Speaker, Sir, as for part (c), one of the conditions of the loan from Exim Bank of China is that the works should be undertaken by Chinese contractors.

Accordingly, the Embassy of the People's Republic of China was requested to submit to the Ministry of Finance and Economic Development the names of at least three contractors that would be invited to submit bids for the construction works.

After protracted discussions between the Chinese Embassy and the Ministry of Finance and Economic Development, between May and September 2010, the Embassy of the People's Republic of China informed the Ministry of Finance and Economic Development that, under delegated authority of the Ministry of Commerce of the People's Republic of China, the China International Contractors' Association has designated Messrs China

International Water & Electric to proceed with bid negotiations with the Mauritian side for the implementation of the Bagatelle dam project. Mr Speaker, Sir, I am tabling a copy of the letter.

The contractor proposed by the Chinese Government satisfied the eligibility criteria and had the required experience in the construction of dams.

The Procurement Policy Office was consulted and advised that -

- (i) if the condition for negotiating with the only one Chinese contractor is a mandatory one of the loan, then Section 3(3) of the Public Procurement Act will apply and the Ministry may proceed with negotiations, subject to the approval of Government;
- (ii) as per Section 14(6) of the Act, the Central Procurement Board is not concerned by Direct Procurement. The Ministry may therefore, envisage negotiations in the manner prescribed to ensure due diligence;
- (iii) in view of the negotiating process, the Evaluation Committee may have to identify the sectors that need to be negotiated and the reasonable parameters for same, and advise on the possibility of review of certain design aspects of the work or work methods that may after negotiations with the contractor, bring down the contract price, and
- (iv) the Ministry may therefore consider having a couple of the members of the Evaluation Committee along with the Negotiating Panel to support the latter in negotiating technical matters.

In the light of the above, on 22 October 2010, Government approved that -

- (i) China International Water and Electric Corporation be invited to submit a proposal in line with the bid document prepared by the Consultant;
- (ii) an Evaluation Committee to be chaired by a representative of my Ministry, and comprising the Consultant for the project, a representative each from the Prime Minister's Office, the Ministry of Finance and Economic Development, the Ministry of Public Infrastructure, National Development Unit, Land Transport and Shipping and the Ministry of Environment and Sustainable Development to evaluate the proposal, and

- (iii) subject to the proposal of the contractor being found to be acceptable by the Evaluation Committee, a Negotiating Team to be chaired by a representative of the State Law Office and comprising representatives of Prime Minister's Office, Ministry of Finance and Economic Development and Ministry of Public Infrastructure, National Development, Land Transport and Shipping and my Ministry, will negotiate with the Contractor with a view to finalising the award of the contract.

In December 2010, the bid document was submitted to the Contractor, and the closing dated was 07 March 2011.

The value of the bid is Rs3,418,569,001.89, inclusive of 15% VAT and 10% contingencies.

The bid is currently being evaluated.

Mr Speaker, Sir, I can assure the House that all procedures have been followed and we are lucky – I consider that we are lucky to get this project, but what we have to ensure is that we get value for money and my Ministry is setting up the appropriate instances to make sure that this does happen.

**Mr Bérenger:** Mr Speaker, Sir, I'll start my question in the order which I put the question. I have asked about the funding agencies that turned down requests for funding. I heard, *en passant*, of the World Bank, EIB, *l'Agence Française de Développement* and APP. I think the Deputy Prime Minister will agree with me that clearly a sustained effort to get one of these funding agencies to fund was not made and the result was that there was no international open bidding for the project.

**The Deputy Prime Minister:** Mr Speaker, Sir, sustained effort was made. The financing of dam was considered to be not very interesting for funding agencies. We have, apart from these annual meetings, approached various agencies. I, myself, have talked to various funding agencies unofficially and with no positive response. It is only when the Chinese authorities came forward with the funding of Bagatelle that suddenly there is a sort of mushrooming of interests again in the other dam to be built and I can assure the hon. Leader of the Opposition that all efforts were made to secure funding.

**Mr Bérenger:** This is not an explanation - as if because the Chinese Government was kind enough to offer a loan, suddenly the donors woke up. We are talking about the dam and it does not hold water at all, hon. Deputy Prime Minister.

I am not targeting the State of China at all; I am talking about private firms in China. The Deputy Prime Minister says that it was cheap money. Will he remember the Terre Rouge/Verdun case where again there was restricted bidding at the request of the Chinese authority? There were three bidders. Clearly, they cooked it among themselves. I am not putting the State into question, but clearly they cooked it among themselves. They came forward with huge proposals; we raised hell – if that is the Parliamentary expression – Government backpedalled, went to the donors, went for an opening international bid and the cheapest that got the award was Rs500 m., the cheapest among the three contractors that had come in. Are we going to have a repeat of the same exercise again?

**The Deputy Prime Minister:** Mr Speaker, Sir, we see events from different angles. I can assure the Leader of the Opposition that the Terre Rouge/Verdun road project was annulled by us on this side of Government at the request of the Prime Minister who was not satisfied there had been some concoction, collusion or whatever term the Leader of the Opposition is using. There has been apprehension, I suppose, from the Chinese Government, that this may repeat itself again and this may be the reason why in spite, and I quote, “protracted negotiations” to nominate three bidders the Chinese authorities were adamant. They were not going to spoil their reputation by naming three firms and having collusion or whatever term is being used among the three to up the price. I remind the House again that the decision of discarding the proposals for Terre Rouge/Verdun came from the Prime Minister and the Government.

*(Interruptions)*

I, myself, when I was Minister there...

*(Interruptions)*

**Mr Speaker:** Let the Deputy Prime Minister answer!

*(Interruptions)*

Order! Order!

**The Deputy Prime Minister:** Mr Speaker, Sir, it was unacceptable. Anyone could see that the margins between estimated and bid prices were exorbitantly high. Anyone could see that. We did not need to have experts and the Prime Minister said “No way. We are going to cancel the exercise and have an open tender.” Today we have a concessionary loan on terms unequalled. I can’t say anything better. I have dealt in the past with various agencies.

We never had any terms as good as this, but as I said, the Chinese authorities considered what would be best in terms of value for money. The Government's reputation is at stake and I think they are mindful of this and this is the result.

**Mr Bérenger:** Mr Speaker, Sir, can I be allowed to quote something just to make my point? I am not targeting China as a State, it is the firms. May I be allowed to quote the Editorial in the Economist of the 12 March to make my point? I quote –

Three decades ago, pretty much all business in China was controlled by one level of the State or another. Now, one estimate, the share of GDPs produced by enterprises that are not majority owned by the State at 70%. Zheng Yumin, the Communist Party Secretary for the Commerce Department, told the Conference last year that more than 90% of China's 43 million companies are private and those private companies behaved like all private companies.

That is why we are again to end up with the same kind of situation, Mr Speaker, Sir.

If I can move on with the consultancy services, my question was clear “at the first closing date”, there was an extension of the date. I'll put the question differently: at the first closing date, before the date was extended, was Coyne and Bellier on the first list and who requested for that extension?

**The Deputy Prime Minister:** Mr Speaker, Sir, I do not have the information. The question was not specific enough. At the first closing date...

**Mr Bérenger:** Coming to what the hon. Deputy Prime Minister replied to only two weeks ago, your officers and yourself could not have misunderstood it. I want to know when a decision was taken to award the contract to so and so, were the other bidders – we are talking about Consultancy Services – informed so that they could appeal if they wanted to or did we have the same scenario as in Med Point where the unsuccessful bidders were not even informed that they have lost their bid?

**The Deputy Prime Minister:** Mr Speaker, Sir, yes, they were informed. I'll provide the information.

**Mr Bérenger:** I would find another sitting. If I can move on to section 3! So, we are informed that it is under section 3(3) that there has been direct bidding, no international tendering and so on. If I heard the hon. Deputy Prime Minister correctly, it is only the Public Procurement Office, a department of the Ministry of Finance that advised that this could take

place under section 3(3) of the Public Procurement Act. Am I to understand that legal advice was not sought, that this is in order? Section 3(3), Mr Speaker, Sir, reads as follows –

“Where any provision of this Act conflicts with the procurement rules of a donor organisation, the application of which is mandatory pursuant to an obligation entered into by Mauritius under any treaty or other form of agreement, those rules shall prevail.”

Mr Speaker, Sir, we are talking about an organisation, not a country. We are talking about procurement rules of a donor organisation. Clearly, the spirit of the law is that in case the European Union or somebody else has procurement rules tighter than ours, stricter than ours, we will go by the stricter rules. But I believe that this is not in order at all to have acted under this paragraph and I asked: was legal advice sought or was Government satisfied with the opinion of civil servants sitting in the Public Procurement Office?

**The Deputy Prime Minister:** Mr Speaker, Sir, the Public Procurement Office is there to tender advice...

*(Interruptions)*

And, of course, they may seek advice elsewhere if they deem necessary and then they provide the advice.

*(Interruptions)*

**Mr Speaker:** Order! Let me listen to the reply, please! I order!

**The Deputy Prime Minister:** I am not sure why this is being questioned. We have a Policy Office to advise on procurement procedures and they may seek advice elsewhere and then they tender the advice. I met the person concerned this morning and he assured me this is quite in order. Secondly, Mr Speaker, Sir, I would like to say again, for the Consultancy Services, it was an open bidding and unsuccessful bidders were informed. I confirm that.

*(Interruptions)*

**Mr Bérenger:** Mr Speaker, Sir, am I therefore given to understand that the Public Procurement Office did not seek legal advice that civil servants decided by themselves that it is in order?

**The Deputy Prime Minister:** I never said, Mr Speaker, Sir. The answer is he will seek advice as he thinks fit to provide it to my Ministry.

**Mr Bérenger:** My point is: does the Central Procurement Office seek itself advice from the State Law Office which is there to give advice?

**The Deputy Prime Minister:** They do as and when they think it is necessary.

*(Interruptions)*

**Mr Speaker:** Order! Order! Order, please!

**Mr Bérenger:** Mr Speaker, Sir, if I understand correctly it is quite amazing, but if I understand correctly, Government through the Central Procurement Office, I suppose, sent the documents to one contractor only with the bid documents and the contractor came forward with a proposal, a bid worth, if I got it rightly, Rs3.2 billion. Mr Speaker, Sir, in all such cases the Ministry concerned – it has all the professionals and so on - works out its estimates for that project. Can I know whether the Ministry did that exercise, when and what was the figure?

**The Deputy Prime Minister:** Of course, the estimate was carried out. I don't want to mention it so as not to jeopardise the negotiation, but if the hon. Leader of the Opposition wants it for transparency, I am quite prepared to state that the estimate is Rs3.1 billion, inclusive of VAT and 10% contingency and the bid ...

*(Interruptions)*

... value is Rs3.4 billion and discussions are ongoing.

*(Interruptions)*

**Mr Bérenger:** On which bid Rs3.1 billion estimates were worked out?

**The Deputy Prime Minister:** It was worked out at the end of 2010. I will find the exact date.

**Mr Bérenger:** I thought I heard Rs3.4 billion. My colleagues told me it was Rs3.1 billion. It is, in fact, Rs 3.4 billion.

**Mr Speaker:** The bid is Rs3.4 billion.

**Mr Bérenger:** No, I thought I heard Rs3.4 billion, but my colleagues had heard Rs3.1. Therefore, I don't want to appear to hit at China at all, but I am not surprised that this private firm...

*(Interruptions)*

**Mr Speaker:** Order! Time is running out! Order!

**Mr Bérenger:** I am not surprised - I am not hitting at the State – but, at private firms, *ils ont fait le coup*, even China agrees. The last three *nous ont fait le coup* in the case of Terre Rouge-Verdun, Mr Speaker, Sir. Now we hear that this private firm in China has bid for Rs3.4 billion, whereas the Ministry had produced estimates of Rs3.1 billion. I must point out that the figure of Rs3 billion, round figure, was used in the Budget Speech and in the debates on the Budget. Can I request Government to keep us informed how negotiations between that firm and Mauritius evolve and that a friendly country like China, if required, and it will probably be required, will be asked to assist in getting a reasonable bid?

**The Deputy Prime Minister:** Mr Speaker, Sir, I confirm the information that has been requested, The Evaluation Committee being assisted by Coyne et Bellier - which I mentioned in my answer - has updated the evaluation estimate and at the end of 2010 it was Rs3.4 billion - not Rs3.1 billion, started with Rs3.1 previously, now it is Rs3.4. I can assure the House as far as the cost and prices are concerned, we are going to look closely ...

**Mr Speaker:** No! The question is very simple. I am sorry. The Deputy Prime Minister is entering into details. The question is whether the Opposition will be constantly informed on the evolution of the negotiations that are taking place. The question is so simple.

**Mr Bérenger:** Do I hear correctly that the last estimates were Rs3.4 billion *et comme par miracle* the bid from that private firm is Rs3.4. Then, what is being negotiated?

**The Deputy Prime Minister:** The negotiations are ongoing. Mr Speaker, Sir on one point, there is some crossed line.

*(Interruptions)*

**Mr Speaker:** Order! Let the hon. Deputy Prime Minister reply!

**The Deputy Prime Minister:** I repeat ...

**Mr Speaker:** Time is running out!

**The Deputy Prime Minister:** I repeat and stand by what I said, Rs3.4 billion is the bid and Rs3.1 billion is the estimated cost.

**Mr Lesjongard:** Mr Speaker, Sir, since the Deputy Prime Minister has stated that there was only a sole recommended contractor and that the Evaluation Committee is

evaluating the technical bid, may I know what will happen if we have major deviations from the technical submission made by the Government of Mauritius?

**Mr Speaker:** No, that is not allowed under the Standing Order.

*(Interruptions)*

Go and read the Standing Order! Do you want me to quote?

*(Interruptions)*

It is not allowed in the Standing Order. I will give you the reasons if you wish. Come to my office.

*(Interruptions)*

Time is over!

*(Interruptions)*

Order! Hon. Ms Deerpalsing, could you please keep quiet!

*(Interruptions)*

No, I heard what you were saying. Keep quiet! This is a Parliament; it is not a bazaar here. Questions addressed to Dr. the hon. Prime Minister! Hon. Guimbeau!