

South Africa's RMIPPPP: mapping the process and its inconsistencies

DMRE's Risk Mitigation Independent Power Producer Procurement Programme ("RMIPPPP") targets the supply of 2,000 MW of dispatchable capacity, via the ESKOM grid, through a range of technologies.

22nd December 2020: Karpowership SA submitted bids, in accordance with the robust and transparent procurement process, for 3 projects, located in Coega, Richard's Bay and Saldanha, aiming to deliver a total of 1,220MW to counter more than one entire stage of loadshedding. The DMRE received a total of 28 bid responses. The Programme followed a substantially similar tender and adjudication process as South Africa's tried and tested Renewable Energy Procurement Programme ("REIPPPP"), including the requirement for non-negotiable 20-year term Power Purchase Agreements with ESKOM.

18th March 2021: Karpowership SA was extremely proud and excited to have been awarded Preferred Bidder status for all three of our Projects, having been deemed fully compliant in all aspects of the tender rules by a panel of independent expert assessors and by offering some of the lowest tariffs in the programme. Financial Close was then scheduled for 31st July 2021, and we made every effort within our control to deliver on that target.

INVESTING IN SOUTH AFRICA'S ENERGY FUTURE

As an energy solutions provider with a proven track record of reliable, cost-effective, environmentally conscious, and sustainable generation across the globe, we engaged in good faith as part of South Africa's RMIPPPP programme. Our company, partnering with local stakeholders to prioritise opportunities for transformation and the meaningful participation of South Africans and businesses in South Africa's energy sector, offered the swiftest – and one of the most cost-effective – solutions of all preferred bidders in the programme.

Following award, we have worked and continue to work in earnest to secure the many licenses and permits that are required for our Projects, in compliance with our bid obligations and applicable legislation. The RMIPPPP and the various project agreements to be concluded under the Programme provide for very stringent bidder and contractor obligations, including anti-corruption, undertakings covering any breach or non-compliance. These requirements and undertakings place bidders at risk of losing their status and indeed their Projects throughout the term of the PPA. It is vital to ensure that every "i" is dotted, and every "t" is crossed - not only to reach Commercial and Financial Close but also through the full 20-year term of the Projects. The requirements imposed under the RMIPPPP are amongst the most stringent and comprehensive that we have experienced and all bidders (whether under RMIPPPP or REIPPPP) would no doubt vouch for that.

From our experience around the globe, we can confidently say that the tender process itself has been run well, with a strong sense of purpose and transparency by the DMRE via the IPP Office. Many other government entities have also demonstrated professionalism, practicality and, importantly, consistency within the relevant regulations; notable key examples being NERSA, National Treasury and TNPA. The SIP 20, under the Presidency, has also been excellent within their challenging mandate. As an international investor this has sustained our confidence to date.

We note with great concern, however, the authorities whose conduct is not aligned with the purpose of the RMIPPPP, and whose lack of transparency and urgency is not conducive to an attractive investment environment. Neither does it align with the RMIPPPP's intention to close the current short-term supply gap by alleviating the current electricity supply constraints and reducing the extensive utilisation of diesel-based peaking electrical generators.

We are disappointed by the manner in which they have been constrained by malingering – whether intentionally or through a lack of confidence – to stand their ground in the interest of the wider national imperative. This has made the practicalities of commercial management and project delivery unnecessarily challenging.

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT, THE DFFE ENVIRONMENTAL IMPACT ASSESSMENTS

26 April 2021: We submitted our Final Environmental Impact Assessment Reports for approval as per bid requirements. We applied for the EIA for all three Projects before submitting our tender bids, providing extremely comprehensive FEIARs in full compliance with the applicable law.

23 June 2021: Our applications were refused on the grounds that we believe were influenced, without merit, by strongly funded and partisan NGOs opposed to natural gas. This was augmented by a concerted, coordinated and sensationalist media campaign built entirely on the dissemination of misinformation and half-truths.

13 July 2021: We appealed the DFFE's decision timeously and are extremely confident that we have demonstrated that all grounds given for refusal were more than adequately addressed in our EIAs. A number of other independent organisations (predominantly business associations local to the proposed projects) also submitted appeals against DFFE's Refusals.

Almost a year later: At numerous stages in the Appeal process the DFFE has not acted within the bounds of regulation, consistently extending timelines way beyond those legally mandated. Normally, the Appeal process must legally be completed within **90 to 120 days**. The current information from DFFE is that a decision cannot be expected from the Minister before **1 July 2022, some 353 days** into the process.

DEPARTMENT OF TRANSPORT AND DEPARTMENT OF PUBLIC ENTERPRISES

SECTION 79 MINISTERIAL DETERMINATION

12 May 2021: We submitted our applications for directives under section 79 of the National Ports Act to the Minister of Transport. Conclusion of the Section 79 Agreement of the National Ports Act is critically important for access to the ports in which our Projects are due to be located.

We have made a great deal of progress with TNPA on the technical, legal, and commercial aspects required, upon the direction of the Ministry of Transport, who advised us that TNPA could progress discussions conditional on the issuance of the Section 79 Ministerial Determination.

More than a year later: We understand, only via our continued engagement with the SIP 20 Committee, as we have not had a response from the relevant department despite having written directly to both Ministers, that the Section 79 Directive application is currently with the Minister of Public Enterprise as Shareholding Minister. We have no clarity on expected timelines for the decisions.

ESKOM'S ROLE

As part of the process, the IPP Office must gain Eskom board approval to enter into the Project Agreements. The Power Purchase Agreement to be entered into by all Preferred Bidders, including Karpowership SA, already contains comprehensive indemnity, including anti-corruption clauses, in Eskom's favour, and moreover provides Eskom with termination rights specific to any corrupt activity.

23 March 2022: Unexpectedly and required only of Karpowership SA and not any of the other bidders, Eskom announced, citing their fiduciary duty, that their board approval was conditional on Karpowership SA Projects signing a separate and extremely wide reaching, open-ended indemnity agreement. This '11th hour' insistence is not only highly irregular but is also outside of the requirements of the tender process.

This is an unfair amendment to the tender conditions, creating a discriminatory environment that deliberately disadvantages Karpowership SA. To permit such exclusionary practices for a 49% black-owned South African company is not only against the spirit of South Africa's stated, inclusive operating environment, but it also opens the entire procurement process to risk.

As a responsible, international business that adheres to the principles of equitable participation and due process, this irregular requirement is not good governance and potentially renders the Projects unbankable.

Notwithstanding this, however, and empathizing that ESKOM's concern may stem from the flurry of legal challenges experienced by the RMIPPPP, we have nevertheless offered ESKOM a comprehensive additional indemnity for legal costs they might incur or become liable for as a result of being drawn into Court proceedings due our Power Purchase Agreements.

28 March 2022: Karpowership SA engaged with Eskom and IPP Office on this matter.

23 May 2022: Karpowership SA was made aware that we were to provide a draft version of a commercially viable indemnity agreement, as opposed to the action was agreed on 28 March 2022.

26 May 2022: In good faith, Karpowership SA provided a draft agreement to the IPP Office, which we strongly believe should adequately address Eskom's concerns.

No response has yet been received, in spite of the urgency that should be placed on bringing new capacity to the grid in this time of immense and deteriorating power constraints for the country. Given that Project Document signing was initially scheduled for 31 March 2022, which was then postponed to 31 May 2022, and then to 2 June 2022, in order to allow Eskom time to approve the signing, it is concerning that to date there appears little urgency on the part of Eskom to resolve the matter in the interest of all parties in appropriate time.

SPURIOUS ALLEGATIONS

Since Preferred Bidder status was awarded to the three Karpowership SA Projects, we have faced a highly coordinated and relentless campaign against our projects, driven by clear commercial and political agendas.

Two streams of opposition worth noting are:

DNG Energy Holdings, a failed bidder due to non-compliance with tender qualification criteria, opened a legal challenge against Karpowership SA, government and all other Preferred Bidders, seeking to either cancel the entire process or replace Karpowership SA with its own, far more expensive projects.

30 January 2022: the High Court of Pretoria made it clear there was absolutely no merit in DNG's case and absolutely no wrongdoing was present in the RMIPPPP tender process. Although we did not welcome the grant of leave to appeal to the Supreme Court of Appeal, we are confident that this spurious and speculative matter will, once again, not stand up to the scrutiny of South Africa's robust judiciary process.

Green Connection and **Organisation for Undoing Tax Abuse (OUTA)** have recently opened Judicial Review proceedings against NERSA, with Karpowership SA and others as respondents, challenging the granting of Generation Licences to the three Karpowership SA Projects.

In an obvious, coordinated attempt to specifically stall our Projects, they delayed their legal challenge and only launched their remarkably similar proceedings, purportedly on an urgent basis, **180 days after they were granted**.

We expect that their strategy will be to bring further challenges to other approval processes simply to attempt to delay progress, whilst the majority of the communities whose interests they pretend to represent continue to suffer.

It is notable that these entities, which rely on the perception of representing public interests, **have not in any way attacked the processes of another Preferred Bidder utilizing LNG** via a very similar gas to power technology, located at the same port as one of our projects.

IN CONCLUSION

Since being awarded Preferred Bidder status under the RMIPPPP, the world has witnessed never seen before challenges in terms of energy security. Thermal power plants, predominantly natural gas generation, has been utilized increasingly in Europe due to lower generation availability from renewables. A number of developed nations are scrambling to access floating infrastructure to access reliable and cost-effective energy supplies. The 11 RMIPPPP Projects, a technology mix of Natural Gas and Renewables, are much more relevant today than even a year ago.

Our projects are the swiftest, most reliable, and cost-effective solution to South Africa's ongoing energy security challenges.

A recent case in point is that since being awarded Preferred Bidder status under the RMIPPPP in South Africa, we have also been awarded Projects in other parts of the world. A comparable example is with fellow BRICS nation, Brazil, where:

August 2021: Power procurement tender commenced

October 2021: Power procurement projects awarded

November 2021: Project Agreements signed

July 2022: 563 MW of LNG to power expected commercial operation date

Despite the ongoing challenges, Karpowership SA stands firm in its commitment to provide the benefit of its globally proven Powerships to its Projects in South Africa. Our power generation assets are fully constructed and ready for deployment as soon as the necessary permissions are obtained. Throughout the tender process, these Powerships have been reserved for South Africa and would have been on track for operations from the ports of Ngqura, Richards Bay and Saldanha by July this year, had the processes run on schedule.

Karpowership SA is not just an international investor in South Africa, we intend to remain a long-term and significant contributor in the wider South African energy market, one that helps build the economy and is an active participant in achieving inclusive and material transformation of our sector. To date, despite the risk associated with not having reached Commercial and Financial Close due to program delays outside of our control, we have established our office in Johannesburg and invested more than ZAR 400 million in development costs into South African businesses.

Government needs to work together cohesively to unblock the few remaining bottlenecks preventing the delivery of our projects and all the inherent benefits to the country, which hand in hand with the new generation capacity will provide close to ZAR 20 billion in economic development investment over the lifetime of the projects to the local communities and create several hundred direct jobs. Karpowership SA is primed to help South Africa overcome its energy security challenges and kick-start economic recovery.