



National Public Procurement Authority

OAU Drive, Tower Hill, Freetown
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BEFORE THE DEBARMENT PANEL

**IN THE MATTER OF THE DEBARMENT OF
KOREA GROUP PURSUANT TO s35 OF THE
PUBLIC PROCUREMENT ACT 2004 AND s155 OF
THE PUBLIC PROCUREMENT REGULATIONS 2006**

RULING

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INTRODUCTION

This matter was brought before the debarment panel of NPPA by the Authority itself pursuant to Section 155(2) of the Public Procurement Regulations, 2006 following an investigation into the performance of a contract awarded to Korea Group for the rehabilitation of the Magburaka potable water supply system.

The main crux of the matter being that:

1. The contractor failed to complete a substantial portion of the contract despite the fact that several requested extensions were granted by Tonkolili District Council. The contractor eventually defaulted on the contract and this action by the contractor placed the entire project at risk of total failure thereby leaving Tonkolili District Council with no alternative but to officially terminate the contract.
2. The company was paid an amount of **Le2,078,430,849** over and above the total quantum of work done.
3. Korea Group removed pipes and other fittings from the site, presumably for repairs, which were valued at approximately Le600,000,000. Most of these were never returned to Tonkolili District Council.

BACKGROUND

The contract to rehabilitate the Magburaka potable water supply system was awarded to Korea Group on the 11th May, 2011 with a completion date of 30th September, 2011 based on the contractor's works programme and at the bid price of Le6,494,510,952 (six billion four hundred ninety four million five hundred ten thousand nine hundred and fifty two leones).

The contractor failed to meet the initial completion time frame and Tonkolili District Council graciously consented to several requested time extensions. However, Korea Group failed to meet all of them eventually leading to Tonkolili District Council having to terminate the contract on the 12th February, 2013.

A review of valuation certificates and other payment related documents showed that the total amount of payments made to the contractor was Le2,903,622,049. However, the valuation certificates showed that the measured work done totalled Le825,191,200. Therefore, Korea Group was paid an excess of **Le2,078,430,849** in relation to the quantum of works done. This includes monies paid to the contractor for the procurement of specific materials under a cash guarantee issued by Union Trust Bank.

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The debarment panel met over a period of three months with more than six sittings. Korea Group failed to produce tangible evidence, especially documentary evidence, to support their claim of substantial performance.

THE LAW

The NPPA is a creature of statute pursuant to enactment of the Public Procurement Act 2004. The entire public sector procurement process in Sierra Leone is governed by the Act and its implementing regulations.

Section 35(1) of the Act gives NPPA the power to exclude bidders from participating in public procurement if they are found to have breached any of the provisions contained in 35(2).

Section 155 of the Regulations provides supporting information on debarment, including the basic procedures to be followed in conducting debarment proceedings.

Section 59 (Termination) of the contract signed between Korea Group and Tonkolili District Council states in Section 59(2) that "Fundamental breaches of contract shall include, but not be limited (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorised by the Project Manager."

THE ISSUE

The singular issue examined by the debarment panel was whether the non-performance of Korea Group of its obligations under this contract could be deemed serious enough to warrant debarment in accordance with Section 35(2)(e) of the Act.

DECISIONS

Following a detailed review of all that transpired under this contract, the debarment panel concluded that the non-performance of Korea Group of its obligations under this contract was serious enough to warrant debarment. In this regard the panel took the following decisions:

1. That Korea Group, should be debarred for a period of three years from participating in public sector procurement.
2. That Korea Group should immediately repay into government's coffers, the total amount of **Le2,078,430,849** which the panel determined was the excess amount paid to the company. Failure to repay this amount within a period of two months will lead to recommendations for criminal action to be brought against the company.

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3. That the period of three years will only commence upon complete settlement of all outstanding amounts stated above.
4. That the company's performance of other similar contracts, notably, Mambolo Water Supply, construction of bore holes in Yoni, Yele and Sanda communities, construction of 200 bore holes under SALWACO, construction of the Kamakwie Gravity Water Supply system in Bombali District must all be reviewed by NPPA as a similar pattern of non-performance of contracts awarded with money taken seems to be emerging in relation to this company.
5. That the company cannot enter into partnership, joint-venture agreement, sub-contract or any other similar such business arrangements with any other firms vying for public sector contracts.

SIGNED

Joseph Bandabla Dauda _____
Chairman, Debarment Panel

Mr. Alie B. Kargbo _____
Member

Mr. Gustavus Williams _____
Member

Mr. Alfred Coker _____
Secretary

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