



Our Ref: DVN/DTSG/IPP/01/16

Your Ref:

Date: 7th June, 2016

The Secretary to Delta State Government

Thru:

The Hon Attorney General and Commissioner for Justice,
Ministry of Justice
Delta State, Asaba

Attention: The Governor of Delta State



Dear Sir,

NOTICE OF ARBITRATION

Arising from your breach of Clauses 3a and 12d of the IPP Agreement dated the 22nd day of March, 2011, coupled with your subsequent plans to sell and dispose of the IPP without recourse to us and in furtherance to your consequential failure to make yourself available to amicably resolve the lingering payment default of the sum of #3,374,572,295 (three billion, three hundred and seventy four million, five hundred and seventy two thousand, two hundred and ninety five naira) as original contract balance part of which valuation/advance payment recovery certificate No. 4 dated the 3rd day of July, 2014 was raised; and the sum of #4,739,691,987 (four billion, seven hundred and thirty nine million, six hundred and ninety one thousand, nine hundred and eighty seven naira) being variation cost of the contract as listed in the variation request, **We hereby demand** that the dispute be referred to Arbitration and finally settled in accordance with the Arbitration and Conciliation Act, Laws of the Federal Republic of Nigeria as stipulated in Clause 11 of the said IPP agreement dated 22/3/2011.

PARTIES INVOLVED WITH THEIR ADDRESSES

DAVNOTCH NIGERIA LIMITED,
Km 1, Asaba Illah Road,
Asaba, Delta State,
Nigeria.

===== CLAIMANT

AND

THE GOVERNOR OF DELTA STATE,
Government House, Asaba,
Delta State.

===== RESPONDENT

THE HON COMMISSIONER,
Ministry of Power and Energy,
Asaba, Delta State.

===== RESPONDENT

THE HON. ATTORNEY GENERAL
& COMMISSIONER FOR JUSTICE,
Ministry of Justice,
Asaba, Delta State.

===== RESPONDENT

ARBITRATION CLAUSE

The Arbitration Clause giving rise to the initiation of this Arbitration is found in Clause 11 of the said IPP Agreement. Clause 11 reads thus: *"Without prejudice to Clause 5, disputes arising from this Agreement may be settled by means of arbitration; the dispute shall be referred to a panel of three chartered arbiters. Each party shall nominate one arbiter and both arbiters shall together nominate the third arbiter, who shall preside. The loser shall pay the entire cost of the arbitration proceedings including legal expense of the winner."*

CONTRACT DOCUMENT

The contract agreement in question which interpretation and enforcement is sought is the IPP Agreement between the Claimant (DavNotch Nigeria Ltd) and the Respondents (Delta State Government) for the Supply and Installation of 2 Nos. Rolls Royce Trent Gas Turbine Generators for the Delta State Independent Power Plant (IPP) at Oghereki in Ethiope West Local Government Area of Delta State, dated 22nd day of March, 2011.

CLAIMS

The Claimant Claims against the Respondents jointly and severally as follows:

- 1) Stoppage of the proposed sale of the IPP by Delta State Government/Respondents and/or anyone acting on her instructions/belief to anyone howsoever whatsoever, pending the satisfaction of the Claimant's demands.

2. The total sum of #8,114,264,282 (eight billion, one hundred and fourteen million, two hundred and sixty four thousand, two hundred and eighty two naira arising from lingering payment default of the sum of #3,374,572,295 (three billion, three hundred and seventy four million, five hundred and seventy two thousand, two hundred and ninety five naira) as original contract balance part of which valuation of work/advance payment recovery certificate No. 4 dated the 3rd day of July, 2014 was raised; and the sum of #4,739,691,987 (four billion, seven hundred and thirty nine million, six hundred and ninety one thousand, nine hundred and eighty seven naira) being variation cost of the contract as listed in the variation request.

For emphasis, Clause 3a of the aforementioned Agreement reads thus:

“3. MODE OF PAYMENT

- a) The contract sum shall be paid to the Contractor upon work evaluation and certification by the Employer provided that 10% of the value of work done but not exceeding five percent (5%) of the contract price shall be retained as retention fee until the expiration of the defect-liability period of twelve (12) months which shall be computed from the date of completion of works.”*

RELIEFS

The reliefs sought in this Arbitration are as follows:

1.) **A DECLARATION** that the failure of Delta State Government/Respondents to pay the Claimant the total sum of #8,114,264,282 (eight billion, one hundred and fourteen million, two hundred and sixty four thousand, two hundred and eighty two naira arising from lingering payment default of the sum of #3,374,572,295 (three billion, three hundred and seventy four million, five hundred and seventy two thousand, two hundred and ninety five naira) as original contract balance part of which valuation of work/advance payment recovery certificate No. 4 dated the 3rd day of July, 2014 was raised; and the sum of #4,739,691,987 (four billion, seven hundred and thirty nine million, six hundred and ninety one thousand, nine hundred and eighty seven naira) being variation cost of the contract as listed in the variation request, is a breach of Clause 3a of the IPP Agreement dated the 22nd day of March, 2011 as well as a breach on extant provisions of the said contract.

2.) **A DECLARATION** that the surreptitious plans of the Respondents to sell the said IPP Plant without recourse to the Claimant and without factoring the claimant's outstanding payments and consequential losses is a breach of Clause 3a and Clause 12d of the said IPP Agreement date the 22nd day of March, 2011.

3.) **A MANDATORY ORDER** directing Delta State Government/Respondents to immediately pay to the Claimant the sum of #8,114,264,282 (eight billion, one hundred and fourteen million, two hundred and sixty four thousand, two hundred and eighty two naira arising from lingering payment default of the sum of #3,374,572,295 (three billion, three hundred and seventy four million, five hundred and seventy two thousand, two hundred and ninety five naira) as original contract balance part of which valuation of work/advance payment recovery certificate No. 4 dated the 3rd day of July, 2014 was raised; and the sum of #4,739,691,987 (four billion, seven hundred and thirty nine million, six hundred and ninety one thousand, nine hundred and eighty seven naira) being variation cost of the contract as listed in the variation request, in compliance with Clause 3a of the IPP Agreement dated the 22nd day of March, 2011 and extant provisions of the said contract.

4.) **A MANDATORY ORDER DIRECTING** Delta State Government/Respondents their agents, servants and/or privies, to stop forthwith and desist from selling the said IPP to anyone howsoever and whatsoever without first settling the Claimant's the total sum of #8,114,264,282 (eight billion, one hundred and fourteen million, two hundred and sixty four thousand, two hundred and eighty two naira arising from lingering payment default of the sum of #3,374,572,295 (three billion, three hundred and seventy four million, five hundred and seventy two thousand, two hundred and ninety five naira) as original contract balance part of which valuation of work/advance payment recovery certificate No. 4 dated the 3rd day of July, 2014 was raised; and the sum of #4,739,691,987 (four billion, seven hundred and thirty nine million, six hundred and ninety one thousand, nine hundred and eighty seven naira) being variation cost of the contract as listed in the variation request, in compliance with Clause 3a of the IPP Agreement dated the 22nd day of March, 2011 and extant provisions of the said contract..

5.) **A MANDATORY ORDER DIRECTING** Delta State Government/Respondents their agents, servants and/or privies, to stop forthwith and desist from selling the said IPP to anyone howsoever whatsoever, if the said sale is to be done without recourse to the Claimant and without recourse to Clause 12d of the IPP Agreement.

6.) **AN ORDER DIRECTING** the Respondents to bear the cost of the Arbitration including Claimant's Arbitrator and Solicitor's cost.

7.) **AND FOR SUCH FURTHER ORDERS**

APPOINTMENT OF ARBITRATORS

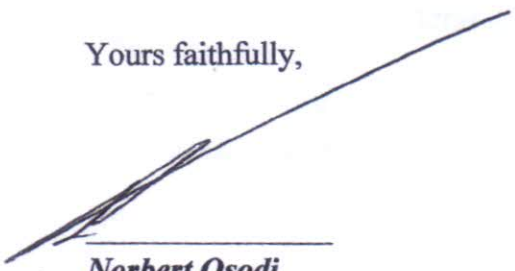
Be informed that in compliance with Clause 11 of the said IPP Agreement, we have chosen and appointed **Messers Albert Akpomudje, SAN** as our Arbitrator.

You are accordingly advised to choose your arbitrator for both Arbitrators to agree on the arbitrator that would preside over the Arbitration Panel as stipulated in Clause 11 of the said IPP Agreement in other for the arbitral panel to be speedily constituted.

TAKE NOTICE that should you fail to appoint your arbitrator within 30 days from the date of your receipt of this NOTICE, the claimant shall seek the leave of court to have one arbitrator appointed for you.

Thanks in anticipation as we await your response.

Yours faithfully,



Norbert Osodi.

FOR: DAVNOTCH NIG. LTD

Cc:

The Honourable Commissioner
Ministry of Energy
Asaba.