



Auditor General's Department

**The Special Audit Report on the Procurement of Coal
from the year 2009 to June 2016 by the
Lanka Coal Company (Private) Limited for
The Lakvijaya Power Plant, Norochhole presented
by the Auditor General at the request of the
Sectoral Oversight Committee on Energy of the Parliament**

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1. Background for the Issue of the above Report

This Report is forwarded in accordance with the request made to the Auditor General (Annexe1) by the Sectoral Oversight Committee on Energy of the Parliament, at the discussion held on 20 July 2016, to forward a Report on the Coal Procurements made by the Lanka Coal Company (Pvt) Limited (LCC) during the period from the year 2009 to June 2016 for the Lakvijaya Power Plant at Norochhole of the Ceylon Electricity Board (CEB).

1.2 Scope

In accordance with the above request made, the matters relating to six Term Contracts, five Spot Contracts and the Coal purchased/obtained from the Ceylon Shipping Corporation (CSC) were examined (The definition of the two system of Procurement appear in Paragraph 7.1)

1.3 Compliance Examination

The Government Procurement Guidelines-2006 issued on Public Procurements by the National Procurement Agency as the NPA Circular No.08 of 25 January 2006 and the amendments on that issued up to date were used as the base document for the compliance examination of those transactions.

(Even the Cabinet of Ministers had given instruction on 04 September 2014 to the Secretary to the Ministry of Power and Energy to take action for the purchase of coal by following the Approved Procurement Procedure of the Government. (Annexe 2)

2. Report Preparation Methodology

The following methodologies were followed in the preparations of this Report.

2.1 Examination of Documents

The examination of the undermentioned documents was carried out subject to the matters appearing in paragraph 3 below.

- (a) The Cabinet Memorandum relating to the establishment of the Lanka Coal Company (Annexe 3) the decision of the Cabinet of Ministers (Annexe4) the Certificate of Incorporation relating to the registration under the Companies Act, No.07 of 2007 (Annexe 5), the Articles of Association (Annexe 6) and the Share Certificates (Annexe 7).
- (b) The following documents from the first invitation for bids to the sixth invitation for bids for the procurement of coal under the Term Contracts and from the first invitation for bids to the fifth invitation for bids for procurement of coal under the Spot Contracts.
 - The request made by the Ceylon Electricity Board for carrying out procurement activities.
 - The correspondence of the Ministry of Power and Renewable Energy (the then Ministry of Power and Energy) with the Lanka Coal Company.
 - Documents relating to the registration of suppliers
 - Bidding Documents
 - Bid Bonds
 - Performance Bonds
 - Letters of Appointment of the Technical Evaluation Committees
 - Reports of the Technical Evaluation Committees

- Letters of Appointment of the Standing Cabinet Appointed Procurement Committees
 - Reports of the Standing Cabinet Appointed Procurement Committees
 - Letters of Credit
 - Bills of Lading
 - The Quality Reports on Coal, jointly prepared and submitted by the representatives of the supplier and the buyer at the time lading.
 - Cabinet Memorandums
 - Relevant Newspaper Reports
 - Other sundry Documents
- (c) Agreements signed by the Lanka Coal Company with the Suppliers
- (d) Correspondence on the Purchase of Coal exchanged between the Lanka Coal Company and the Ceylon Shipping Corporation (CSC).
- (e) Agreement signed by the Lanka Coal Company with the Ceylon Shipping Corporation for the transport of coal.
- (f) Agreement signed by the Lanka Coal Company with the Ceylon Electricity Board for the supply of coal.
- (g) The judgment dated 24 June 2016 declared on the case on the Sixth Term Contract filed by the Noble Resources Ltd. In the Supreme Court of the Democratic Socialist Republic of Sri Lanka. (Annexe 8)
- (h) The judgment dated 15 July 2016 declared on the complaint against the Liberty Commodities Ltd., filed by the Lanka Coal Company in the Supreme Court of the Democratic Socialist Republic of Sri Lanka. (Annexe 9).
- (i) The Appeals in connection with the above procurements made by the Suppliers and the Reports on those Appeals forwarded by the Appeal Board to the Cabinet of Ministers.
- (j) The Report of the Three Member Committee under the Chairmanship of Mr.Lalith R de Silva appointed by the Secretary to the President on 07 October 2015 upon the decision of the Cabinet of Ministers dated 22 September 2015 for the examination of the deficiencies highlighted in the Report on nearest tender

furnished by the Procurement Appeal Board and on the other tenders from the year 2009 onwards. (Annexe 9A)

- (k) The Report dated 29 July 2016 of the Three Member Committee appointed by the Minister of Power and Renewable Energy on 12 July 2016 for “carrying out a Study of the Purchase Process of Coal for the Lakvijaya Power Plant during the period 2015 and 2016”. (Annexe 9B)
- (l) The Statement tabled in Parliament on 20 July 2016 by the Minister of Power and Renewable Energy. (Annexe 9C)

2.2 Other Examinations

- (a) The information relating to the above process received in different forms were subjected to an analytical review.
- (b) Discussions with the relevant parties.
- (c) On the spot examination – Lakvijaya Power Plant – Norochhole

3. Limitation of Scope

It is emphasized that in arriving at the conclusions through the observations highlighted in this Report, my scope was subjected to the following limitations.

- (a) The existence of a period of 8 years between the subject process which commenced in the year 2008 and the date of the mandate of the Auditor General to carry out an examination of the process.
- (b) Inability to participate in a physical stock verifications of coal.
- (c) Non-submission of the original documents of the files relating to the Third, Fourth and Fifth Term Contract Procurements maintained by the Ministry of Power and Renewable Energy. (The photocopies of a part of the originals only were made available for audit as those documents had been handed over to the Commission to Investigate Allegations of Bribery or Corruption for investigations. (Annexe10).
- (d) Certain documents relating to procurement which should have been examined in Audit had not been furnished to Audit. (Annexe 10)

4. Obtaining Services of Specialists in Procurement

In pursuance of provisions in the Article 154(4)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka, the Auditor General can engage the services a specialist in the examination of any technical, professional or scientific problem relevant to the audit. Accordingly, the services of Mr.M.S.M. Suhair, a retired Officer in Class I of the Sri Lanka Accountants' Services, who has experience and the specialist knowledge of large scale procurement activities of the Government, was obtained.

5. Establishment of the Lanka Coal Company

According to the Cabinet Memorandum on the establishment of a Limited Company named Lanka Coal Company for the purchase of coal for the Coal Thermal Power Plants planned for construction at Norochhole, Trincomalee and Hambantota, presented to the Cabinet of Ministers on 03 April 2006 (Annexe 3) by the then Minister of Power and Energy, the Cabinet of Ministers had granted the approval for the establishment of this company on 05 April 2006. (Annexe 4).

5.1 Capital Composition of the Company

The Lanka Coal Company had been established on 23 January 2008 in accordance with the above approval and the composition of the Capital of the Company since that date to date had been as follows (Annexe 7).

Share Ownership	Percentage of Shares	Number of Shares	Share Capital	Date of Issue of Share Certificates
Ceylon Electricity Board	60	1,200,000	Rs. 12,000,000	23.01.2008 1 Share 22.07.2008 599,999 shares 21-07.2009 600,000 shares
General Treasury	20	400,000	4,00,000	24.03.2009 200,000 shares 11.12.2009 200,000 shares
Ceylon Shipping Corporation	10	200,000	2,000,000	22.07.2008 100,000 shares 15.03.2010 100,000 shares
Sri Lanka Ports Authority	<u>10</u>	<u>200,000</u>	<u>2,000,000</u>	24.03.2009 100,000 shares 03.09.2009 100,000 shares
Total	<u>100</u>	<u>2,000,000</u>	<u>20,000,000</u>	

5.2 Objectives of the Company

According to the Article of Association of the Company the Objects of the Company are as follows.

- (a) To carry within Sri Lanka and outside Sri Lanka the business of contracting, procurement, sale, and distribution of Coal, Coal by-products, Petroleum Coke or any other Petroleum Coke by-product, Liquid Natural Gas, Syn Gas (Synthetic Gas) or any other form of energy or energy generating raw material or semi-finished or finished product.
- (b) To own, build, have, construct, secure, and/or otherwise obtain necessary facilities, infrastructure, and other requirements for the reception, treatment, processing, packaging, storage, transportation and delivery of Coal, Coal by-products, Petroleum Coke or any other Petroleum Coke by-product, Liquid

Natural Gas, Syn Gas (Synthetic Gas) or any other form of energy generating raw material or semi-finished or finished product.

- (c) To build, construct, own, operate, contract or otherwise acquire energy generating Power Plants of whatsoever kind of description, including but not limited to Thermal and Coal Power Plants, and to undertake and/or enter into contracts for the Operation and Maintenance of all such plants.
- (d) To build, construct, maintain, operate and manage the necessary works, including but not limited to Transmission Lines and Substations; for the inter-connection of Generating Stations and Substation for the transmission and distribution of electricity in bulk or otherwise from Generating Stations and Substations to such places as may be necessary from time to time.
- (e) To produce independent power and energy and transmit same to feed the National Grid.
- (f) To purchase, manufacture, lease, deal, hire, exchange, own or otherwise acquire ships and other ocean going vessels for the transport of Coal, Coal by-products, Petroleum Coke any other Petroleum Coke by-product, Liquid Natural Gas, Bio Gas or any other form of energy generating raw material or semi-finished or finished product.
- (g) To carry on, undertake, and execute road and bridge construction work and development and maintenance work of all description for the Road Development and maintenance work of all description for the Road Development Authority, Municipality, Pradeshiya Sabhas or any other authority, Board, Organisation, Company, Firm or Individual in collaboration or otherwise.
- (h) To carry on the business of hydraulic and water supply engineers and to sink wells and shafts and to make water works, cisterns, wells, culverts, filter beds main and other pipes and appliances and to execute and to do all other works and things necessary or convenient for the purposes of obtaining, storing, selling, delivering measuring and distributing water to supply persons, organizations, villages, towns, cities, provinces, states or any other country.

- (i) To carry on the business of and to undertake civil, structural, mechanical, electronic, electrical, hydraulic, mining and any other form of engineering works and of construction contractors.
- (j) To carry on any one or all of the above mentioned business and any other business or business which is ancillary or incidental or connected to the main objectives of the Company within Sri Lanka and outside Sri Lanka.

The Audit Observations on the above mentioned objects appear in the paragraph 18.1 below.

5.3 Staff

The approved staff of the Company as at 31 December 2015 had been 18 and the actual staff as at that date had been 14.

5.4 Operational Position of the Company

The financial position of the Lanka Coal Company from the year 2008 to the year 2015 is given below.

	2008 Rs.	2009 Rs.	2010 Rs.	2011 Rs.	2012 Rs.	2013 Rs.	2014 Rs.	2015 Rs.	2016 (As at 30 June) Rs.
Income	-	-	-	87,650,449	199,599,203	52,856,223	34,173,684	32,774,884*	18,354,497*
Other Income	820,286	3,226,423	21,874,756	55,394,699	24,421,328	1,598	1,479,708	6,883,043	2,204,972
Expenditure (Except Salaries)	2,999,923.	4,296,737.	6,744,444	44,967,929	67,436,216	22,518,867	20,526,000	24,628,897	11,890,574
Salaries	3,423,676	5,193,990	4,291,754	5,520,217	8,616,351	8,344,337	13,739,803	14,890,479	8,647,496
Financial Expenses	7,936.93	17,552	675,817	254,088	54,967	345,795	188,554	138,551	21,399
Profit / Loss	(5,611,251)	(6,281,857)	10,162,741	92,302,913	147,912,997	21,648,821	1,999,036	-	-

5.5 Reimbursement of Expenditure of Lanka Coal Company by the Ceylon Electricity Board

The Lanka Coal Company and the Ceylon Electricity Board had not entered into an agreement, at the inception, in connection with the supply and purchase of coal. Nevertheless, the Lanka Coal Company had charged U.S.\$ cents 30 per metric ton for the supply of coal to the Ceylon Electricity Board. The Lanka Coal Company and the Ceylon Electricity Board had entered into an agreement on 05 September 2013 (Annexe11) and thereafter the Lanka Coal Company had made charges as in the past. According to the agreement entered into between the Lanka Coal Company and the Ceylon Electricity Board on 10 October 2014 (Annexe12), it had been agreed to reimburse the Net Overhead Cost of the Lanka Coal Company by the Ceylon Electricity Board. Subsequently, on 23 May 2016, the Ceylon Electricity Board and the Lanka Coal Company had entered into a new agreement. (Annexe13)

6. Coal Requirements of the Lakvijaya Coal Power Plant, Transport, Unloading and Storage

The power generation of the First Stage of the Norochhole Coal Power Plant had been commenced in February 2011 and the annual coal requirement in that connection had been identified as 650,000 metric tons. The power generation of the Second and the Third Stages thereof had been commenced in April and September 2013 respectively. Accordingly, the total annual coal requirement had been 2,250,000 metric tons. As the period from April to September is the off season with rough sea in the Norochhole area, it is not possible to unload coal and the coal carried ships or barges cannot reach the jetty of the Power Plant. As such the annual coal requirements for the generation of thermal power are collected from October to March of the ensuing year, stored in the Coal Yard and used for uninterrupted generation of power. The quantity of coal carried by ships arriving at Norochhole is about 65,000 Metric tons (Panamax) and according to the above requirement it is expected that ships have to make about 35 shipments in the year.

6.1 Payments for Coal

The Deaf Coal for spreading on the Power Plant Yard and the Thermal Coal for combustion in the Power Plant had been purchased on the Free On Board (FOB) or Cost Insurance and Freight (CIF) Basis according to the alternative methods referred to in paragraph 7 below. According to that basis, the ownership of coal is transferred to the Lanka Coal Company from the loading of the stock of coal to the ship and at the time of reaching the jetty respectively.

Out of the total value of the Stock of Coal under the FOB basis (adjusted according to the report issued after testing the Samples at the loading Port) 100 per cent should be paid to the supplier before the receipt of the Stock of Coal (after the receipt of the final invoice). In the procurement of coal under the Spot Contract, it is possible for the supplier to realise 85 per cent of the value of the stock of coal before the receipt of the stock of coal. The balance 15 per cent is paid to the supplier after unloading the coal.

6.2 Coal Handling Process from the time of Loading Coal to the Ship up to the Issue to the Power Plant

- Examination by an independent Quality Inspector.
- Loading Coal to the Ship by the Supplier.
- Loading of such coal to the barges in the deep sea about 4 Kilometers from the Norochhole Power Plant Jetty as the ships cannot reach the Norochhole Power Plant Jetty. (Annexe14)
- Barges loaded with coal brought to the Power Plant Jetty.
- Cranes unload coal from the barges to the Zero Belt.
- Coal sent to the Coal Yard through that Belt.
- Proper piling of coal in the yard and moving those by Backhoe machines close to the machine used for sending coal to the Power Plant.

7. Methodologies followed for Coal Purchased/Obtained

7.1 Purchases made by following the Procurement Process

Purchases had been made under the following two systems by following the International Competitive Bidding System

- Term Contracts

Purchase made under the contracts generally awarded for a period exceeding one year to obtain relatively a larger quantity of coal from the suppliers selected by inviting open quotations are considered as Term Contracts.

- Spot Contracts

Purchases made under the contracts awarded for obtaining relatively a smaller quantity over a very short period by inviting bids from the registered suppliers at the prevailing competitive prices are considered as Spot Contracts.

(a) Summary of Term Contracts followed.

The activities relating to the purchase of coal for the Lakvijaya Thermal Power Plant situated at Norochhole under the Term Contract Procurement was commenced by the Lanka Coal Company in the year 2008 in accordance with the decision of the Cabinet of Ministers dated 27 March 2008 (Annexe15). Accordingly, out of 06 Term Contract Procurements commenced during the period up to June 2016, the contracts on two procurements had been awarded to the Noble Resources Company and the Swiss Singapore Company. Out of that, 3 had been cancelled due to reasons appearing in the Table at paragraph 8 of the Report. The Fourth Procurement commenced had been cancelled without inviting bids.

(b) Summary of Spot Contracts followed

In order to avoid the shortages of coal that could occur due to the weaknesses in the Procurement Process for the selection of the Term Contract Suppliers (as

appearing in the Cabinet Memorandum) 06 Spot Contract Procurements had been commenced. Out of that the Third Procurement had been cancelled due to the reasons appearing in paragraph 13.3. The contracts for the balance 05 procurements had been awarded as expected and the Liberty Commodities Company and the Adani Global Company had been selected in all 05 occasions.

7.2 Purchases made/obtained without following the Procurement Process

Purchases of coal had been made in three occasions from the Ceylon Shipping Corporation, treating it as a supplier, without following the procurement process as shown in detail in paragraph 14.2. Further, coal had been purchased/obtained and supplied to the Ceylon Electricity Board in one occasion, without following the Procurement Process, and in accordance with a decision of the Board of Directors of the Lanka Coal Company (Annexe16) as given in detail in paragraph 14.1.3.

The occasions of Purchases so made/obtained outside the Procurement Process, in brief are as follows.

(a) Purchases of Coal made from the Ceylon Shipping Corporation as a Supplier

The Lanka Coal Company had purchased Deaf Coal from the Ceylon Shipping Corporation outside the Procurement Procedure. Further, Thermal Coal also had been purchased subsequently on two occasion outside the Procurement Process.

(b) Alternative Stocks obtained from the Ceylon Shipping Corporation due to the problems that arose in the Transport /Unloading Coal.

The Ceylon Shipping Corporation had transported the Thermal Coal supplied by the Noble Resources Company and those stocks brought by Shipments 16 and 17 could not be unloaded due to the rough seas and had been sold by the Ceylon Shipping Corporation to other buyers. Similarly, the Deaf Coal referred to in paragraph (a) above had to be carried back due to the inability to unload. The Thermal Coal as well as a part the Deaf Coal which could not be unloaded had been supplied subsequently by the Ceylon Shipping Corporation.

7.3 Determining the Purchase Price of Coal

The following price Indexes which are internationally recognized had been made the basis for determining the price of coal.

7.3.1 New Castle Index

This is a recognized Index used for determining the price of coal supplied by the countries as in the Asia Pacific Zone. (This Index can be obtained by the parties registered with the www.globalcoal.com Web Site)

7.3.2 API 4 Index

This is a recognized Index used for determining the price of coal supplied by the countries in the African Zone (This Index can be obtained by the parties registered with the www.cmegroup.com Web Site)

(the Lanka Coal Company is a Company registered in the above Web Sites)

7.3.3 Working of the Coal Power Plant

According to the information supplied by the Ceylon Electricity Board, the total Electricity Units generated by the Lakvijaya Power Plant from its inception to 31 October 2016 had been 15,744 Giga Watt Hours. The expenditure on one Thermal Fuel Kilowatt Hour generated at present amounts to Rs.21.44 and the direct cost of one Kilowatt Hour generation by the Power Plant is Rs.5.23. The overall income earned by the Power Plant amounts to U.S.\$1,823 million and the expenditure incurred on the construction of the Power Plant amounted to U.S.\$1,346 million. As such, the income exceeding the total expenditure incurred at present amounts to U.S.\$477 million.(Annexe17).

8. Term Contract Procurement

The information on the six Term Contract Procurements executed by the Lanka Coal Company up to 30 June 2016, in brief, is given below.

First Procurement	Date of Inviting Bids	Number of Bids Received	Date of Receipt of Technical Evaluation Committee Recommendation	Date of Receipt of Recommendation of Procurement Committee	Date of Submitting Cabinet Memorandums	Decision and Date of Cabinet Approval	Reference
1	Inviting of Expression of Interest 2008.04.16	28	2008.07.14	2008.07.21	No	Procurement Committee had cancelled the Procurement and invite bids again without obtaining the approval from the Cabinet	Paragraph No. 12.1
	Inviting Bids 2009.01.08	02	2009.06.12	2009.06.29			
2	2009.07.27	12	2009.11.11	2009.12.07	2010.02.03	Decided on 06 April 2010 to award contact to the Noble Resources Company.	Paragraph No. 12.2
3	2011.12.29	12	2012.10.25 2012.12.31	2012.11.02 2013.01.08	2013.05.03	Approval granted to cancel the Tender on 21.05.2013 and procure from the current supplier in case of emergency required of coal.	Paragraph No. 12.3
4	Procurement ceased before inviting Bids					Approval granted on 11 November 2013 for purchase up to a maximum of 1 million metric tons of coal according to terms of conditions of the Noble Resources Company at the base price of U.S.\$ 68.50 and for extension of current agreement up to 31 March 2014.	Paragraph No. 12.4
5	2014.04.17	06	2014.07.09	2014.07.09	2014.08.13 / 2014.09.29	Approval granted for the purchase of 1.97 million metric tons of coal at U.S.\$ 94.65 from Indonesia U.S.\$ 95.83 from Russia and from South Africa at U.S.\$ 94.13 and extension of period by 06 months.	Paragraph No. 12.5
6	2014.11.27	08	2015.07.03	2015.07.03 2015.10.01	2015.09.16 2015.10.01	Decided on 12 October 2014 to award the Bid to M/S Swiss Singapore Company.	Paragraph No. 12.6

9. Spot Contract Procurements

The information on the 05 Spot Contract Procurements executed by the Lanka Coal Company up to 30 June 2016, in brief, is given below.

Procurement	Quantity Ordered Metric Ton	Date of approval of Procurement Committee to Process	Bidder	Price U.S.\$.	Date of informing Lanka Coal Company by the Secretary to the Ministry	Date of Issue of Letter of Award	Date of Signing Agreement	Date of Cabinet Memorandum	Date of Covering Approval of the Cabinet	Reference
01	165,000	2015.08.10	Liberty	69.47 CIF(55.70 FOB)	2015.08.11	2015.08.11	2015.08.17	2015.11.19	2015.12.09	Paragraph No. 13.1
Re-order	82,500	2015.08.20	Liberty	69.47 CIF(55.70 FOB)	2015.08.26	2015.08.27	No	2015.11.19	2015.12.09	
02	330,000	2015.09.17	Liberty	51.29 FOB	2015.09.21	2015.09.17	2015.09.18	2016.01.13	2016.01.27	Paragraph No. 13.2
03	Cancelled									Paragraph No. 13.3
04	330,000	2016.01.06	Liberty	49.85 FOB	2016.01.06	2016.01.07	2016.01.21	2016.06.28	2016.07.12	Paragraph No. 13.4
05	260,000 (Thermal) 20,000 (Deaf Coal)	2016.03.03	Adani	50.25 FOB (Thermal) 33.00 FOB (Deaf Coal)	2106.03.10	2016.03.04	2016.03.09	Not submitted for Approval		Paragraph No. 13.5

10. Instances of Purchases made/Obtained outside the Procurement Procedure

The instances of coal purchased/obtained by the Lanka Coal Company from the Ceylon Shipping Corporation and the Noble Resources Company without following any Procurement Process whatsoever had been as follows.

Supplier	Shipment	Quantity Ordered Metric Tons		Price per Metric Ton (U.S.\$)		Date of Signing Agreement	Reference
		Thermal Coal	Deaf Coal	Thermal Coal	Deaf Coal		
Ceylon Shipping Corporation	0 (DC 1)	-	19,892		80.56(CIF)		Paragraph No. 14.2
Ceylon Shipping Corporation	3	81,688	-	150.92(CIF)	-	2011.12.21	Paragraph No. 14.2
Ceylon Shipping Corporation	13	59,358	9,640	137.67(CIF)	81.02(CIF)	2011.12.21	Paragraph No. 14.2
Ceylon Shipping Corporation	19	32,827	12,375 12,650	107.78(CIF)	80.72 (CIF) 72.14 (CIF)	2012.06.29	Paragraph No. 14.2
Ceylon Shipping Corporation	20	55,111	-	100.67 (CIF)	-	2012.06.29	Paragraph No. 14.2
Noble Resources	47	54,200	-	97.33 (CIF)	-	2014.07.24	Paragraph No. 14.1.3
Noble Resources	48	54,270	-	95.76 (CIF)	-	2014.07.24	Paragraph No. 14.1.3
Noble Resources	49	56,739	-	98.52 (CIF)	-	2014.07.24	Paragraph No. 14.1.3
Noble Resources	50	57,530	-	98.22 (CIF)	-	2014.07.24	Paragraph No. 14.1.3
Total		451,543	54,557				

11. Quantities and Dates of Purchase of Coal by the Lanka Coal Company

The generation activities of the Coal Thermal Power Plant at Norochhole had commenced in February 2011. The information on the purchase of Thermal Coal, from the commencement of the purchase of coal by the Lanka Coal Company in November 2008 to June 2016, in brief, had been as follows.

<u>Supplier</u>	<u>Quantity Metric Tons</u>	<u>Number of Shipments</u>	<u>Period *</u>		<u>Amount Paid U.S.\$.</u>		<u>Reference</u>
			<u>From</u>	<u>To</u>	<u>To Supplier</u>	<u>For Transport</u>	
Noble - Second Term Procurement	2,237,994	37	2010.11.30	2014.01.09	203,661,590	60,113,307	Paragraph No. 14.1.1
Noble – First Extension of Period	210,972	4	2014.02.17	2014.03.23	14,221,208	5,398,175	Paragraph No. 14.1.2
Noble – According to Decision of the Board of Directors	222,739	4	2014.08.29	2014.10.23	16,042,418	5,673,162	Paragraph No. 14.1.3
Noble – Second Extension of Period	1,626,987	28	2014.10.15	2015.03.24	104,437,229	34,104,416	Paragraph No. 14.1.4
Ceylon Shipping Corporation	284,978	5	2011.03.07	2012. 11.05	32,157,128	6,546,559	Paragraph No. 14.2
Liberty - Spot 1	226,290	4	2015.09.01	2015.10.14	12,295,615	3,116,013	Paragraph No. 14.4
Liberty - Spot 2	370,594	7	2015.10.04	2015.11. 18	18,296,805	5,392,143	Paragraph No. 14.4
Swiss Singapore- Sixth Term Procurement	1,064,724	18	2015.11.16	2016.03. 28	57,932,357	15,491,734	Paragraph No. 14.5
Liberty - Spot 4	383,804	7	2016.01.24	2016.03.14	18,229,353	5,584,348	Paragraph No. 14.4
Adani - Spot 5	146,117	3	2016.04.02	2016.04.05	7,253,790	2,126,002	Paragraph No. 14.6
Total	<u>6,775,199</u>				<u>484,527,493</u>	<u>143,545,859</u>	

* According to Bills of Lading

12. Term Contract Procurement

The detailed information on the Term Contract Procurements commenced by the Lanka Coal Company and ceased halfway/cancelled and contracts awarded is as follows.

12.1 First Procurement- 2009

12.1.1 Obtaining the Approval of the Cabinet of Ministers for the Procurement

The following observations are made.

- (a) The Cabinet Memorandum on the topic of the Supply of Coal to the Puttalam Thermal Power Plant, for the appointment of a Technical Evaluation Committee (Technical Evaluation Committee) and a Standing Cabinet Appointed Procurement Committee (Procurement Committee) for the direction of the Procurement of coal from the Lanka Coal Company and the said company to Invite the Expression of Interest immediately, submitted by the then Minister of Power and Energy on 02 March 2008 (Annexe18) had been approved by the Cabinet of Ministers on 27 March 2008 (Annexe19). Accordingly, the Deputy Secretary to the Treasury had appointed to Technical Evaluation Committee and the Procurement Committee on 23 April 2008 (Annexe20).
- (b) According to the Guideline 2.11.1(c) of the Procurement Guidelines (Annexe 21) the first meeting jointly with the Technical Evaluation Committee and the Procurement Committee should be held to agree on the Procurement Time Schedule, the procurement method and the types of bidding documents.
The audit observations relating to this paragraph appear in paragraph No.18(2)(a).
- (c) According to the paragraph (a) above, the Cabinet of Ministers had granted approval on 27 March 2008 for inviting the Expression of Interest for the First Procurement. In the newspaper advertisement for inviting the Expression of Interest for the First Procurement, the Lanka Coal Company had included in

words “Adequate information on the sources and methodologies relating to the expected supply of coal should be supplied and should have had 5 years experience in supply of coal or in a business of similar nature” in order to confirm that the supplier had the capacity to fulfil the total coal consumption requirements.

The Audit observations relating to this Paragraph appear in paragraph No.18.2(b).

12.1.2 Bidding Process

The bidding process had been executed under 3 stages, that is, the procedures for Inviting Expressions of Interest from the parties who show willingness to present bids in the first instance, the examination of the pre-qualifications of the parties selected therefrom and prepare a Register of Bidders who qualify in the second instance and the limitation of inviting bids in the future to the competitors registered in such register in the third instance.

12.1.3 Inviting Expressions of Interest and Evaluation

- (a) The Chairman/Managing Director of the Lanka Coal Company had published the Newspaper advertisement inviting Expressions of Interest on 16 April 2008. (Annexe22). According to that advertisement, the bid had been closed on 30 May 2008 and 28 applications from the Bidders as stated in Annexe23 had been received as at that date.
- (b) The Procurement Committee had, at the first meeting held on 21 July 2008, decided to issue application to 26 out of the 28 appearing the above Annexe 23 who had paid the application fees and furnished the Expressions of Interest without considering the qualifications.

12.1.4 Examination of Pre-qualifications

According to a letter of the Chairman of the Lanka Coal Company, the bidders had been informed to obtain the Pre-qualification Applications within the period from 22 July 2008 to 01 August 2008 and that if the applications are not obtained by calling at the Office, those will be sent to the bidders by registered post.

- (a) Out of 12 Pre-qualifications Applications received, 08 had been recommended as qualified by the Technical Evaluation Committee on 03 October 2008. That recommendation had been approved by the Procurement Committee on 14 November 2008 and accordingly, it had been decided to invite bids from the eight parties.

12.1.5 Invitation for Bids

The Company had commenced the work on purchases in the year 2008 with the purchase of 1,950,000 +- metric tons of coal for a period of 03 years at 650,000 +- metric tons of coal per year as the First Procurement. Even though the last date of accepting bids according to the Bid Invitation of 16 April 2008 had been 09 March 2009, that date had been subsequently extended to 23 March 2009 by revision 01, to 05 May 2009 by revision 04 and to 02 June 2009 by revision 05.

Only the photocopies of the letters prepared to inform the bidders the first and second extension under Revision 01 and Revision 04 had been filed. In all those photocopies, the words "Sent for all bidders" and "Faxed and e-mailed to all bidders" had been inserted in handwriting to indicate that those had been sent, faxed / emailed to all bidders. (Annexe 24)

The audit observations relating to this paragraph appear on paragraph No.18.2(c).

12.1.6 Extension of Invitation for Bids

Lanka Coal Company had extended the last date for accepting bids from time to time as shown above and the Invitation for Bids had been closed on 02 May 2009.

12.1.7 Bid Opening and Evaluation

Even though 08 Bid Documents had been issued in connection with this procurement, only 02 had been received. Those bids had been opened on 02 June 2009. In the bid evaluation one bidder had not been technically responsive and in the evaluation of financial proposals, the other bidder had also been rejected.

12.1.8 Complaints of Bidders and Cancellations of Procurement

The Senok Bhatiya Coal Company which was the only bidder who had responded technically for the above procurement had made an appeal. The Procurement Committee had, after considering that appeal, decided on 26 June 2009 to cancel the above procurement and to invite bids again. (Annexe25).

The audit observations relating to the paragraph appear in paragraph 18.4(d)

12.2 Second Procurement - 2009

12.2.1 Invitation for Bids

Subsequent to the cancellation of the First Procurement as referred to above, and according to a decision taken on 13 July 2009, by the Procurement Committee appointed for the First Procurement the Lanka Coal Company had invited for bids through a newspaper advertisement published on 27 July 2009, for the purchase of 1,950,000±20 per cent (650,000±20% \times 3) for a period of 3 years (\pm 10% means allowing for the supply of the ordered quantity less or more by 20 per cent). Nevertheless, the approval of the Cabinet of Ministers had neither been obtained for this procurement nor brought to the notice of the Cabinet of Ministers.

Even though 86 Bid Documents had been issued in relation to this procurement, 12 only had been received. Those bids had been opened on 02 June 2009 and at the Technical Evaluations 09 bids had been found non-responsive. The technical proposals and the financial proposals in relation to this procurement under Single Stage - Two Envelop system were opened on 10 September 2009 and 16 October 2009 respectively.

12.2.2 Bid Evaluation

Name of Bidder	Price Offered (US\$)(FOB) Per Metric Ton	Evaluation Price (US\$)(CIF) Per Metric Ton	Position (Base on the Least Price)
----- Holcim Trading Company	60	87.99	01
Coal of Africa Company	64	86.85	02
Noble Resources International (Pvt) Company	73.53	89.81	03

Based on the recommendation of the Technical Evaluation Committee dated 11 November 2009, the Procurement Committee had recommended on 07 December 2009, the purchase of 65,000±20 per cent metric tons of coal from the Holcim Trading Company which had offered the lowest prices at US\$ 60.00 per metric ton on the FOB basis (on board ship)

12.2.3 Communication of the Selection

The decision of the Procurement Committee referred to above paragraph had been communicated on 28 December 2009 in terms of Guideline 8.3 of the Procurement Guidelines to all bidders informing that representations, if any, should be made to the Procurement Appeal Board within one week.

12.2.4 Procurement Appeals

Three appeals in connection with this procurement, as shown below, had been received, and one of the bidders included in the above paragraph 12.2.2, that is, the Coal of Africa Company had not made appeals. The appeals so made had been referred to the Appeal Board on 13 January 2010.

Bidder	Date of forwarding Appeals
-----	-----
	-
Noble Resources Company	04 January 2010
Senok Bathiya Company	04 January 2010
PT Wahara Mining Company	07 January 2010

12.2.5 Decision of the Appeal Board and Award of Bids

As the decision of the Appeal Board on the appeals referred to above would be delayed, a Cabinet Memorandum recommending that the Holcim Trading Company is the bidder successful both technically and commercially had been submitted by Minister to the Cabinet of Ministers on 03 February 2010 by the Minister. The Cabinet of Ministers had taken a decision on 10 February 2010 directing that, until the receipt of the recommendation of the Appeal Board the transport of Coal should be done by the Ceylon Shipping Corporation. (Annexe 26)

The Appeal Board had rejected the appeals forwarded by the SenokBathiya Company and the PT Wahara Mining Company. The appeal made by the Noble Resources Company had been considered and the appeal Board had recommended on 25 February 2010, that in view of the following matters the bid should be awarded to the Noble Resources Company.

- More energy can be produced from the coal supplied by that Company (Noble Resources) and the total cost of coal of the Noble Resources Company amounts to US\$ 58,376,500 and the total cost of the Holcim Trading Company amounts to US\$ 62,124,019 and as such an additional cost of US\$3,747,519 could be prevented.
- Being the Bidder offering the technically and commercially qualified lowest price.

12.2.6 Decision of the Cabinet of Ministers

Considering the decision of the Appeal Board (referred to the paragraph 12.2.5 above), the Secretary to the Line Ministry had communicated to the Cabinet of Ministers on 09 March 2010, through the Minister that his Ministry has no objection to awarding the Contract to the Noble Resources Company subject to the condition that the price per metric ton is further reduced to less than U.S.\$ 70.45.

Accordingly, the Cabinet of Ministers had decided on 24 March 2010 to award the bid to the Noble Resources Company subject to the condition that the price of the Noble Resources Company amounting to U.S.\$ 70.45 per metric ton should be further reduced. The Minister had submitted a Note to the Cabinet of Ministers on 03 April 2010 that the supplier had agreed to supply coal at U.S.\$ 70.00 per metric ton. Accordingly, the Cabinet of Ministers had granted approval on 06 April 2010 (Annexe 26 and 28) for the purchase of coal from the Noble Resources Company at the base price of U.S.\$ 70.00 per metric ton over a period of 3 years. (First Stage of the Norochchole Power Plant) with effect from April 2010 and for the transport of coal by the Ceylon Shipping Corporation.

12.2.7 Award of Contract

The Lanka Coal Company had sent the Letter of Contract Award to the Noble Resources Company on 20 April 2010. Subsequently, on 06 July 2010, the Lanka Coal Company had entered into an agreement with the Noble Resources Company (Annexe 29) with the Noble Resources Company for the purchase of 1,950,000 +/- 20% metric tons of coal at the base price of U.S.\$ 70.00 per metric ton for the period from February 2011 to February 2014 (considering the period of supply of coal as 03 years from the date of commencement of commercial operations of the Power Plant) and the Lanka Coal Company had entered into an agreement with the Ceylon Shipping Corporation (Annexe 30) on 08 September 2010 for the transport of the same quantity of coal.

12.3 Third Procurement – 2011

12.3.1 Invitation for Bids for Procurement

The approval of the Cabinet of Ministers for this procurement had been obtained and the Lanka Coal Company had published a newspaper advertisement (Annexe31) on 29 December 2011 for inviting bids for the purchase of 4,500,000 (1,500,000 x 3) metric tons of coal on CIF Jetty, basis over a period of 3 years.

12.3.2 Bid Process

Even though the advertisement referred to in the above paragraph indicated the last day for obtaining Bid Documents as 19 January 2012 and the closing date for bids as 28 March 2012, four revisions had been issued for extending the last date of obtaining the Bid Documents twice and extending the date of closing the bids twice. (Annexe32). The Pre-bid meeting had been held on 26 January 2012 and the examination of the Coal Yards by the coal bidders had been done on 27 January 2012. The requirement for registration under the Public Contracts Act, No. 13 of 1987 (Annexe 33A) had been discussed at the meeting dated 26 April 2012 of the Procurement Committee relating to the Third Procurement (Annexe 33). Accordingly the Procurement Committee had issued instructions to the Lanka Coal Company to obtain legal advice regarding the requirement for registration under that Act, furnish a report on that to the Procurement Committee and for the amendment of the Bidding Documents accordingly.

Even though 82 Bid Documents had been issued in relation to this procurement, 12 only had been received. Those bids had been opened on 16 May 2012 and at the Technical Evaluation, 06 bids had been found non-responsive.

The audit observations relevant to this paragraph appear in paragraph No. 18.2 (d).

12.3.3 Bid Evaluation

The Technical Evaluation Committee had, on 25 October 2012, recommended to the Procurement Committee (Annexe 34) to award the bid for the purchase coal at US\$ 108.10 per metric ton on the CIF basis from the Taurian Company which had offered the commercially and technically responsive lowest price.

One of the bidders, namely Coal & Oil Company had submitted an objection to the Lanka Coal Company on 25 October 2012 that the representatives of the companies that offered bids for this procurement and their local representatives had not registered under the Public Contracts Act. (Annexe 34A) As specified in the decision dated 02 November 2012 of the Procurement Committee, (Annexe 35) the Secretary to the Ministry of Power and Energy had sought the opinion of the Attorney General on 07 November 2012 with regard to that requirement. (Annexe 36) The opinion of the Attorney General stating that registration under Section 8 of the Public Contracts Act, No. 13 of 1987 is required had been furnished on 17 December 2012. (Annexe 37) Subsequently on 26 December 2012, Procurement Committee had informed the Technical Evaluation Committee to carry out fresh evaluations. (Annexe 38)

Re-evaluation

The Technical Evaluation Committee had re-evaluated all bids and submitted its report (Annexe 39) to the Procurement Committee on 31 December 2012. Thereafter, on 08 January 2013, the Procurement Committee (Annexe 40) had decided that the following 3 bidders had fulfilled the qualifications for the financial evaluation.

- Noble Resources Company
- Coal & Oil Company
- Liberty Commodities Company

Accordingly, Procurement Committee had recommended on 08 January 2013 (Annexe 40) the award of contract for the purchase of 4,500,000 metric tons of coal at U.S.\$ 118.11 per metric ton (CIF) from the Liberty Commodities Company which had shown substantial responses commercially and technically.

12.3.4 Communication of the Selection

The decision of the Procurement Committee had been communicated on 21 January 2013 in terms of Guideline 8.3 of the Procurement Guidelines to all bidders, informing that representations, if any, should be made to the Procurement Appeal Board within one week.

12.3.5 Procurement Appeals

Accordingly, the following four bidders had forwarded their appeals to the Procurement Appeal Board (Annexe 41) on 24 January 2013.

Noble Resources Company

Coal & Oil Company

Emirates Trading Company

Taurian Iron & Steel Company

The Procurement Appeal Board had accepted the appeal of the Taurian Iron & Steel Company and rejected the appeals of the other three bidders. Similarly, the award of the contract for the purchase of 4,500,000 metric tons of coal at US\$ 108.10 per metric ton of coal from the Taurian Iron & Steel Company which had offered the commercially and technically responsive lowest price, had been recommended on 04 March 2013. It was also stated that the supplier concerned had supplied coal under the first stage of the Project and that there were no allegations relating thereto. (Annexe 42)

12.3.6 Forwarding a Cabinet Memorandum

The then Minister of Power and Energy had, after considering above recommendation, forwarded a Cabinet Memorandum on 03 May 2013, seeking approval for the following matters. (Annexe 43)

There are various allegation and complaint against in appellant Bidder, that 3 shipments of low quality coal had been supplied after certifying the availability of high quality coal and the Ceylon Electricity Board had incurred a fuel loss of R.852.768 million from the combustion of such coal.

Subsequently, the approval of the Cabinet of Minister had been sought through the Cabinet Memorandum (Annexe 43) for the following matters.

- Subsequent to obtaining clearance of the Attorney General for the recommendations of the Procurement Committee and the approval of the recommendations of the Procurement Committee after considering the recommendations of the Appeal Board and the recommendations of the Ministry and the Technical Evaluation Committee.
- Authorise the Procurement Committee to negotiate with the Liberty Commodities company which offered commercially responsive lowest price and reduce the CIF price as far as possible.
- The Opinion of the Attorney General on the legality of the recommendations of the Procurement Committee, the Technical Evaluation Committee and the Appeal Board and the decisions taken for reducing the price to be reported to the Cabinet of Ministers within one month from the grant of the Cabinet approval.
- If the Attorney General concurs with the Procurement Committee recommendations for the supply of coal, to authorize the Lanka Coal Company to award the contract to the Liberty Commodities company for the purchase of coal at a negotiated price not exceeding U.S\$. 118.10 CIF per metric ton of coal.

12.3.7 Decision of the Cabinet of Ministers

The Cabinet of Ministers, having considered the Cabinet Memorandum, the observations of the Minister of Finance and Planning (Annexe 44) the comment of the Strategic Enterprise Management Agency (Annexe 45) and the recommendations of the Appeal Board (Annexe 42) directed the Secretary to the Ministry of Power and Energy on 21 May 2013 to take action as follows. (Annexe 46)

- i. To cancel this Tender
- ii. Explore the possibility of following the proposed course of action in the observations of the Minister of Finance and Planning (Annexe 44) to ensure the

supply of coal on long term without interruption for the Puttalam Coal fired Power Plant.

- iii. Call for fresh tenders for the supply of coal in short term and mid term basis until the introduction of the course of action set out in paragraph ii above.
- iv. If the price of coal is favourable in the opinion of the Ministry and if there are urgent requirement of coal, forward a proposal through the Minister for procurement from the current supplier.

12.4 Fourth Procurement 2012/2013

The Secretary to the Ministry had informed the Chairmen of the Lanka Coal Company and the Ceylon Electricity Board on 25 May 2013 to implement the Procurement Process in accordance with the Cabinet Decision dated 21 May 2013 referred to in paragraph 12.3.7 above. Further, in accordance with the letter of the Ministry addressed to the Department of Public Finance on 11 June 2013, on a request made on 07 May 2013 by the Chairman of the Lanka Coal Company, the Technical Evaluation Committee had been appointed again on 26 June 2013.

12.4.1 Bidding Process

The Deputy General Manager of the Lakvijaya Power Plant had by his letter dated 24 June 2013, informed Lanka Coal Company that 1,200,000 metric tons of coal will be required for the ensuing period (October 2013 to September 2014) of the Second Phase. (Annexe 47). Subsequently, the Chairman of the Lanka Coal Company had made a proposal by quoting reference to a meeting held at the Ministry on 04 July 2013, to invite quotations from the qualified bidders who offered quotations for the cancelled Third Procurement for the Second Phase of the Power Plant, as it would take time for inviting open quotations again. Further, the Secretary to the Ministry had been informed on 05 July 2013 that as the period of the current contract (First Procurement) expires in April 2014 and that it was decided to invite bids for the purchase of 2,250,000 metric ton of coal and to select two supplier for that purpose (Annexe 48)

- (b) The Chairman of the Lanka Coal Company had sent a letter to the Chairman of the Technical Evaluation Committee on 10 July 2013 together with draft Bidding Document. (Annexe 49). As the period of the current contract is due to expire in April 2014, the Technical Evaluation Committee had recommended the draft Bidding Documents prepared for inviting bids from the bidders who had responded to the previous tenders, for the selection of two suppliers for the overall Power Plant for a period of 03 years and forwarded to the Procurement Committee on 10 July 2013. (Annexe 50)
- (c) The recommendations made by the Technical Evaluation Committee had been approved by the Procurement Committee on 12 July 2013 and on the same day the General Manager of the Ceylon Electricity Board had addressed the Secretary to the Ministry and forwarded the following two proposals. (Annexe 51)
- Inviting Fresh Tenders – As an unnecessary delay would be involved in this process, the approval of the Cabinet of Ministers should be obtained for obtaining coal from the bidders who had already qualified themselves technically in the previous invitations to bids.
 - Purchase for urgent requirements from the current supplier (Noble Resources Company) – As the price of the current supplier is more than the prices of the cancelled procurements, authorize the Procurement Committee, to negotiate with that supplier for reducing the price.

Subsequently, on 26 July 2013, the Chairman of the Ceylon Electricity Board had sent a letter to the Ministry informing that the Board of Directors of the Ceylon Electricity Board had granted approval on 25 July 2013 for inviting bids under the limited quotations.

- (d) Thereafter, the Procurement Committee had decided on 25 July 2013, subject to the approval of the Cabinet of Ministers, to invite bids from the 19 Bidders in the list sent by the Chairman of the Lanka Coal Company to the Ministry on 25 July 2013. (Annexe 52) Accordingly it had been decided to invite bids on 29 July 2013, to open the bids on 29 August 2013 and for the award of bids on 27 December 2013.

- (e) The then Minister in charge of the subject had submitted a Cabinet Memorandum on 31 July 2013, (Annexe 53) seeking the approval for inviting quotations in terms of the Guideline 3.3 of the Procurement Guidelines under the International Competitive Bidding Process from the 19 Bidders who had offered bids in the previous Procurement Process. Nevertheless, the approval dated 22 August 2013 of the Cabinet of Ministers (in the Draft) (Annexe 54) had been as follows.

To extend the period of the contract entered into with the current supplier of coal under the existing terms and conditions, by 06 month in order to ensure the uninterrupted supply of the coal requirements of the stages I, II and III of the Lakvijaya Power Plant and forwarding recommendations to the Cabinet of Ministers for the selection of a supplier under the Open International Competitive Method to enter into long term agreements by identifying favourable supply sources.

The Cabinet of Ministers had considered the Cabinet Memorandum dated 31 July 2013 (Annexe 53) and the Additional Note presented by the Minister on 27 August 2013 (Annexe 55) and the letter of the Secretary to the Ministry of Finance and Planning addressed to the Secretary to the Cabinet and passed the following decision to the Secretary to the Ministry on 29 August 2013.

To issue instruction to the Ministry and the Procurement Committee to negotiate with the current supplier of coal in order to extend the period of the existing agreement on the supply of coal for a further period of 06 month under the same agreement entered into, to gain the benefit of the reducing price of coal in the World Market, to forward the recommendation of the Procurement Committee for ensuring the uninterrupted supply of coal required for the stages I, II and III of the Lakvijaya Power Plant within two weeks and invite international quotations in consultation with the Board of Investments within the period of six months referred to above for the selection of a suitable supplier for the period commencing from October 2014, and submit to the Cabinet of Ministers.

12.4.2 Abandoning the Bid Process of Fourth Procurement

The Lanka Coal Company ceased the work on the Fourth Procurement in accordance with the decision of the Cabinet of Ministers dated 29 August 2013 referred to in paragraph (e) above and the coal required for 06 months had been purchased as appearing in paragraph 14.1.2 from the Noble Resources Company, which is the supplier of the Second Procurement referred to in paragraph 12.2.7 above.

12.5 Fifth Procurement 2014

12.5.1 Obtaining the Approval of the Cabinet of Ministers for Procurement

The approval of the Cabinet of Ministers for this procurement had been granted on 29 August 2013. (Annexe 55)

12.5.2 Bid Process

The Lanka Coal Company commenced the procurement work on 01 April 2014 for the purchase of 2,250,000 metric tons of coal within a period of 04 years. Each stage from obtaining the bids had been as follows.

- (i) Bids had been invited through newspaper notices dated 17 April 2014 (Annexe 56) and the closing date of bid had been shown as 06 June 2014.
- (ii) The Technical Evaluation Committee had, at the meeting held on 20 May 2014, recommended the first revision (Annexe 57) of Bid Closing Date as 18 June 2014 and the revision of evaluation criteria (2.3 of Bid Document) and those revision had been approved by the Procurement Committee on 22 May 2014. (Annexe 57)
- (iii) The Technical Evaluation Committee had, at the meeting held on 02 June 2014, had presented the recommendations for revision of evaluation criteria and the Procurement Committee had approved the second revision (Annexe 58) at the meeting held on 06 June 2014.

- (iv) The Procurement Committee approved the third revision relating to freight (Annexe 59) and the extension of the Bid closing date as 03 July 2014 at the meeting held on 20 June 2014.
- (v) The Chairman of the Lanka Coal Company had noted that the revision was sent to all bidders on 24 June 2014.
- (vi) According to a letter of the Chairman of the Lanka Coal Company dated 26 June 2014, the fourth revision (Annexe 60) (Sec – II – ITB Clause 5.4, Ref. ITB P-14) had been sent and forwarded for covering approval to the Procurement Committee on the same day.
- (vii) The Procurement Committee had granted the covering approval for the fourth revision on 04 July 2014. (Annexe 61)

The audit observations on this Bid Process appear in paragraph 18.5 (c).

12.5.3 Bid Evaluations

- (a) Forty two Bidding Documents had been issued in connection with this Procurement and 06 only had been received. Those bids had been opened on 03 July 2014. Five bids had been found as non-responsive at the Technical Evaluation.
- (b) The steps and the recommendations relating to this Bid Evaluation process had been as follows.
 - (i) The Technical Evaluation Committee had recommended at the meeting held on 04 July 2014 that the financial proposals should be opened as the Swiss Singapore Company is the bidder responsive technically and commercially (Annexe 62).

- (ii) The Procurement Committee had approved that at the meeting held on 28 July 2014 (Annexe 63).
- (iii) The Technical Evaluation Committee had referred its report to the Procurement Committee on 09 July 2014 stating that the Swiss Singapore Company which offered the lowest price of U.S.\$ 77.70 per metric ton of coal is the technically and financially responsive bidders and that price negotiations should be held with the said bidder. (Annexe 64).
- (iv) Taking action in accordance with the recommendation of the Technical Evaluation Committee the Procurement Committee had recommended the purchase of 1,125,000 +- metric tons of coal representing 50 per cent of the coal requirement at U.S.\$ 77.50 and for the selection of a second supplier by inviting bids again for the purchase of the balance 50 per cent. (Annexe 64A)

12.5.4 Communication of the Selection

The decision of the Procurement Committee had been communicated on 11 July 2014 in terms of Guideline 8.3 of the Procurement Guidelines to all bidders informing that representations, if any, should be made to the Procurement Appeal Board within one week.

12.5.5 Procurement Appeals

The following 04 Bidders had forwarded appeals to Procurement Appeal Board. (Annexe 65)

Bidder -----	Date of Forwarding Appeals -----
J V Liberty Commodities Company	17 July 2014
Trafigura PT Company	21 July 2014
Noble Recourses Company	18 July 2014
Kolma Group AG Company	21 July 2014

The Procurement Appeal Board had forwarded its report dated 04 August 2014 (Annexe 66) to the Cabinet of Ministers on 07 August 2014 through the Secretary to the President.

12.5.6 Cabinet Memorandum and the Observations thereon of the Ministry of Finance

Even though the then Minister of Power and Energy had forwarded a Cabinet Memorandum on 24 July 2014 (Annexe 67) for the implementation of the recommendations referred to in Sub-numbers iii and iv of paragraph 12.5.3 (b) above, the Minister of Finance had informed the Cabinet of Ministers that it is not possible to concur with that due to the following reasons (Annexe 68) (The decision of the Appeal Board had not been received by the Cabinet of Ministers by that date)

- (i) The comparison of the base price of U.S.\$ 77.50 per metric ton of coal with the base price of U.S.\$ 70 previously supplied by the previous supplier of coal, Noble Resources Company, a material increase prevails.
- (ii) Similarly, an analysis of the data of 04 preceding years indicates a decrease in the coal prices in the World Market by a considerable level.
- (iii) The need for the comparison of the competitive prices among the suppliers for obtaining that benefit.
- (iv) Similarly, the evaluation of only one financial proposal for this procurement valued at about U.S.\$ 340 million would deprive of the occasion for obtaining a competitive price.

12.5.7 Decision of the Cabinet of Ministers

The Report of the Procurement Appeal Board dated 04 August 2014 (Annexe 66) had been submitted to the meeting of the Cabinet of Ministers held on 14 August 2014 (Annexe 69) and that had been put off for discussion at the meeting. The observations of the Minister of Finance, had been considered at that meeting and the Secretary to the Line

Ministry had been directed by the Cabinet of Ministers to purchase the quantity of coal essential for the uninterrupted supply of electricity, from the Noble Resources Company, the previous supplier under the terms and conditions of the previous agreement. The Secretary to Line Ministry had given instructions on 19 August 2014 to the Chairmen of the Lanka Coal Company and the Ceylon Electricity Board to act in accordance with that order.

The Cabinet of Ministers taking into consideration the Cabinet Memorandum dated 24 July 2014 submitted by the Minister, (Annexe 67), the report dated 13 August 2014 by the Secretary to the Ministry of Power and Energy submitted through the Minister (Annexe 69A), the observations of the Minister of Finance, the observations of the Minister of Technology and Research (Annexe 69B) and the decision of the Appeal Board (Annexe 66) had given instructions on 04 September 2014 to cancel the Fifth Tender, to invite International Competitive Bids by following the Procurement Process approved by the Government for the purchase of coal (Annexe 70).

The Technical Evaluation Committee had, at the meeting held on 22 September 2014, (Annexe 71), taken action in accordance with the instructions of the Cabinet of Ministers referred to above and recommended to the Procurement Committee to hold negotiations with the Noble Resources Company for the purchase of coal produced in Indonesia at prices lesser than U.S.\$ 77.50 (FOB) per metric ton and the coal produced in South Africa at prices lesser than U.S.\$ 74.22 (FOB) per metric ton. Nevertheless, the Procurement Committee had, at the meeting held on 24 September 2014, decided to purchase 1.97 million metric tons of coal on FOB basis from the previous supplier Noble Resources Company up to September 2015 (Annexe 72).

Country	Price per Metric Ton (US\$)	Freight offered by Ceylon Shipping Corporation (US\$)	Price per Metric Ton (CIF) (US\$)
Indonesia	78.30	15.35	93.65
Russia	77.25	18.58	95.83
South Africa	75.50	18.63	94.13

A Cabinet Memorandum containing the above quotations, seeking approval for the award of the tender had been submitted by the Minister on 29 September 2014. The Cabinet of Ministers had considered this Memorandum together with the observations of Minister of Finance and the comments of the Central Bank of Sri Lanka and decided on 16 October 2014 to take action accordingly. The Lanka Coal Company had entered into an agreement with the Noble Resources Company on 26 September 2014 for the supply of 1.97 million metric tons of coal on FOB basis in accordance with that decision from October 2014 to March 2015. (Annexe 139)

According to that, Thermal Coal had been purchased as follows.

Country	Price per M.T. (U.S.\$)	Quantity Purchased	Value * U.S.\$
Indonesia	78.30	504,245	32,157,148
Russia	77.25	1,122,742	72,280,081
		<u>1,626,987</u>	<u>104,437,229</u>

* The value had been computed by the adjustment of the relevant criteria on the base price.

The purchases made from the previous supplier (Noble Resources Company) subsequent to the above recommendation appear in paragraph 14.1.4.

12.6 Sixth Procurement – 2014/15

12.6.1 Obtaining the Approval of the Cabinet of Ministers for the Procurement

In accordance with the instructions given by the Cabinet of Ministers on 04 September 2014 (Annexe 73) the Lanka Coal Company had commenced the procurement work on the same day for the selection of two suppliers for the purchase of coal at 2,250,000 metric tons of coal per supplier over a period of 04 years.

The Department of Public Finance had appointed the Technical Evaluation Committee and the Procurement Committee for this procurement work in accordance with the Cabinet decision on 19 September 2014 (Annexe 73). Subsequently, on 20 January 2015 and 23 September 2015 the Procurement Committee had been appointed again (Annexe 197).

12.6.2 Bid Process

The following process had been followed for this procurement.

- (i) To consider the Freight and Lightering Charges in the financial evaluation.
- (ii) Transport to be carried out through the Ceylon Shipping Corporation.
- (iii) Insurance to be done by the Lanka Coal Company.
- (iv) Instead of selecting one supplier for this procurement, select two suppliers on condition that each should supply at the rate of 50 per cent.

The Procurement Committee which met on 21 January 2015 (Meeting No. 06) had recommended that it is difficult to select two suppliers at the same price as required by the decision of the Cabinet of Ministers. Accordingly, the Memorandum submitted by the Minister on 23 January 2015 had recommended the selection of only one supplier and reducing the period of the agreement for 03 years. Accordingly, the Cabinet of Ministers had approved that on 05 February 2015. (Annexe 74)

12.6.3 Extension of Bid Invitation Dates

The invitation of bids for this procurement had been published in an advertisement in the newspapers of 27 November 2014 (Annexe 75) as well as in the Lanka Coal Company Web Site. Even though the date of closing the bids had been 09 January 2015, that date had been revised as follows from time to time by the Procurement Committee.

- (i) Bid closing date extended up to 28 January 2015 on 07 January 2015. (Annexe 76)
- (ii) Bid closing date further extended by 08 weeks on 21 January 2015 (Annexe 77)
- (iii) Bid closing date further extended by 02 weeks to 08 April 2015 on 23 February 2015 (Annexe 78)

12.6.4 Pre-Bid Meetings

Two Pre-Bid Meetings had been held for this procurement and the particulars thereon are given below.

12.6.4.1 First Pre-Bid Meeting – 17 December 2014

- (i) Sixteen Bidders who had purchased Bid Documents had participated in that and 6 of those had made written enquiries about certain matters included in the Bidding Documents. Further enquiries had been made with regard to the surcharge recovered on the criteria on the mass (size) of a lump of coal and other technical specifications as well.
- (ii) It was decided by the Technical Evaluation Committee and the Procurement Committee that the above terms and conditions in the Bidding Documents would further remain as they are and the Lanka Coal Company had communicated that position to all prospective bidders in terms of the Guideline 5.3.14 (d) (Annexe 81) of the Procurement Guidelines (Annexes 80).

12.6.4.2 Second Pre-Bid Meeting – 18 March 2015

- (i) Forty four Bidders including the Swiss Singapore Company which had purchased the Bidding Documents had participated in this meeting and they had made enquiries on certain technical matters included in the Bidding Documents. In addition, they had made enquiries whether it is possible to offer quotations based on the API – 4 Index instead of the New Castle Index. Nevertheless, the Lanka Coal Company had decided that such changes to the terms and conditions could not be made.
- (ii) The Lanka Coal Company communicated the decision taken at the above meeting to all prospective bidders in terms of the Guideline 5.3.14 (d) of the Procurement Guidelines, while on necessary occasions, amendments to the Bidding Documents as well had been done. (Annexe 80 and 81)

The audit observations on this paragraph appear in paragraph 18.3 (d).

12.6.5 Amendments to Bidding Documents

The amendment of the Bidding Documents of this Procurement on 6 occasions from time to time for making changes for extension of the period, for the increase of the high value of Volatile Matter from 36 per cent to 39.9 per cent and for explaining the differences identified in the First and Second Pre-bid meetings had been the main reason for the delay of 03 months in the closing date for the bids and the delay of 08 months in the award of the contract. (Annexe 82)

The audit observations relating to this paragraph appear in paragraph 18.2 (e).

12.6.6 Bid Evaluations

The acceptance of bids had been ceased with effect from 08 April 2015 and bids from 08 Bidders had been received.

In the first stage of the Evaluation of Bids, the Technical Evaluation Committee had examined the technical proposals of the Bidders on 10, 12 and 16 , April 2015 and eliminated the bids of 03 Bidders from evaluation due to the existence of material deviations. (failure to supply acceptable Bid Security). One bid had been rejected in the second stage of the Bid Evaluation due to lack of technical and economic qualifications (producing photocopies instead of the originals of documents on the particulars of coal supplies made during 3 preceding years).

- (b) As the balance 4 companies were technically and commercially responsive, and the Technical Evaluation Committee had forwarded its report recommending the financial evaluation of those to the Procurement Committee on 26 May 2015 (Annexe 83).
- (c) The Procurement Committee had re-considered the three Bidders who had been rejected as appearing in (a) above and decided on 28 April 2015 to bring this matter to the notice of the Cabinet of Ministers and obtain an order. (Annexe 84) According to the Cabinet Memorandum (Annexe 85) submitted on 05 May 2015 by the Minister, the Cabinet of Ministers had granted approval on 20 May 2015 for considering those 3 as qualified and be subjected to evaluation (Annexe 86)
- (d) Nevertheless, one of the 3 Bidders referred to in (c) above had failed to submit the Bid Security in the proper manner on the second occasion and finally 06 Bidders as shown below had been qualified for evaluation.

	Name of Bidder	Evaluation Price U.S.\$.	Placement According to Lowest Price
	-----	-----	-----
i.	Noble Resources Company	- 90.219	1
ii.	Suek AG Company	- 90.645	2
iii.	Trafigura PTE Company	- 101.968	3
iv.	Adani Global Company	- 103.108	4
v.	Swiss Singapore Company	- 103.782	5
vi.	Liberty Commodities Company	- 113.604	6

- (e) According to the Report made by the Technical Evaluation Committee on 13 June 2015 (Report No. 15) (Annexe 87) the quotations received from the Bidders had been properly evaluated and the Bidders had been placed as shown above on the basis of the evaluated quotations. Accordingly, the Noble Resources Company had become the company that quoted the lowest Evaluated Price. In addition, the Technical Evaluation Committee had proposed in the same Report to the Procurement Committee that the quotations furnished by that company for the transport of coal should be compared with the quotation for transport of coal submitted by the Ceylon Shipping Corporation.
- (f) The Procurement Committee which had met on 15 June 2015 (Meeting No. 12) (Annexe 88) and made the following recommendations relating to the above evaluation.
- (i) That it is appropriate to obtain a report from the Technical Evaluation Committee separately indicating as to how the quoted price of each Bidder changed up to the evaluated price.
 - (ii) That it is appropriate to obtain an opinion from the Department of Attorney General through the Ministry of Power and Renewable Energy with regard to the legal position of the Bidders who had not registered under the Public Contracts Act.
 - (iii) That in considering the quantity of stock offered by the Noble Resources Company (Per shipment) with the quantity appearing in the Bidding Documents indicates a material increase (when the quantity of stocks in the Bidding Documents is 65,000 metric tons, the quantity of stocks in the Bidders documents amounts to 100,000 metric tons).
 - (iv) As such in offering quotations for transport a bigger gain accrues to the Bidder.

- (v) As such the quotations for the transport of coal should be compared with the Ceylon Shipping Corporation, it is appropriate to enquire whether the Noble Resources Company agrees to supply coal in quantities as appearing in the Bidding Documents.
 - (vi) That the Adani Company had not specifically named the ports of loading and as such it is not possible to compare the transport quotations furnished with the quotations of the Ceylon Shipping Corporation.
 - (vii) That in the adjustment of interest on loan according to the Technical Evaluation Committee Report, the interest applicable to the full year had been adjusted whereas the actual interest adjustment should be for a loan interest free period of 30 days and with the interest up to 60 days thereafter.
 - (viii) As such the Technical Evaluation Committee Report should be prepared again.
 - (ix) That the clarification of the quantity of coal that can be loaded to a ship per shipment should be obtained from the Noble Resources Company.
- (g) The Technical Evaluation Committee had considered the above recommendations forwarded by the Procurement Committee and forwarded the Technical Evaluation Committee 15A Report on 17 June 2015 (Annexe 89). According to that Report, the following adjustments had been made.
- Adjustment of interest
 - The computations made in the evaluation of prices had been made separately for each item.
- That Report which nominated the Noble Resources Company as the Bidder who had offered the lowest evaluated (at the Jetty of the Plant) had been forwarded to the Procurement Committee.

- (h) Procurement Committee stated in their report on the meeting (meeting 13) held on 17 June 2015 that the Noble Resources Company was invited to discuss the stock coal brought per shipment and that the Company further stated that it expected to deliver coal at the rate of 100,000 metric tons per stock (Annexe 90).

- (i) The Noble Resources Company had sent a letter to the Lanka Coal Company on 18 June 2015 stating that the Company had participated at the meeting held on 17 June 2015 on an invitation made by the Technical Evaluation Committee, that enquiries as to whether further discounts could be given were made at the meeting and that he was surprised as it was an invitation for International Competitive Bids, that he did not agree to give discounts as requested and that it had offered a competitive price. But there was no note made of any discussion on that (reducing the price) would be discussed at the meeting of the Procurement Committee held on 17 June 2015 (Annexe 91) The meeting of the Procurement Committee held on 17 June 2015 did not indicate that the relevant matter (price reduction) was discussed. (Annexe 91). In addition any information on price negotiations made at the Procurement Committee meeting held on 03 July 2015 had not been noted (Annexe 151). If such price negotiation had not taken place the Procurement Committee should have informed the Noble Resources Company as a response to the letter dated 18 June 2015. No such response had been made.

The audit observations on this paragraph appear in paragraph 18.3 (a).

- (j) The Swiss Singapore Company which was the Bidder in the fifth position according to (d) of paragraph 12.6.6 above had informed the Procurement Committee of the following matters by letter dated 29 June 2015 (Annexe 92).
 - (i) That the Bidders could not find out their places as only the the prices quoted by the Bidder himself only had been disclosed by the Bid Opening Committee at that time.

- (ii) That in surcharging each Bidder “O” placed as the low value and the high value of a lump of coal had made it possible for each Bidder to change his bid for his benefit.
- (iii) That as coal is a natural resource, “O” taken as a methodology for measuring the low value and high value of coal is not an appropriate methodology.
- (iv) That the Lanka Coal Company which has several years experience in the importation of coal could verify themselves whether considering “O” as the value of the size of coal is correct.
- (v) That in the combustion of coal, those are crushed to 0.06 m.m. size, and as such expenditure on a separate force employed for that has to be incurred.
- (vi) That the Bidder selected by the Lanka Coal Company could become qualified despite having large lumps of coal as adjustment for surcharges are made.
- (vii) That the Bidding documents did not include a method for measuring the high value and low value (02 mm and 50 mm) of the size of coal.

According to sub-section 5.2 of the Bid Document, subject to Sub-section 5.3 thereof any Bidder offering bid prices should not make any contacts on any matters relating to the bids with the Lanka Coal Company or any other person or organization dealing with such bids from the time of opening the bids up to the time of awarding the contract. Similarly, the result of any efforts made by any person offering bids to influence the decisions relating to the evaluation of bids or comparison of bids or the award of contracts is the cancellation of such bid.

- (k) The Procurement Committee had considered the letter dated 25 June 2015 received from the Lanka Coal Company (Annexe 93), the E-mail message dated 26 June 2015 received from the SUEK AG Company (Annexe 94) and the letter dated 29 June 2015 received from the Swiss Singapore Company (Annexe 92) at

the meeting held on 29 June 2015 and recommended to the Technical Evaluation Committee to re-evaluate the financial evaluations in accordance with the following instructions (Annexe 95).

- (i) That all the bids received should be re-evaluated as described in the Report of the Procurement Committee.
- (ii) That the evaluations should be made by using the correct interest rate as noted at the meeting of the Procurement Committee held on 15 June 2015.

The audit observations on this paragraph appear in paragraph 18.3 (b).

- (l) The Technical Evaluation Committee had met on 03 July 2015 and at that meeting (Technical Evaluation Committee Report No.16) (Annexe 96) the price evaluation had been done in accordance with the directive made by the Procurement Committee and that the evaluation of the other criteria was done in accordance with the terms in the Bidding Documents and submitted its report recommending that the Swiss Singapore Company is the Bidder which had offered the lowest evaluation price.

According to the Guideline 7.9.10 of the Procurement Guidelines (Annexe 97) “Bids shall be first evaluated strictly according to the criteria and methodology specified in the bidding documents and such evaluated Bids shall be compared to determine the lowest evaluated substantially responsive Bid”. Nevertheless, the evaluation had been done by using other methodologies without complying with the criteria and methodology specially specified in the Bidding Documents.

Further, according to the Guideline 5.3.20 (b) of the Procurement Guidelines, “The disclosed criteria shall not be modified or additional criteria shall not be introduced during evaluation”. (Annexe 98)

The Audit Observations on this paragraph appear in paragraph No. 18.3 (c).

- (m) The Procurement Committee had decided on 03 July 2015 that it is appropriate to award this tender for the supply of 6.75 +- 20% million metric tons of coal (requirements for 03 years) at the base price of U.S.\$ 68.72 per metric ton (based on the New Castle Index) as recommended by Report No. 16 of the Technical Evaluation Committee, to the Swiss Singapore Company (Annexe 99).

The Secretary to the Ministry of Power and Renewable Energy had, by his undated letter No. PE/TEN/SCAPC/55/2014/38, informed me that the specifications relating to the criteria on the size of lumps of coal had not been specifically stated in the tender documents and that (TBN) appearing therein indicated that the methodology “will be notified later”. Further, it was stated therein that the methodology for the measurement of the size of the lumps of coal had not been notified to the Bidders even by the date of opening of tenders.

Further, the Procurement Committee had decided, in accordance with the decision of the Cabinet of Ministers dated 08 February 2015, to carry out the transport of coal through the Ceylon Shipping Corporation at the rate of U.S.\$ 13.75 per metric ton and if that company does not agree to that price, to award the transport contract to the Swiss Singapore Company.

12.6.7 Communication of the Selection

The decision of the Procurement Committee had been communicated on 06 July 2015 (Annexe 100) in terms of the Guideline 8.3 of the Procurement Guidelines, to all Bidders, informing that representations, if any, should be made to the Procurement Appeal Board within one week.

12.6.8 Procurement Appeals

The following 04 appeals in connection with this procurement had been received. (Annexe 101)

<u>Bidder</u>	<u>Date of Appeal</u>
Liberty Commodities Company	08 July 2015
Noble Resources Company	10 July 2015
Suek AG Switzerland Company	10 July 2015
Adani Global Company	10 July 2015

The Appeal Board had forwarded those appeals to the Secretary to the Ministry of Power and Renewable Energy requesting for all information relating to the procurement together with the observations of the Ministry.

Accordingly the Secretary to the Ministry had forwarded the observations of the Procurement Committee and the Technical Evaluation Committee relating to the appeals together with the following observations to the Secretary to the President for sending those to the Appeal Board. A summary of those observations appear below. (Annexe 102)

- (i) That the bids of certain bidders who had not registered under the Public Contracts Act, No. 3 of 1987 should be rejected.
- (ii) That it is not suitable to accept bid securities with certain deficiencies merely on the decision of the Cabinet of Ministers.
- (iii) That it was not possible for each bidder to assess the evaluated prices of the other bidders as the Lanka Coal Company and the Procurement Committee had not agreed to supply the data and information furnished by the bidders to the other bidders.
- (iv) That it was not possible for the bidders to evaluate the surcharges computed on each bidder as the bidders could not obtain the reports of the Technical Evaluation Committee / Procurement Committee.
- (v) That changing bid criteria without consent is not formal and that it is a violation of the Procurement Guidelines.

- (vi) That communicating with the Lanka Coal Company and the Procurement Committee by certain bidders after the opening of the bids is a violation of the Procurement Guidelines.
- (vii) That the Swiss Singapore Company which had been the lowest bidder at the evaluation of the financial proposals by the Technical Evaluation Committee had become the bidder with the highest evaluated price after the price evaluation.
- (viii) That the Procurement Committee had observed that the criteria on the size of a lump of coal adjusted as presented by them had resulted in the adjustment of U.S.\$ 19.24 per metric ton.
- (ix) That the Procurement Committee had observed that it is an unusual situation and that it was done accordingly based on the Bidding Documents.
- (x) Nevertheless, on further consideration such surcharge resulting on the size of a Lump of Coal is a big problem.
- (xi) When coal is used by the Power Plant, the cost of further crushing coal is reduced due to the size of coal being smaller thus making it favourable to the Ceylon Electricity Board.
- (xii) The only problem arising from the size of a lump of coal being reduced is a transport problem and it is no reason for justifying the imposition of surcharges.

12.6.9 Decision of the Appeal Board

The Procurement Appeal Board had recommended to the Cabinet of Ministers that the entire Procurement Process should be totally cancelled and invite fresh bids again. (Annexe 103).

12.6.10 Cabinet Memorandum dated 16 September 2016

A summary of proposals in the Cabinet Memorandum presented by the Minister of Power and Renewable Energy is given below. (Annexe 104).

- (a) As the Procurement Appeals Board had forwarded recommendations without providing an occasion for the related parties to represent matters and without

proper understanding of the matters, the rejection of the recommendation of the Procurement Appeal Board.

- (b) The Technical Evaluation Committee and the Procurement Committee had made their recommendations with the approval of the Cabinet of Ministers, the recommendations of the Attorney General as well as carrying out the formal technical studies, acceptance of the following proposals by taking into consideration of those recommendations in order to ensure the energy security of the country.
 - (i) The purchase of coal through long term contracts as well as through short term spot purchases.
 - (ii) Award the contract as recommended by the Technical Evaluation Committee and the Procurement Committee to the Swiss Singapore Company which had submitted substantially responsive lowest prices for the supply of 4.5 ± 20 per cent million metric tons of coal requirements for 2 years within a period of 3 years according to the New Castle Index in accordance with the specifications furnished by the Bidder at the FOB Price of U.S.\$ 68.72 per metric ton.
 - (iii) The purchase of the balance 2.25 million metric tons required for the ensuing 03 years to be made under the Spot Tender system through the Special Standing Procurements Committee.
- (c) Award of the contract for the transport of coal to the Ceylon Shipping Corporation at U.S.\$ 13.75 per metric ton offered as shipping charges lighter charges and insurance by the Swiss Singapore Company which had offered the lowest CIF price for the supply of coal referred to above.

The Minister of Finance had furnished his observations on this Cabinet Memorandum (Annexe 105) on 21 September 2015 and included the following

1. When the matters included in the Cabinet Memorandum are considered it is observed that in the purchase of coal for the Lakvijaya Power Plant

throughout the preceding 5 years had been made from one supplier through the extension of the period of the agreement entered into for the initial contract.

The decisions made by the Procurement Committee on award of 04 tenders invited during the 5 preceding years for the Lakvijaya Power Plant had been challenged and in all such instances, the Procurement Appeal Board had recommended the cancellation of contracts and inviting fresh bids.

Under such circumstances, as the Procurement Committee had, in making recommendations for the award of contracts relating to the Memorandum under reference had made recommendations by obtaining the approval of the Cabinet of Ministers with regard to policy matters and the comments of the Attorney General with regard to the legal matters, action has to be taken for entering into a fresh agreement and concurrence is given for the award of the tender on the recommendations of the Procurement Committee subject to the conditions stated at No. 2 below.

2. 2.1 Even though the New Castle Index is used in entering into long term contracts for the supply of coal, it is observed that the continuous price decreasing trends seen in the energy sources in recent times is not reflected from the prices offered for this procurement. That is, the prices included in the Cabinet Memorandum are the prices offered, several months ago and as such the country will not receive through that the benefit of the nearest competitive prices for coal in the World Market.
As such, in view of the comparatively high cost involved in the use of fuel instead of coal for generation of electricity by the Power Plant and the national importance of the uninterrupted supply of coal, concurrences is given for entering into an agreement for one year with the recommended supplier for the purchase of the requirements of only one year subject to price negotiations relating to spot purchases and for the Line Ministry to invite bids for

entering into a long term contract of two years for the supply of coal.

The Minister of Megapolis and Western Development, as a member of the Cabinet of Ministers, made his observations as follows, (Annexe 106)

- (i) That the decision of the Procurement Appeal Board for the cancellation of this tender and inviting fresh tenders should be accepted.
- (ii) Similarly, the contract for coal should be limited only for one year and that coal should be purchased through spot purchases (until the selection of a new supplier after the long term supply becomes successful) for a further period of one year.

The Minister of Ports and Shipping, as a member of the Cabinet of Ministers, made his observations (Annexe 106) and stated that it is appropriate to give approval for the payment of U.S.\$ 14.50 per metric ton to the Ceylon Shipping Corporation for the transport of coal and unload by lighters.

12.6.11 Decision of the Cabinet of Ministers dated 22 September 2015

After considering the Cabinet Memorandums referred to in the above paragraph 12.6.10 the Cabinet of Ministers had decided – (Annexe 107)

- (a) to direct the Secretary, Ministry of Power and Renewable Energy to take action -
 - (i) to enter into a contract only for one (01) year term with the bidder recommended by the Standing Cabinet Appointed Procurement Committee, for the supply of coal to the Lakvijaya Coal Power Plant, subject to negotiating with the bidder for a possible price reduction, taking into consideration, the recently received substantially lower prices for Spot

Tenders, as indicated in paragraph (2) of the observations of the Minister of Finance;

- (ii) to continue to purchase coal for the Lakvijaya Coal Power Plant through Spot Tenders to ensure an uninterrupted supply of coal, according to the Cabinet decision dated 2015.07.22 to call for fresh bids immediately for the supply of coal for the said Power Plant following the international competitive procedure, limiting the term of supply for a period of one (01) year.
- (b) that, with regard to the proposal (2.4) in paragraph (6) of the Memorandum (Annexe 104) relating to the transport contract, the Minister of Power and Renewable Energy should discuss the matter with the Minister of Finance and the Minister of Ports and Shipping, with a view to arriving at a consensus and report the outcome to the Cabinet for consideration.
- (c) to request His Excellency the President to appoint a Committee
 - (i) To examine the deficiencies highlighted in the Report of the Procurement Appeal Board (relating to its meeting held on 05 August 2015) on the Tender for the recent tender for the Procurement of Coal for the Lakvijaya Power Plant (900 mw) Puttalam, and
 - (ii) To submit recommendations to the Cabinet through His Excellency the President, on action to be taken –
 - (I) Against those responsible, if any, for the lapses in the tender process of the above Tender, and to prevent the recurrence of such lapses in future . (Annexe 9A)

12.6.12 Seventeenth Meeting of the Procurement Committee

The Meeting of the Procurement Committee had been held on two days, that is, 30 September 2015 and 01 October 2015 and negotiation had been held thereat with the

Swiss Singapore Company for reducing the price (Annexe 108). The direction of the Cabinet of Ministers dated 22 September 2015 had been made the base for that.

Accordingly, the Procurement Committee had reached the following concurrences.

- (a) To change the price of coal from the New Castle Index to the API 4 Index.
- (b) The purchase of $1.92 \pm 20\%$ million metric tons of coal at US\$ 58 per metric ton according to the API 4 Price Indexes of September 2015 during the periods January 2016, April 2016, September 2016 and April 2017.
- (c) The purchase of a quantity of $330,000 \pm 20\%$ metric tons of coal at the fixed price of US\$ 51.96 per metric ton.
- (d) To retain the other conditions of the Bidding Document without change.

The audit observations on this paragraph appear in paragraph 18.3 (c).

12.6.13 Cabinet Memorandum dated 02 October 2015

The Minister of Power and Renewal Energy had forwarded a Cabinet Memorandum based on the Procurement Committee recommendation of 02 October 2015 seeking the approval of the Cabinet of Minister for the following proposals (Annexe 109).

- (a) Purchase of 330,000 $\pm 20\%$ metric tons out of 2.25 $\pm 20\%$ million metric tons of coal being the requirement of the Lakvijaya Power Plant for one year during the forthcoming November and December at the price of U.S.\$ 51.96 FOB per metric ton as negotiated and agreed with the Swiss Singapore Company the bidder recommended for the award of the tender by the Cabinet Appointed Procurement Committee. To award the tender to Swiss Singapore Company for the purchase of the balance 1.92 $\pm 20\%$ million metric tons of coal for U.S.\$ 58 FOB per metric ton based on the price of U.S.\$ 51.85 per metric ton according to the API 4 Index for September 2015 from January 2016 to April 2016 and September 2016 to April 2017 .

- (b) To award the shipping and barging contract related to the above Tender to the Ceylon Shipping Corporation at a fixed rate of US\$ 14.50 per Metric Ton of coal.

The Minister of Finance had forwarded his observations on this Cabinet Memorandum (Annexe 110) to the Cabinet of Ministers on 06 October 2015 and through that he had concurred with the proposal put forward by the Minister of Power and Renewal Energy. Accordingly the approval of the Cabinet of Ministers for the above Memorandum had been received on 14 October 2015 (Annexe 111).

12.6.14 Award of Bids

The Secretary to the Ministry of Power and Renewable Energy had communicated the decision of the Cabinet of Ministers to the Lanka Coal Company on 15 October 2015 and the Lanka Coal Company had awarded the bid to the Swiss Singapore Company on 16 October 2015. (Annexe 112)

12.6.15 Acceptance of the Bid and Entering into Agreement

The Presidential Secretarial had communicated the decision on the Bid reached by the Cabinet of Ministers (shown in 12.6.14 above) on 15 October 2015 to all the Bidders who had made appeals. Thereafter, the agreement between the Swiss Singapore Company and the Lanka Coal Company had been entered into on 16 October 2015 (Annexe 113).

Nevertheless, certain criteria in the draft agreement included in the original Bidding Documents and agreed to by all parties, had been amended in entering into the final agreement between the Swiss Singapore Company and the Lanka Coal Company. For example, the Swiss Singapore Company had, through its Bidding Documents, shown the maximum value (above 50 mm) and low value (less than 2 mm) as 03% and 25% as the size criteria of grain of coal (Grain Size), that had been shown as 05% and 30% in the agreement. (Annexe 113) (According to the Lanka Coal Company Standard, these are rejected values).

The audit observations on the above paragraph appear in paragraph 18.3 (e) and (f).

13. Spot Procurements

13.1 Spot Procurement No. 01

13.1.1 Obtaining the Approval of the Cabinet of Ministers for Procurement

The Minister of Power and Energy had submitted a Cabinet Memorandum dated 13 July 2015 on the subject of “Purchasing Coal for Puttalam Coal Power Plant for the Energy Requirements under the Spot Market” (Annexe 114) and proposed that the Spot Tendering is the appropriate method to purchase coal in every energy requirements of the Puttalam Coal Power Plant and sought the approval of the Cabinet of Ministers for that.

Accordingly, the Cabinet of Ministers had, at the meeting held on 22 July 2015, granted the approval (Annexe 115) to purchase coal in any emergency situation of the Puttalam Coal Power Plant, Spot Market System based on the day to day market prices on the basis of New Castle Index, to ensure the uninterrupted operation of the power plant, considering its national importance. Further approval had been granted to authorize the Secretary to the Treasury to appoint an appropriate Cabinet Appointed Procurement Committee and a Technical Evaluation Committee for the purpose and to call for bids for the initial immediate requirement for this occasion only, from the parties who were technically qualified for supply of coal by participating in the tenders in the years 2009, 2011, 2013 and 2014 and to take expeditious action to commence the process of registration of suppliers in a more transparent manner, providing an opportunity to enabling greater participation in the future spot tenders and to obtain the covering approval of the Cabinet of Ministers for the same at the earliest Meeting of the Cabinet.

The audit observations on this paragraph appear in paragraph 18(4)(a).

13.1.2 Bid Process

In accordance with the approval in the above paragraph, the Department of Public Finance had nominated the Technical Evaluation Committee and the Procurement Committee on 23 July 2015 (Annexe 116). The Technical Evaluation Committee had

examined the Bidding Documents furnished by the Lanka Coal Company and in the recommendation made to the Procurement Committee on 24 July 2015 (Annexe 117) it had noted “No penalty for size consist” under the Salient Features of the Bidding Document. The words “Standard value of coal: Grain Size above 50 mm more than 5% and less than 2 mm more than 30% by weight” (in page 18) of the Bidding Document for this procurement (Annexe 118) and the same appear under the Reject Value for coal as well (page 19 of the Bidding Document). Further, the Lanka Coal Company had called “Reject Value for coal: Grain Size above 50 mm more than 5% and less than 2 mm more than 30% by weight” had been noted in the same manner in the Agreement (Page 50) (Annexe 118). In addition, the Procurement Committee had approved on 24 July 2015 the recommendations made to invite bids from 14 selected institutions which had made technically responsive bids for the previous bids and for the transport to be done through the Ceylon Shipping Corporation at the rate of US\$ 14.50 per metric ton (Annexe 119). The Lanka Coal Company had invited bids through E-mail on 27 July 2015 for the procurement of 165,000 ± 10% metric tons of coal according to specified specifications under a fixed price.

The audit observations on this paragraph appear in paragraph 18.6 (a).

13.1.3 Bid Evaluation

Six bids had been received and those had been opened on 10 August 2015 and the prices offered by the Bidders are as follows.

Name of Company	Bid Price FOB US\$	Bid Price CIF US\$	Placement according to lowest Prices
Liberty Commodities Company	69.47	55.70	1
Noble Resources Company	70.52	57.00	2
Adani Global Company	71.65	56.14	3
Swiss Singapore Company	72.84	58.25	4
Trafigura Company	74.70	60.60	5
Suek AG of Switzerland Company	78.02	64.00	6

13.1.4 Bid Awards

In the above evaluation, the letter of awarding the Bid for the purchase of 165,000 ± 10% metric ton of coal at US\$ 69.47 (CIF) per metric ton had been sent to the Liberty Commodities Company, the lowest Bidder on 11 August 2015 and the agreement in that connection had been entered into on 17 August 2015 (Annexe 120). The formulas for price adjustments for the criteria on sulfur and ash had been changed. This agreement had been updated without entering into new agreements for the Spot Purchases 02 and 04. As such the disadvantages resulting from the problematic position in the agreement for the first procurement had occurred in the second and fourth procurements as well.

The Audit observations on this paragraph appear in paragraph 18.6 (b).

13.1.5 Reordering

In view of the adequacy of 165,000 metric tons of coal purchased under the Spot Procurement No. 01 only up to 15 October 2015, the Procurement Committee had, at the meeting held on 20 August 2015, granted approval for utilizing the provisions in Guideline 3.6 of the Procurement Guideline – 2006 for the reorder of a further quantity of 50 per cent, that is, 82,500 metric tons of coal from the same supplier at US\$ 69.47 (CIF) per metric ton and take action in terms of the terms of the agreement. (Annexe 121) Accordingly, the Lanka Coal Company had sent the letter of award of the additional 50 per cent to the Liberty Commodities Company on 27 August 2015.

The Audit Observations on this paragraph appear in the paragraph No. 18.6 (c).

13.2 Spot Procurement No. 02

Action on the second procurement had been commenced based on the approval of the Cabinet of Ministers referred to in 13.1.1 above.

13.2.1 Bidding Process

In accordance with the approval referred to in paragraph 13.1.1, the Lanka Coal Company had invited applications for the registration of qualified bidders on 17 August

2015 through newspaper advertisements and the Web Site and 35 applications had been issued. Accordingly, 14 applications had been received and the applications had been opened on 31 August 2015. Thereafter the Procurement Committee had granted the approval for the registration of 08 bidders who had fulfilled the qualifications, the procurement of 300,000 +/- 10% metric tons of coal, invite bids at FOB prices and for the transport and unloading to be done through the Ceylon Shipping Corporation at US\$ 14.50 per metric ton (Annexe 122). Accordingly, bids from 08 registered bidders were invited by E-mail on 01 September 2015 and the bids had been closed on 14 September 2015.

13.2.2 Evaluation of Bids

The bidders who had offered financial proposals and the bid quotations offered by them are as follows.

Name of Company	Bid Quotation U.S.\$	Placement according to Lowest Price
-----	-----	-----
Liberty Commodities Company	51.29	1
Swiss Singapore Company	51.96	2
Trafigura Company	52.33	3
Adani Global Company	54.66	4
Nobel Resources Company	55.55	5
Vitol Asia Company *	56.55 (156,000 MT)	
	57.90 (110,000 MT)	6
	64.10 (55,000 MT)	

* Vitol Asia Company had offered different quotations for different quantities.

13.2.3 Award of Bids

The letter of award of bids for the purchase of 330,000 +- 10% metric tons of coal at U.S.\$ 51.29 (FOBT) per metric ton had been sent on 18 September 2015 to the Liberty Commodities Company which had offered the lowest quotation according to the above evaluation and the agreement entered into between the two parties referred to in 13.1.4 above had been updated on the same date (Annexe 123).

The Audit Observations on this paragraph appear in paragraph No. 18.4.(a), No. 18.6(a) and No. 18.6 (b)

13.3 Spot Procurement No. 03

A report on the recommendations for the Third Spot Procurement had been presented by the Technical Evaluation Committee to the Procurement Committee on 01 September 2015, (Annexe 124). In the meantime the Lanka Coal Company had invited bids from the registered suppliers for the Procurement of 330,000 +- 10% metric tons of coal from the registered suppliers. Nevertheless, based on the letter of the Secretary to the Ministry dated 06 October 2015 (Annexe 125) informing the Lanka Coal Company to cancel the Third Procurement until further notice, the Lanka Coal Company had informed the bidders on 05 October 2015 that the procurement was cancelled. (Annexe 126)

13.4 Spot Procurement No. 04

13.4.1 Obtaining the Approval of the Cabinet of Ministers for the Procurement

Action had been taken in accordance with the approval of the Cabinet of Ministers referred to in paragraph 13.1.1.

13.4.2 Bidding Process

The Procurement Committee had granted approval for the procurement of 330,000 +- 10% metric tons of coal at the FOB price and the bids had been invited by E-mail on 10 December 2015. (Two bidders, namely, Frost International and the MCS Holdings had

been registered as new bidders and the number of bidders referred to the 13.2.1 above had improved by this time to 10 bidders).

13.4.3 Evaluation of Bids

Five bids had been received and those had been opened on 05 January 2016 and the quotations offered by the bidders are given below.

Bidder	Bid Quotation	Placement according to Lowest Quotation
-----	-----	-----
	(U.S.\$.)	
Liberty Commodities Company	49.85	1
Adani Global Ltd	50.20	2
Swiss Singapore Company	51.69	3
Trafigura Company	53.58	4
Frost International Company	56.40	5

13.4.4 Award of Bids

The letter of award of bid for the purchase of 330,000 +/- 10% metric tons of coal at U.S.\$ 49.85 FOBT per metric ton had been sent on 07 January 2016 to the Liberty Commodities Company which had offered the lowest quotation according to the above evaluation and the agreement had been updated in that connection on 21 January 2016. (Annexe 127)

13.5 Spot Procurement No. 05

13.5.1 Obtaining the Approval of the Cabinet of Ministers for the Procurement

Action for the purchase had been taken in accordance with the approval of the Cabinet of Ministers referred to the paragraph 13.1.1 above.

13.5.2 Bidding Process

The approval of the Procurement Committee had granted for the procurement of 260,000 +- 10% metric tons of Thermal Coal and 20,000 +- 10% metric tons of Deaf Coal on the FOB basis from the registered suppliers. Accordingly, the Lanka Coal Company had invited bids on 18 February 2016 by E-mail from he registered suppliers. The prices of Thermal Coal and Deaf Coal were separately given according to the bidding documents.

13.5.3 Bid Evaluation

Three bids had been received and those had been opened on 03 March 2016 and the quotations offered by the bidders are given below.

Company	Bid Price for Thermal Coal	Bids Price for Deaf Coal	Placement according to the Lowest Price
-----	-----	-----	-----
	(U.S.\$.)	(U.S.\$.)	
Adani Globle Company	50.25	33.00	1
Liberty Commodities Company	51.38	25.00	2
Swiss Singapore Company	52.33	21.38	3

13.5.4 Award of Bids

The letter of award of bids for the purchase of 260,000 +- 10% metric tons of Thermal Coal at U.S.\$ 50.25 per metric ton and 20,000 +- 10% metric tons of Deaf Coal at U.S.\$ 33.00 per metric ton had been sent on 04 March 2016 to the Adani Global Company which had offered lowest bid and the agreement had been entered into 09 March 2016. (Annexe 128)

14. Coal Purchased / Obtained

A summary of Thermal Coal purchased from the date of commencement of operations by the Lanka Coal Company up to June 2016 is given in the following Note.

<u>Supplier</u>	<u>Quantity</u> (M.T.)	<u>Period (According to</u> <u>Bills of Lading)</u>		<u>Total</u> <u>Expenditure</u> <u>(U.S.\$.)</u>
		<u>From</u>	<u>To</u>	
Noble Resources Company (Term Procurement 02)	4,298,692	30-11-2010	24-03-2015	338,362,445
Ceylon Shipping Corporation (Outside Procurement Process)	284,978	07-03-2011	05-11-2012	32,157,128
Liberty Commodities Company – Spot Procurement 1	226,290	01-09-2015	14-10-2015	12,295,615
Liberty Commodities Company – Spot Procurement 2	370,594	04-10-2015	18-11-2015	18,296,805
Swiss Singapore (Term Procurement 06)	1,064,724	16-11-2015	28-03-2016	57,932,357
Liberty Commodities Company - Spot Procurement 4	383,804	24-01-2016	14-03-2016	18,229,353
Adani Global Company – Spot Procurement 5	146,117	02-04-2016	05-04-2016	7,253,790
Total	<u>6,775,199</u>			<u>484,527,493</u>

14.1 Purchases from Noble Resources Company

Purchases of 4,298,692 metric tons of coal had been made by paying U.S.\$ 338.36 million from 30 November 2010 (the date of loading the first shipment) up to 24 March 2015 as shown in paragraph 14 above. Details appear below.

14.1.1 First Contract

Purchase of 2,237,994 metric tons of coal had been made by paying U.S.\$203.66 million from 30 November 2010 (Mandate of loading the first stock of coal) up to 09 January 2014 as shown in paragraph 14 above.

14.1.2 First Extension – with the Approval of the Cabinet of Ministers

The Procurement Committee which had met on 08 October 2013 had recommended the purchase of the maximum required of coal amounting to 1 million metric tons coal at the base price of U.S.\$ 68.50 per metric ton (according to the New Castle Index) from the Noble Resources Company, the extension of the contract period and obtaining the approval of the Cabinet of Ministers in that connection.

The Cabinet of Ministers had, at the meeting held on 31 October 2013, considered the Cabinet Memorandum dated 22 October 2013 submitted by the then Minister of the Line Ministry (Annexe 129) and the recommendations of the then Minister of Finance and Planning and the Minister of Technology and Research (Annexe 130) and decided that negotiations should be held with the current supplier (Noble Resources Company) and to submit the recommendations through the Minister as a very urgent matter to the Cabinet of Ministers on 11 November 2013 (Annexe 131).

The Cabinet of Ministers had, at the meeting held on 11 November 2013, decided that the procurement of the additional stocks of coal should comply with the terms and conditions of the current agreement between the Lanka Coal Company and Noble Resources Company, that the price should be determined at the base price of U.S.\$ 68.50 per metric ton subject to a maximum limit of 1 million metric tons, that the period of the current agreement should be extended up to 31 March 2014 and that with the co-operation of the Procurement Committee action should be taken to formulate a sustainable methodology for the long term fulfillment of the national agreement in accordance with the observations of the then Minister of Finance and Planning.

Even though the above Cabinet Decision received by the Ministry on 12 November 2013 and it had been communicated to the Lanka Coal Company on the same day (Annexe 132) the Lanka Coal Company had communicated that to the Noble Resources Company only on 26 November 2013. Even though the approval for obtaining one million metric tons of coal as referred to above had been received the Ceylon Electricity Board had communicated to the Lanka Coal Company that 600,000 metric tons of coal would be adequate for the ensuing period (Annexe 133). The Noble Resources Company had agreed to supply the maximum amount that can be supplied up to 31 March 2014 and to supply the balance quantity out of the one million tons of coal at the next turn at the same price (at base price US\$ 68.50 per metric ton of coal) (Annexe 134). Accordingly, the Lanka Coal Company had entered into an agreement on 08 April 2014 with the Noble Resources Company for the supply of 200,000 metric tons of Coal before 15 April 2014 (Annexe 135). Even by then the Noble Resources Company had supplied 210,972 metric tons of coal for which US\$ 14.22 million had been paid.

The Audit observations on the above paragraph are given in detail in paragraph No. 18.4 (b).

14.1.3 Purchases made on the approval of the Board of Directors of the Lanka Coal Company without the approval of the Cabinet of Ministers

The Board of Directors of the Lanka Coal Company had meet on 22 July 2014 and decided to purchase 200,000 +/- 10% metric tons of coal outside the Procurement Process from the Noble Resources Company itself at the fixed price of US\$ 74.42 (FOB) per metric ton (Annexe 16). Accordingly, 222,739 metric tons of coal had been purchased from 29 August 2014 to 01 October 2014 at the fixed price of US\$ 74.42 (FOB) per metric ton for a sum of Rs.US\$ 16.04 million.

The Audit observations on this paragraph appear in paragraph 18.4 (c).

Second Extension – with the Approval of the Cabinet of Ministers

Purchase of 1,626,987 metric tons of coal had been made for U.S.\$ 104 million from 15 October 2014 to 24 March 2015 while 10,012 metric tons of Deaf coal valued at U.S.\$ 522,026 had also been purchased.

14.2 Purchases / Supplies through Ceylon Shipping Corporation

The Lanka Coal Company had purchased 228,984 metric tons of Thermal Coal valued at U.S.\$ 29.59 million and 54,557 metric tons of Deaf Coal valued at U.S.\$ 4.29 million from the Ceylon Shipping Corporation.

Shipment	Period	Thermal Coal			Deaf Coal		
		Quantity (M.T.)	Price per Metric Ton U.S.\$.	Value U.S.\$.	Quantity (M.T.)	Price per Metric Ton U.S.\$.	Value U.S.\$.
0 (DC 1)	2010/11	-	-	-	19,892	80.56(CIF)	1,602,500
3	2010/11	81,688	150.92(CIF)	12,328,353	-	-	-
13	2011/12	59,358	137.67(CIF)	8,171,816	9,640	81.02(CIF)	781,033
19	2012/13	32,827	107.78(CIF)	3,538,094	12,375	80.72	998,910
					12,650	72.14(CIF)	912,571
20	2012/13	55,111	100.67 (CIF)	5,548,024	-	-	-
		-----		-----	-----		-----
		<u>228,984</u>		<u>29,586,287</u>	<u>54,557</u>		<u>4,295,014</u>

(a) Shipment O (DC 1)

The Lanka Coal Company placed an order on the Ceylon Shipping Corporation for 49,542 metric tons of Deaf Coal valued at U.S.\$ 2,764,939 (Rs. 313,348,188) required for spreading on the floor of the Power Plant before storing the coal, on decision of the Board of Directors without following the Procurement Process (Annexe 140). Out of this stock of coal, 29,650 metric tons had been sold to a third party by the Ceylon Shipping Corporation as that could not be unloaded due to operating difficulties. The Ceylon Shipping Corporation had entered into an agreement on 16 November 2011 to supply that quantity. Accordingly, 9,640 metric tons of coal valued at U.S.\$ 781,033 by 13 shipments and 12,375 metric tons of coal valued at U.S.\$ 998,910 by 19 shipments had been supplied. Nevertheless, 7,635 metric tons valued at U.S.\$ 426,084 had not been supplied (Annexe 141).

The Audit observations on this paragraph appear in paragraph 18.6 (i)

(b) Shipment 03

In entering into an agreement No. LCC/CSL on 21 December 2011 for the purchase of Deaf Coal referred to above (Annexe 142) Lanka Coal Company with the Ceylon Shipping Corporation, the Lanka Coal Company had agreed to purchase Thermal Coal from the Ceylon Shipping Corporation outside the Procurement Process and without the approval of the Cabinet of Ministers. Accordingly, 81,688 metric tons of Thermal Coal valued at U.S.\$12,328,353 (Rs.1,602,685,890) at U.S.\$ 150.92 CIF (U.S.\$ 124.24 FOB) had been purchased (from Taurine Iron Steel Company). However, during the period the Noble Resources Company as well had been supplying (transport by the Ceylon Shipping Corporation) Thermal Coal at U.S.\$ 148.29 CIF (U.S.\$ 121.61 FOB per metric ton. Even though purchases at U.S.\$ 148.29 CIF (U.S.\$ 121.61 FOB) per metric ton could have been made purchases had been a higher price as shown above.

The Audit observations on this paragraph are given in detail paragraph No.18.6 (d).

(c) Shipment 13

The Lanka Coal Company had purchased 59,358 metric tons of Thermal Coal valued at U.S.\$8,171,816 at U.S.\$ 137.67 CIF (U.S.\$ 107.63 FOB) through the Ceylon Shipping Corporation under the agreement No. LCC/CSC (from Taurine Iron Steel Company) (Annexe 142). However, during the period the Noble Resources Company as well had been shipping (transport by the Ceylon Shipping Corporation) Thermal Coal at U.S.\$132.47 CIF (U.S.\$ 102.43 FOB) per metric ton. Even though purchases at U.S.\$ 132.47 CIF (U.S.\$ 102.43 FOB) per metric ton could have been made, purchase of 59,358 metric tons had been made at a higher price as shown above.

The Audit observations on this paragraph are given in detail in paragraph No. 18.6 (e).

14.3 Coal Purchased under Shipments 16 and 17 and could not be unloaded, Resupplied under Shipment 18

The Ceylon Shipping Corporation had, on behalf of the supplier Noble Resource Company, loaded under shipments 16 and 17 a stock of 142,350 metric tons of coal relating to the Second Procurement on 17 April 2012 and 23 April 2012 respectively. As the sea around Norochhole is rough due to bad weather during May to September, 85,891 metric tons relating to shipments 16 and 17 could not be unloaded.

The Board of Directors of the Lanka Coal Company had decided on 28 June 2012 to sell the coal which could not be unloaded due to this reason to a third party and obtain coal of the same standard through the said party. Accordingly, the Ceylon Shipping Corporation had entered into an agreement with Taurine Iron Steel Company (Pvt) Ltd (Annexe 143) for the purchase of coal and the Lanka Coal Company and the Ceylon Shipping Corporation had entered into an agreement on 29 June 2012 (Annexe 144).

Even though Ceylon Shipping Corporation should have supplied 85,891 metric tons of coal, 55,994 metric tons of coal only had been supplied. Instead of taking action to obtain the further receivable 29,896 metric tons of coal valued at U.S.\$ 3,558,763 , the Lanka Coal Company had opened Letter of Credit for 32,827 metric tons of coal valued at U.S.\$ 4,076,640 (R U.S.\$..529,963,200), a stock of 12,650 metric tons of Deaf Coal valued at U.S.\$ 809,760 for the shipment 19 and for 55,111 metric tons of coal valued at U.S.\$6,228,200 (Rs.809,666,000) for the shipment No. 20 (Annexe 145).

The Quality Report obtained by the Ceylon Electricity Board at the time of unloading the coal imported by the Taurine Iron teel Company by shipments 18, 19 and 20 stated that the coal is not conforming to the standards, that is, less than 5,900 thermal generation value.

The Audit Observations on paragraph 14.2 above are given in detail in paragraph No. 18.6 (f) and (h).

14.4 Purchases from the Liberty Commodities Company

The Lanka Coal Company had purchased 980,688 metric tons of coal from the Liberty Commodities Company from September 2015 to March 2016 and the expenditure incurred on that amounted to U.S.\$48,821,773.

14.5 Purchases from the Swiss Singapore Company

The Lanka Coal Company had purchased 1,064,724 metric tons of coal from the Swiss Singapore Company from 16 November 2015 to 28 March 2016 and the expenditure incurred on that amounted to U.S.\$ 57,932,357.

14.6 Purchases from the Adani Global Company

The Lanka Coal Company had purchased 146,117 metric tons of Thermal Coal valued at U.S.\$ 7,253,790 and 20,789 metric tons of Deaf Coal valued at U.S.\$ 987,477 from the Adani Global Company.

15. Transport of coal

The Lanka Coal Company had spent a sum of U.S.\$ 145,142,587 for the transport of 6,775,199 metric tons of Thermal Coal and 85,358 metric tons of Deaf Coal purchased from 30 November 2010 to 09 May 2016.

Transport costs for the transport of coal amounting to U.S.\$141,232,129 and U.S.\$ 3,910,458 had been charged by the Ceylon Shipping Corporation and the Liberty Commodities Company respectively. The details thereon are given below.

Supplier -----	Quantity ----- (M.T.)		Number of Shipment s ----- -	Ceylon Shipping Corporation ----- (U.S.\$)	Liberty Commoditie s Company ----- (U.S.\$)
	Thermal Coal -----	Deaf Coal -----			
Noble Resources Company	4,298,692	10,012	73	105,500,814	-
Ceylon Shipping Corporation	284,978	54,557	9	7,630,092	-
Liberty Commodities Company	980,688	-	18	10,182,046	3,910,458
Swiss Singapore Company	1,064,724	-	18	15,491,734	-
Adani Global Company	146,117	20789	3	2,427,443	-
Total	6,775,199	85,358	121	141,232,129	3,910,458
Grand Total					145,142,587

16. Storage of Coal and Disposal of Ash

The Audit observations revealed in connection with the storage of coal and the disposal of coal ash appear in paragraph No. 18.11.

17. Idle Assets

Two boats and 03 barges purchased at the inception of the Power Plant at a cost of Rs.1,129,844,592 (Annexe 146) for the transport of coal cannot be used and they are anchored in the Ports of Trincomalee and Colombo on the payment of retention charges. The Audit Observations on the above paragraph appear in paragraph No. 18.12.

18. Audit Observations

The Audit Observations on the matters referred to in the above paragraphs are given below under each identified head.

18.1 Establishment of the Lanka Coal Company and its Functions

Even though the Cabinet of Ministers had granted approval (Annexe 4) for the establishment of the Lanka Coal Company for the execution of the specified function of the purchase of coal required for the Coal Thermal Power Plants planned for construction at Norochchole, Trincomalee and Hambantota as appearing in paragraph 5 above it was observed according to paragraph 5.2 that the Lanka Coal Company arrogated to itself certain functions assigned to other Public Institutions by Parliamentary Acts, in its objectives thus covering a scope much wider than the objectives of the establishment of the Company (Annexe 6).

18.2 Deficiencies in the Bid Process

- (a) The failure to hold the first joint meeting of the Technical Evaluation Committee and the Procurement Committee referred to in paragraph 12.1.1 (b) is observed as a violation of the Guideline 2.11.1 (c) of the Procurement Guidelines. (Annexe 147).
- (b) According to paragraph 12.1.1 (c), the newspaper advertisement (Annexe 22) published for inviting the Expression of Interest for the First Procurement included the requirement of 5 years experience in the supply of coal or a similar business, whereas applications had been issued to institutions with 3 years experience. This was observed as a violation of the Guideline 3.12.1 (f) of the Procurement Guideline (Annexe 148). It was further observed that it had deprived of the opportunity to other institutions that could have made applications, thus reducing the competitiveness causing disadvantage to the Lanka Coal Company.

- (c) There was no evidence in support that the second, third and fifth amendments to the First Procurement described in paragraph 12.1.5 had been communicated to the bidders. Further, the hand written notes on the photocopies of the letters prepared to communicate the first and the fourth amendments had not been signed and confirmed by an authorized officer. As such it was not specifically confirmed that those were communicated to all bidders. Thus it was observed that the Guideline 5.3.14 (a) of the Procurement Guidelines had been violated (Annexe 149).
- (d) Even though the Lanka Coal Company should have included a conditions on the requirement of registration under the Public Contracts Act in the Bidding Documents as referred to in paragraph 12.3.2, it had not been so done. It was also observed that the failure to take action to obtain legal opinion on the above matter and amend the Bidding Documents accordingly as directed by the Procurement Committee, had been the primary reason for the cancellation of this procurement.

Further, in terms of the Supplement No. 13 (Annexe 150) of the Procurement Manual, registration under Section 8 of the Public Contracts Act, No. 13 of 1987 is required for every contract exceeding Rs.5 million (Annexe 33). Nevertheless, the Lanka Coal Company had been taking action disregarding that up to the Fifth Procurement.

- (e) According to paragraph 12.6.5, the Bidding Document for the Sixth Procurement had been amended in 6 occasion (Annexe 82), thus resulting in the delay of bid closing date by 03 months. Even though 5 Bid Processing had been completed as at that point of time, it was observed that a long period of 08 months had been taken for the award of the contract due to the failure of the Technical Evaluation Committee and the Procurement Committee to make use of the experience gathered.

18.3 Deficiencies in the Bid Evaluation Process

- (a) According to paragraph 12.6.6 (j), it was not specifically confirmed whether the Procurement Committee held negotiations with the Noble Resources Company for further reducing the price offered in the bid before the selection of a substantially responsive bidder for the Sixth Procurement.
- (b) Even though the Procurement Committee considering an E-mail message sent on 26 June 2015 by the Suek AG Company (Annexe 94) and a letter sent on 29 June 2015 by the Swiss Singapore Company relating to Sixth Procurement (Annexe 92) referred to in paragraph 12.6.6 (k) is contrary to Sub-section 5.5 subject to Sub-section 5.2 (Annexe 152) of the Bidding Document, it was observed that the rejection of the bids warrant in such situations had not been implemented by the Procurement Committee against the Swiss Singapore Company and the Suek AG Company.
- (c) The elimination of the Price Penalty on size Consist of coal for the second evaluation of the bids of the Sixth Procurement as referred to in paragraph 12.6.6 (l) was observed as a violation of the Guidelines 5.3.20 (b) and 7.9.10 (Annexe 154) of the Procurement Guidelines.
- (d) According to paragraph 12.6.4.2 the prospective bidders had made enquiries at the Second Pre-bid Meeting (Annexe 81) whether bids could be offered according to the Price Indexes of different countries (API 4 Index as an example) and the Procurement Committee which stated at that point, that it cannot be done (as stated in paragraph 12.6.12) had used the API 4 Index in place of the New Castle Index in a subsequent occasion. Such subsequent change of the Index was observed as an action contrary to the prior consensus as well as the Guideline 5.3.20 of the Procurement Guidelines (Annexe 155).
- (e) According to paragraph 12.6.15 certain criteria in the draft agreement (Annexe 157) included in the original Bidding Documents of the Sixth Procurement to

which all parties had agreed, had been amended when the Lanka Coal Company entered into the agreement with the Swiss Singapore Company (Annexe 158) and as such, the Price Penalty for size consist recovered on the deviation of the standard size of lumps coal included in the original Bidding Documents could not be recovered according to the amended agreement. As such the estimated penalty which could not be recovered from the Swiss Singapore Company amounted to U.S.\$ 8,754,979 (Rs.1,138,147,270) (Annexe 159).

Even though the criteria used from the commencement of the Coal Procurement Process (from the First Procurement to the Fifth Procurement) had been included in the Bidding Documents of the Sixth Procurement as well, the re-evaluation done by altering one of the criteria in a different form was observed as a violation of the principle of providing an opportunity to all (Annexe 160).

The Price Penalty for Size consist amounting to Rs.29,683,391 had not been recovered in connection with 4,298,692 metric tons of coal supplied by the Noble Resources Company during the period November 2010 to 24 March 2015 (Annexe 156).

- (f) According to paragraph 12.6.15 though the criteria with size consist of the coal shown was as maximum value (above 50 mm) 3% and low value (less than 2mm) 25%, in entering into the agreement between Lanka Coal Company and the Swiss Singapore Company (Annexe 113) those values had been altered as (above 50mm) 5% and (less than 2 mm) 30%.

18.4 Action not taken in Compliance with the Decisions of the Cabinet of Ministers / Action without Approval

- (a) The First, Second and Fourth Spot Contracts described in paragraphs 13.1, 13.2 and 13.4 had been awarded on 11 August 2015, 18 September 2015 and 21 January 2016 respectively. Even though the Cabinet of Ministers had granted approval at the Cabinet Meeting held on 22 July 2015 (Annexe 118) for the award of the tenders subject to the condition that after each award the covering approval of the Cabinet of Ministers should be obtained at the earliest meeting of the

Cabinet of Ministers, the covering approvals for the above procurements had been obtained only on 09 December 2015, 27 January 2016 and 12 July 2016 respectively. Further according to paragraph 13.5.4 , the covering approval of the Cabinet of Ministers for the Fifth Spot Contract awarded on 04 March 2016 had not been obtained even up to the date of this report. Accordingly, an inordinate delay in obtaining the covering approval of the Cabinet of Ministers was observed.

- (b) According to paragraph 14.1.2, the Cabinet of Ministers had decided on 11 November 2013 the purchase of coal subject to a maximum of one millions metric tons at U.S.\$ 68.5 per metric ton before 31 March 2014 from the Noble Resources Company (the previous supplier). Nevertheless, the Lanka Coal Company had purchased 210,972 metric tons of coal from 17 February 2014 to 23 March 2014 without entering into an agreement with the Noble Resources Company. Subsequently, on 08 April 2014, an agreement with the Noble Resources had been signed for 200,000 +- 10% metric tons (Annexe 161). Such procurement of goods without entering into agreements is an action contrary the Guideline 8.9.2 of the Procurement Guidelines (Annexe 162).

Even though the Cabinet of Ministers had decided that coal up to a maximum of one million metric tons should be purchased before 31 March 2014, the Noble Noble Resources Company had been supplying coal under the Term Contract Procurement, by then, and the fact that the unloading of a further one million metric tons within a period of 5 months would not be practical had not been included in the Cabinet Memorandum submitted. Even the Ceylon Electricity Board had confirmed that one million metric tons of coal could not be unloaded during that period.

- (c) According to paragraph 14.1.3 , an agreement had been entered into with the Noble Resources Company (Annexe 163) on 24 July 2014 based on a decision of the Board of Directors of the Lanka Coal Company for the purchase of 200,000 metric tons of coal deviating from the Procurement Process and without the

approval of the Cabinet of Ministers, (Metric tons 200,000 +- 10%) and 222,739 metric tons of coal had been purchased for U.S.\$ 16.04 million at the fixed price of U.S.\$ 74.42 (FOB) per metric ton. This is observed as a transaction executed without transparency.

It is observed that a problematic situation will arise in connections with the above requirement and making a spot purchase of 200,000 metric tons of coal from the Noble Resources Company at a time when a bidder for Term Procurement had already been selected by inviting for bids, is observed as a questionable transaction.

- (d) According to paragraphs 12.1.8, the Cabinet of Ministers had not been made aware of the cancellation of the First Term Procurement by the Procurement Committee on 26 June 2009 and the approval of the Cabinet of Ministers had not been obtained for the commencement of the Second Procurement referred to in paragraph 12.2.1.

18.5 Non-compliance with the Procurement Guidelines

- (a) Even though the Master Procurement Plan should have been prepared in terms of the Guideline 4.2 (Annexe 167) of the Procurement Guidelines and despite being informed at the inception of the Lanka Coal Company by the Deputy Secretary to the Treasury, by his letter No. NPA/DM/104-20-73 dated 23 April 2008, it had not been so done. Even though the Cabinet of Ministers as well had brought its attention to this matter again the Lanka Coal Company had prepared a Master Procurement Plan for the years 2016/2017 and furnished to the Ministry of Power and Renewal Energy only on 25 January 2016.
- (b) As action in accordance with the instructions in the Guideline 1.2.1 (a), (b) and (f) of the Procurement Guidelines appearing in Annexe 169 had not been taken, the Lanka Coal Company, the Technical Evaluation Committee and the Procurement Committee had disregarded the objectives of the Government Procurement Guidelines in the procurement of coal.

- (c) According to the instructions in the Guideline 4.2.3 of the Procurement Guideline / Procurement Manual (Annexe 170) a period of 12 weeks should be allowed for closing of bids for contracts valued over Rs.3,000 million. But there were instances of time not so given.

In the case of the Fifth Procurement, shown in detail in paragraph 12.5.2 , sufficient time in connection with modifications in terms of the Guideline 5.3.15 of the Procurement Guidelines (Annexe 171) had not been given to the bidders. Even though it was stated that the third modification of the Fifth Procurement had been communicated on 24 and 26 June 2014 and the fourth modification had been communicated on 26 June 2014 (there were no confirmations), it was observed that sufficient time had not been given to the bidders as the bid closing date was 03 July 2014. (It was stated in the Report of the Appeal Board that one of the bidders, that is, Kolma Group, had stated in their appeal (Annexe 173) that it had not been given time to submit a satisfactory bid. In addition, it had been confirmed by the Appeal Board as well).

- (d) Even though each member of the Technical Evaluation Committee shall sign to confirm the individual responsibility to the task assigned in addition to signing the joint responsibility of the Technical Evaluation Committee in terms of the Guideline 2.4 of the Procurement Manual (Annexe 174) all members had not signed certain Reports of the Technical Evaluation Committee (Annexe 175).
- (e) Even though the unsuccessful bidders should be informed of their shortcomings in brief with the overall objective of educating the bidder to submit more responsive and competitive bids in future in terms of the Guidelines 8.8 of the Procurement Guideline (Annexe 176) it had not been so done.
- (f) In terms of the Guidelines 8.10.2 of the Procurement Guidelines (Annexe 178) if the contract value exceeds Rs.250 million, publication of contract awards in at least in one widely circulated national newspaper and the Government Gazette is

mandatory. Nevertheless, the Lanka Coal Company had not followed those instructions in connection with the procurement of coal.

- (g) In terms of the Guideline 7.12.4 of the Procurement Guidelines (Annexe 179) a record of matters agreed with the bidder during negotiations and execute a Memorandum of Understanding with the bidder relating to the agreed negotiation terms and conditions, it had not been so done in connection with the procurement of coal.
- (h) In terms of the Guideline 8.9.3 of the Procurement Guideline / Procurement Manual (Annexe 180), in instances of contract value exceeding Rs.500 million, the contract agreement should be signed by the Secretary to the Line Ministry. Nevertheless, none of the relevant contract agreements had been signed by the Secretary to the Line Ministry and all coal procurement agreements had been signed by the Chairman of the Lanka Coal Company.
- (i) The Technical Evaluation Committee and the Procurement Committee for the Sixth Procurement had been appointed on 19 September 2014 by the Department of Public Finance and subsequently the Procurement Committee had been reappointed on 20 January 2015. Nevertheless, the Additional Secretary to the Line Ministry had functioned as an alternate member of the Procurement Committee for 7 meetings from the ninth meeting to the fifteenth meeting of this procurement. But he had not been formally appointed in terms of the Guideline 2.7.8 of the Procurement Guidelines and the legality of such participation was observed as questionable (Annexe 197).

18.6 Economy, Efficiency and Effectiveness of Transactions

- (a) Despite the inclusion of the size consist and weight of a grain of coal in the Bidding Document under the Spot purchases as stated in paragraph 13.1.2, the words “size consist, not applicable” under the Quality Price Adjustment (Page 53) (Annexe 118). This criteria had been included from the First Procurement to the Sixth Procurement and the elimination of this criteria in the Spot Procurements

had been done without adducing justifiable reasons and without carrying out a formal study and without the approval of the Cabinet of Ministers.

In view of the elimination of the criteria on Grain Size for Quality Price Adjustment without carrying out a formal study or approval, the penalties relating to the First, Second and Fourth Spot Procurements amounting to U.S.\$ 758,358 (Rs.98,586,540) U.S.\$ 562,763 (Rs.73,159,190) and U.S.\$ 409,537 (Rs.53,239,810) (Annexe 181) could not be recovered from the Liberty Commodities Company.

In addition, the sum recoverable from the Fourth Spot Procurement shown above is only for 28 per cent of the stock of coal. The amount recoverable for the balance 72 per cent (shipments 106,107,108,113 and 114) that is 275,144 metric tons of coal (Annexe 181) could not be computed as the Independent Quality Survey Report (Annexe 182) did not contain the information on the size criteria.

The Independent Quality Survey Institution had included the Grain size in the Quality Survey Reports up to 30 January 2016, and that information had not been included in the reports after 16 February 2016. Evidence in support whether the Lanka Coal Company had communicated to the Quality Survey Institution to eliminate the information on the Grain size from the report and for inclusion thereafter or any enquiries made by the Lanka Coal Company from the Quality Survey Institution for their failure to furnish the information or any other course of action taken was not furnished.

Further, as the Grain size had not been considered under the Quality Price Adjustment (as stated in paragraph 13.1.2) penalty of U.S.\$ 1,194,612 (Rs.155,299,560) (Annexe 183) under the Fifth Spot Procurement, could not be recovered from the Adani Global Company.

- (b) According to paragraph 13.1.4, as the Lanka Coal Company had not paid due attention to the alterations made to the Price Adjustment Formulas on criteria for sulfur and ash contained in the draft agreement in entering in to the final agreement with the Liberty Commodities Company, overpayments of U.S.\$

173,134 (Rs.22,507,420 for 226,290 metric tons of coal under the First Spot Procurement, U.S.\$ 391,192 (Rs.50,854,960) for 370,594 metric tons of coal under the Second Spot Procurement and U.S.\$ 1,011,304 (Rs.131,469,520) for 383,804 metric tons of coal under the Fourth Spot Procurement (Annexe 184) had been made to the Liberty Commodities Company.

- (c) According to paragraph 13.1.5, in placing reorder, the Procurement Committee had not taken action in terms of the Guidelines 3.6 of the Procurement Guideline (Annexe 185).
- (d) As described in paragraph 14.2 (b) when there was the possibility for the purchase of coal at U.S.\$148.29 CIF (U.S.\$121.61 FOB) per metric ton from Noble Resources Company, an estimated loss of U.S.\$ 215,236 (Rs.27,980,680) (Annexe 186) had been sustained in the purchase of coal at higher prices through the Ceylon Shipping Corporation (Purchased from the Taurine Iron Steel Company). Further, this order had been executed without following the Procurement Process and without the approval of the Cabinet of Ministers.
- (e) As described in paragraph 14.2 (c), when there was the possibility for the purchase of coal at U.S.\$ 132.47 CIF (U.S.\$102.43 FOB) per metric ton from the Noble Resources Company an estimated loss of U.S.\$ 308,930 (Rs.40,160,900) (Annexe 186) had been sustained in the purchase of 59,358 metric tons of coal at higher prices through the Ceylon Shipping Corporation (purchased from the Taurine Iron Steel Company). Further, this order had been executed without following the Procurement Process and without the approval of the Cabinet of Ministers.
- (f) As described in paragraph 14.3, the coal purchased by the Ceylon Shipping Corporation from the Taurine Iron Steel Company and transported under shipments 18, 19 and 20 did not conform to the specified quality and the amount of electricity units generated from that coal had less than the expected amount and the resultant loss of income according to the computation of the Ceylon Electricity Board amounted to Rs.852,768,000 (Annexe 187).

- (g) According to paragraph 14.2 (a), even though an order had been placed for 49,542 metric tons of Deaf Coal, required for spreading on the floor of the Power Plant prior to the storage of coal, valued at U.S.\$2,764,939 (Rs.313,348,188), and paid for. Nevertheless,, 41,907 metric tons out of that only had been supplied. Accordingly, the Ceylon Shipping Corporation had not supplied 7,635 metric tons Deaf Coal (Annexe 141) valued at U.S.\$ 426,084 (Rs.55,390,920) to the Ceylon Electricity Board even by 31 October 2016. Further, this order had been executed without following the Procurement Process and without the approval of the Cabinet of Ministers.
- (h) As described in paragraph 14.3, even though the Ceylon Shipping Corporation should have supplied 85,891 metric tons of coal, 55,994 metric tons of coal out of that only had been supplied. Further, 29,896 metric tons of coal valued at U.S.\$ 3,558,763 (Rs.462,639,190) had not been supplied by the Ceylon Shipping Corporation even by 31 October 2016 (Annexe 188).

18.7 Functions of the Technical Evaluation Committee and the Procurement Committee

Out of 06 Term Supply Procurements commenced during the period from the year 2008 to 31 October 2016, three Procurements (First, Third and Fifth) had been cancelled and the Fourth Procurement had been ceased even without inviting bids. Modifications made to the Bidding Documents from time to time resulting in difficulties to the bidders and the consequent extension of the dates for obtaining the Bidding Documents and the closing dates of bids were observed. The period from the date of inviting bids for the Third Term Procurement up to its cancellation had been 01 year and 04 months.

18.8 Operation of the Power Plant at Low Capacity

As coal sufficient for the requirements of the Power Plant had not been supplied an additional expenditure had to be incurred. Such estimated additional expenditure according to the computation by the Secretary to the Line Ministry amounted to Rs.12,500,000,000 (Annexe 190) and according to the computation of the Chairman of the Ceylon Electricity Board amounted to Rs.983,230,000 (Annexe 191).

18.9 Environmental Impact

In the planning stage of the Power Plant, the facilities for the unsecured deposit of floating ash daily disposed of from the Power Plant allowing for free release of ash to the environment had been provided and as a result ash had been blown out by the wind causing considerable damage to the community life and cultivation in the surrounding areas. It was observed that sufficient, expeditious and sustainable solutions to such problems had not been provided.

18.10 Transport of Coal

The demurrage computed for the shipments 1 to 15 amounted to U.S.\$ 692,412 (Annexe 192) and out of that U.S.\$256,301 , that is, Rs.27,435,577 (Annexe 192) had been paid. The demurrage for the period 2014 to 2015 amounting to U.S.\$ 4,503,826.21 (Rs.607,115,773) (Annexe 193) had been paid. Further, a Committee had been appointed for the payment of demurrage for the shipments 1 to 15 and the payments had been made on the recommendations of that Committee. But the payments for this period had been made without such recommendations. The demurrage on unloading for the period November 2015 to April 2016 as at 10 October 2016 amounting to Rs.115,070,656 (Annexe 194) had been agreed to. However, finally this demurrage will be a charge on the Government.

18.11 Storage of Coal

According to the capacity of the Yard in the Coal Power Plant, 900,000 metric tons of coal (Annexe 191) only can be stored and in view of the inability to import coal during 06 months annually, it was observed that the stores yard is not sufficient for the storage of coal required for such periods.

18.12 Observations revealed with regard to Idle Assets

Costs amounting to Rs.177 million (Annexe 146) had been incurred by the Ceylon Electricity Board up to 31 December 2015 for keeping the vessels referred to in paragraph 17 above anchored without being used.

18.13 Observations on the Lanka Coal Company

- (a) It was observed that the Lanka Coal Company had not maintained appropriate and sufficient co-ordination with the Line Ministry, the Ceylon Shipping Corporation and the Ceylon Electricity Board.
- (b) It was observed that there were instances in which the Lanka Coal Company had entered into agreements without obtaining the clearance from the Attorney General with regard to their legal validity and the legal background.
- (c) Since the year 2009, the Bidding Documents had been modified from time to time in a large number of instances. The Lanka Coal Company and the Ceylon Electricity Board had not taken action to understand the adverse impacts caused to the Bidders by such modifications and rectify those. It was observed that there were instances in which the overall Bid Process had to be ceased due to result of appeals.
- (d) Even though samples of coal had been obtained at the unloading port from every shipment from the year 2009 to May 2016 and subjected those to quality tests at laboratories, it was observed that 15% retention money had been released before the receipt of the quality certificates (Annexe 195 and 196). Several examples are given below.

Shipment Number	Date of Obtaining the Sample	Date of Issue of Quality Certificate	Date of Completing Payment
100	2016.02.03	2016.03.09	2016.02.08
101	2016.02.15	2016.04.08	2016.02.24
102	2016.02.19	2016.04.18	2016.02.18

19. Recommendations

01. The components of the Bidding Documents should be prepared accurately on the advice of Technical Specialists. Similarly, in the evaluation of bids, the standards of the relevant technical criteria should be specially determined by a Committee having technical knowledge.
02. The officers should be given specific instructions on the maintenance of the files on procurement systematically and assign the responsibility in that connection.
03. A file of data on the Bidders who obtain Bidding Documents and the confirmation of the acknowledgement of the modifications to the Bidding Documents and others dispatched / communicated to the parties concerned should be obtained.
04. A formal and practical Annual Procurement Plan for the procurement of coal should be formulated by the Lanka Coal Company in consultation with the Line Ministry, the Ceylon Shipping Corporation and updated and implemented, after paying due attention to the requirements of the Power Plant, storage facilities, climate changes and other requirements.
05. The officers responsible should take action to ensure that all relevant information is made available through Cabinet Memorandums to the Cabinet of Ministers to enable the Cabinet of Ministers to take correct decisions.
06. Attention should be paid for using the entire quantity of ash released from the Power Plant as waste, as raw material for other by-products. The methodologies used by other countries for minimising the environmental damage caused by release of waste from the Coal Power Plants should be studied and follow such methodologies for minimising the environmental damage caused due to the operation of the Power Plant.

07. The Procurement Process should be directed to safeguard economy, efficiency and effectiveness aspects in order to safeguard the value for Money Concept.
08. The authorities concerned should ensure that the Pre-Bid Meetings are held with better effectiveness and through that minimize problems that may arise in the future.
09. Meetings should be held in a manner that would build-up a good co-ordination and responsibility among the Line Ministry, the Lanka Coal Company and the Ceylon Electricity Board and the Minutes of such meetings should be formally exchanged among the parties concerned.
10. The Ceylon Electricity Board should maintain the supervision of unloading coal from the ships to the barges. As the Ceylon Electricity Board incurs all expenditure on the quality tests, a methodology to involve Ceylon Electricity Board in the Test Process should be introduced.
11. The laws, rules and the generally accepted terms and conditions in force relating to the Procurement Process should always be complied with.
12. Invitation to bids and the method of procurement should be determined in order to accrue the gains resulting from the fluctuation of the market price of coal to the Government.
13. In entering into agreements, the clearance of their legal background from the Attorney General should be obtained.
14. The Lanka Coal Company should take action to obtain the Competitive gains through the creation of a formal Procurement Process for the transport of coal.

15. A formal mechanism should be formulated to ensure that the future action will follow in accordance with the agreed specifications based on the results of the Quality Test Reports.
16. The possibility of annual registration of the suppliers technically qualified under Spot Procurement, inviting bids from such suppliers and making Spot purchases from such bids when required should be considered.
17. Instead of resorting to the intermediary suppliers for the purchase of high quality coal for the Coal Power Plants, the possibility of attracting the Coal Mine Owners direct to the Procurement Process should be considered.
18. The infrastructure facilities should be improved in order to expand the 06 months suitable period available annually at present for the unloading of coal to cover the entire year.
19. The storage facilities should be improved for the maintenance of a buffer stock to prevent any shortages, in order to ensure generation at the full capacity of the Plant.
20. Action should be taken either for the use or the disposal of the barges lying idle at present in the Colombo and Trincomalee Ports due to those being unfit for use.
21. Action should be taken to enhance the competitiveness in the Procurement Process in order to avoid the deficiencies such as making a number of Modification due to the inadequacy of the information in the Bidding Documents, the non-issue of modifications to the bidders with sufficient time, deficiencies in the criteria used for technical evaluations, the deficiencies in the decisions made by the Technical Evaluations Committee and the Procurement Committee during the bid evaluations, inordinate delays involved in the Procurement Process, the failure to improve the transparency of the Bidding Documents.

22. The accounting records should be maintained in a manner to disclose the Profit Centre for a particular period and the financial position as at a specific date in order for the identification of the contribution made to the national economy by the Norochhole Lakvijaya Power Plant.
23. As most of the developed countries in the world had utilized coal as the more profitable avenue of power generation to bring the economy to a stable level the generation of power by using coal should be promoted until the economy reaches a stable level.

20. Conclusions

- (a) It is concluded that the Coal Procurement Process under review had not been directed in accordance with the primary objectives of the Procurement Process, namely -
- Maximising economy, timeliness and quality in Procurement resulting in least cost together with the high quality,
Adhering to prescribed standards, specifications, rules, and regulations and good governance,
Providing fair, equal and maximum opportunity for eligible interested parties to participate in the Procurement,
Expeditious delivery of goods and services, and
Ensuring transparency and consistency in the evaluation and selection procedure.
- (b) It is concluded that the officers responsible for the estimated loss / additional cost / loss of income amounting to Rs.4,145.43 million (Annexe 198) should be identified and that the Procurement Process should be made formal in order to prevent the recurrence of such losses / additional cost / loss of income in the future.
- (c) It is concluded that, according to the matters revealed in this report, it was not confirmed that the institutions such as the then Ministry of Power and Energy, the Ministry of Power and Renewable Energy, the Lanka Coal Company Ltd., the Ceylon Electricity Board and the Ceylon Shipping Corporation and the Technical Evaluation Committee and the Standing Cabinet Appointed Procurement Committee appointed for these purchases had not exercised professional due care in the performance of their duties.
- (d) It is concluded that the Lanka Coal Company Ltd., related to the purchase of coal was not proved as an essential institution that should act to ensure the least cost

and least risk to the Government and as such the relevant parties should carry out an extensive study as to whether this institutions should be maintained any longer.

- (e) It is concluded that as the generation of electricity in Sri Lanka by using coal involves a comparatively very low cost, it is necessary to consider further improving such economic gain resulting from the generation of electricity by using coal by employing the standard methodologies along with the mitigation of the damage caused to the environment.
- (f) It is concluded that there were instances in which the important information relevant for making decision on Procurement had not been made available to the Cabinet of Ministers through Cabinet Memorandums.
- (g) This Report was prepared within the limitations of the mandate, resources and time available to the Auditor General and the examination did not go beyond the scope and examine whether there were illegal or criminal activities on which the Auditor General cannot make any conclusions and if it is perceived that such inquiry should be carried out, I conclude that it is appropriate to seek the assistance of the institutions specialized in such fields.