



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### **MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 9 December 2015

**STATUS** Immediate

#### ***Westinghouse v Eskom Holdings (476/2015) [2015] ZASCA 208***

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

The Supreme Court of Appeal today reversed the decision of the Gauteng Local Division that had dismissed the application for the review of an award by Eskom to Areva NP, a French company, of a tender to replace the steam generators in the two units of the Koeberg Nuclear Power Station in the Western Cape. The application was brought by Westinghouse Electric, Belgium, which was the unsuccessful bidder. Eskom required that the steam generators at Koeberg be replaced during a scheduled outage in 2018.

The Board Tender Committee (BTC) of Eskom had taken the decision to award the tender to Areva for various strategic considerations that fell outside the bid evaluation criteria. The Gauteng Local Division had considered that the strategic considerations were relevant to the award and that the decision was thus not unlawful. It did not take into account that Westinghouse had not known what these criteria were before the decision was made and had thus not had an opportunity to deal with them. The court also did not take into

account that a tender process must be procedurally fair, and that a bid should be evaluated only against the bid criteria contained in the invitation to tender.

The SCA found that the process followed by Eskom was procedurally unfair and the award made for reasons that were not relevant. It thus set aside the decision of the BTC, but remitted the matter to Eskom to reopen the tender process if it still considered that the strategic considerations were decisive.