



Chhattisgarh State Electricity Regulatory Commission

Civil Lines, G.E. Road, Raipur - 492 001 (C.G.)

Ph.0771-4048788, Fax: 4073553

www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in

Petition no. 03 of 2008(M)

Petitioner:

Jindal Steel & Power Ltd

In the matter of approval of deviations from Standard Bid Documents for procurement of power on medium term basis from developers / generators by adopting tariff based bidding process.

Present:

S.K. Misra, Chairman

Sarat Chandra, Member

ORDER

(Dated 21.02.2008)

This petition has been submitted by Jindal Steel & Power Ltd. (JSPL) seeking Commission's approval for deviations from Standard Bid Documents (SBD) for procurement of 100 MW power for medium term through competitive bidding route:

2. As per section 63 of Electricity Act, 2003 (the Act), the Commission has to adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. The Government of India under section 63 of the Act, has notified "Guidelines for determination of Tariff by Bidding process for procurement of power by Distribution Licensees" (hereinafter referred to as CBG) on 19th January 2005. As per clauses 3.1 and 5.16 of these Guidelines, approval of appropriate Commission is required in the event of deviations from the bidding conditions stipulated in the Guidelines.

3. While the Central Government has finalized "Standard Bid Documents" (SBD) for case-2 type cases (for hydro projects or load centre projects or location-specific / fuel specific projects), the 'Standard Bid documents' for case-1 type cases (where location, technology or fuel is not specified by the procurer) are yet to be finalized by Central Government. Under the circumstances, the JSPL has proposed to adopt SBD for case-1 for procurement of power through competitive bidding.

4. Clause 4.1 of the Guidelines provide for single stage bidding for medium-term procurement. It states: "For medium term procurement the procurer may, at his option, permit bids on a single part basis, and the same shall be clearly specified in the Request for Qualification (RFQ) / Request for Proposal (RFP)". Similarly Clause 5.1 of the bidding guidelines allows a procurer, at his option, to adopt a single stage tender process for medium term procurement, combining the RFP and RFQ processes. JSPL has proposed to procure through single stage bidding process.

5. The petitioner vide his letters dated 20.11.07 and 20.12.07 has informed the Commission that since, Central Government has not issued their SBD for Case-1,

the petitioner has utilized SBD of case-2 as a base for preparing bidding documents for the case-1 bids for medium term procurement of power, and also that he has modified the SBD as issued by Government of India for case-2 to suit the requirement of case-1 wherein, the power may be procured from unknown producers by competitive bidding process.

6. As already mentioned, Clause 3.1 and Clause 5.16 of the CBG, lay down that approval of the Commission needs to be sought in the event of deviations from bidding conditions stipulated in the CBG. In view of these provisions, the petitioner vide letter dated. 03.01.08 has furnished the list of deviations for RFP and RFQ documents along with deviations in the PPA documents with respect to SBD for case-2 and has requested the Commission for approval of the same.

In course of consideration of the petition, the petitioner was asked to submit the following information:-

- a. Power procurement plan to cover the demand forecast, requirement and availability of power for next three years.
- b. Limit of maximum and minimum quantum of power in terms of MW for which bids are proposed to be invited.

JSPL has informed that the peak demand in its area of license was 93.4 MW and 94.2 MW (estimated) during FY 2007 & 2008 respectively. It has been further informed that the demand forecast for FY 2009, FY 2010 & FY 2011 is 150 MW, 200 MW & 300 MW respectively against the firm requirement of 100 MW during these years. JSPL also informed that the bid documents are prepared for maximum and minimum quantum of power at 100 MW based on firm contracts that JSPL has entered into at this point of time. During the course of hearing on 15.02.08 the representative of petitioner confirmed that their requirement during FY 2009 to FY 2011 will be 100 MW or more. In case, more power will need to be procured in future, separate bidding process will be initiated for the procurement of additional power.

7. Clause 5.2 of the CBG envisages that the bidding shall necessarily be by way of International Competitive Bidding (ICB). Although, no reference has been made by the petitioner to this in his petition, we feel that the ICB route may not be necessary for procurement of such a small quantum of power under case-1. The Commission therefore, decides that the matter may be left to the choice of JSPL whether to invite bids on ICB basis or from domestic bidders only.

8. The major deviations for which approval has been sought by petitioner and views of the Commission are as follows:-

- A. Deviation in RFP cum RFQ documents.
 - i. Time line for bid process- As per SBD, the bidding process is to be completed within 425 days from the commencement of date of RFQ documents. The petitioner has proposed to complete the bid process within 80 days from issue of RFP cum RFQ documents..

Commission's view: A long period of 425 days is not required where bidding is done under case-1. The schedule of 80 days for completion of bidding process seems to be reasonable.

- ii. Fulfillment of minimum financial requirement-

- a. Internal Resource Generation (IRG) - In SBD it is specified as Rs. 0.30 crore per MW of the maximum capacity specified by the procurer, computed as five times the maximum IRG during any of the last five year's business operation. The petitioner has proposed it as Rs. 0.30 crore per MW of the minimum capacity, computed as three times, the maximum IRG during any of the last five year's business operation.
- b. Net Worth- It is specified in SBD as Rs. 0.50 crore per MW of the maximum capacity specified by the procurer. However the petitioner has specified as 0.25 crore per MW of the minimum capacity.
- c. Annual Turnover- It is specified as Rs. 1.20 crore per MW of the maximum capacity in the SBD. However, the petitioner has proposed not to consider this criteria for fulfillment of minimum financial requirement

Commission's view: Considering the fact that, the bidding process is proposed under case-1 and also the quantum of power being only 100 MW that too for a period of three years only, the minimum financial requirement as proposed by the petitioner is sufficient to meet the purpose.

B. Deviation in Power Purchase Agreement (PPA):

i. Renewal of Agreement: The SBD states "Upon the occurrence of the expiry date, this agreement shall, subject to Article 18.9, automatically terminate, unless mutually, extended by all the parties on mutually agreed terms and conditions, atleast one hundred and eighty (180) days prior to the expiry date, subject to approval of the Appropriate Commission, as necessary". The petitioner has proposed to reduce the time limit from 180 days to 90 days.

Commission's view: SBD holds a minimum period of 180 days for renewal of long term agreement (25 years) whereas, the petitioner proposal is only for agreement for three years only. Considering the term of agreement, the reduction of time period as proposed by the petitioner seems to be proper.

ii. Collateral Agreement:- SBD provides "As further support for each procurer's obligations, on or prior to the Effective Date, each Procurer and the Seller shall execute separate Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the relevant procurer shall be routed and used as per the terms of the Default Escrow Agreement". The petitioner has not proposed any provision for the escrow coverage.

Commission's view: Considering the tenure of the agreement and the quantum of power to be purchased, establishment of letter of credit is

adequate to meet the purpose. The provision of an escrow arrangement is not considered necessary in this case.

iii. Default in payment: SBD states "If a defaulting procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly / Supplementary Bill for a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Collateral Agreement and Letter of Credit". The petitioner has proposed to raise the above limit of 15% to 30%.

Commission's view: The SBD for case-2 has been designed keeping in view the power plants of large capacity. Considering that the procurement proposed is for only 100 MW under case-1 the proposal of the petitioner is accepted.

iv. RLDC / SLDC charges: The SBD provides that all scheduling and RLDC / SLDC charges applicable shall be borne by the procurer. Whereas, it has been proposed by the petitioner that these charges upto the delivery point i.e. PGCIL sub-station at Kumhari are to be borne by the seller

Commission's view: In SBD for case-2 the delivery point has been identified as generator switchyard whereas in this case the delivery point has been identified as PGCIL sub station. Considering this aspect the deviation proposed seems to be justified

v. Third party sales on default: The SBD provides "The seller shall have the right (but not the obligation) to make available and sell the Default Electricity or a part thereof to a third party, namely:

- a. Any consumer, subject to applicable Law; or
- b. Any licensee under the Electricity Act, 2003."

The petitioner has proposed to delete this condition on the ground that it has not allowed third party sales as entire load requirement of JSPL will be met by power procured through the bidding process.

Commission's view: The ground on which the said clause is proposed to be deleted does not appears to be sufficient. This deviation is therefore disallowed.

vi. Deletion of clauses in regard to terminal price payment, (Article 2.3) Lead procurer (Article 2.5) Performance Guarantee (Article 3.4, 3.5) Progress Report (Article 3.2), Construction (Article-5) Synchronization, Commissioning and Commercial operation (Article-6) Operation and Maintenance (Article-7) Capacity, availability and dispatch (Article-8), have been proposed by the petitioner on the ground that these clauses are not applicable for case-1.

Commission's view: Since, the SBD has been made for case-2, these clauses do not appear to be relevant and can be deleted.

9. In sum, the Commission has observed that the most of the deviations from SBD for case-2 for long term as issued by Govt. of India are due to preparation of documents (i.e RFQ, RFP & PPA) for case-1 for medium term based on the SBD for

case-2. The Commission has further observed that deviations submitted before the Commission vide petitioners letter dated. 03.01.08 for approval are generally in order. The Commission, therefore, approves all the deviations as proposed by the petitioner except one and allows JSPL to initiate bidding process for procurement of 100 MW power for medium term. The Commission directs the petitioner to take action as following: -

- i. As per clause 3.3 of CBG, the petitioner should obtain the transmission clearances necessary for receiving power at the delivery points prior to inviting bids.
- ii. As per clause 5.7 of CBG in case the number of qualified bidders responding to RFQ / RFP is less than two, and the petitioner still wants to continue with the bidding process the same may be done with the consent of this Commission.
- iii. The petitioner shall approach the Commission for adoption of tariff in accordance with Section 63 of the Act.

10. As per time line for bid process mentioned in clause 1.2 of draft RFP documents, signing of RFP project documents is scheduled after 80 days from the date of issuance of RFQ and RFP documents. In the draft notification for RFQ and RFP it is indicated that JSPL intends to procure 100 MW power (round the clock) with minimum capacity of 100 MW for a three year period commencing from 1st May in a block of 3 years. Due to time schedule of 80 days for bid process the procurement of power may now not be possible from 1st May'2008. Further, on the request of JSPL the Commission vide letter dated. 27.09.07 has allowed it to procure 100 MW power from Jindal Power Ltd. at the maximum rate of Rs. 2.80 per unit for a period of nine months w.e.f. Oct'07. The petitioner should take into consideration this aspect also while deciding the date of commencement of procurement of power against this proposed bidding process.

11. The Hon'ble Appellate Tribunal for Electricity in their judgement dated 4.4.2007 passed in Appeal no. 14 of 2007 & IA No. 06 of 2007 & Review Petition No. 23 of 2007 in Appeal No. 20 of 2006, has ordered that the distribution licensees including JSPL shall buy 5% of electricity from any generator of electricity who is using renewable sources of energy for generation of electricity. In view of this order of Hon'ble Appellate Tribunal, JSPL is directed to ensure compliance of these directives and to ensure that power procurement through bidding process leaves room for purchase of power from non-conventional energy source to the extent of 5% of total requirement as per above directives. During the course of hearing on 15.02.08 the representative of JSPL confirmed that above said directives regarding procurement of power from renewable sources of energy will be complied with.

The petition accordingly stands disposed off.

Sd/-
Member

Sd/-
Chairman