



Chhattisgarh State Electricity Regulatory Commission

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Petition No. 21 of 2007 (M)

Petitioner: Chhattisgarh State Electricity Board

In the matter of approval of deviations from standard bidding documents for long term procurement of thermal power on international competitive bid basis from Bhaiyathan thermal power plant

**Present: S.K. Misra, Chairman
Sarat Chandra, Member**

ORDER (Dated 03.10.2007)

The present petition has been submitted by Chhattisgarh State Electricity Board (CSEB or Board) for approval of deviations from the guidelines and standard bidding documents (SBD) as issued by Ministry of Power, Government of India, for long term procurement of power on international competitive bid basis from Bhaiyathan Power project (under case 2 of competitive bidding guidelines for procurement of power)

1. Background of Bhaiyathan Thermal Power Project: Background and project proposal

The petitioner CSEB seeks to assign the Bhaiyathan thermal power project with a capacity of 1200 MW - 1500 MW, to a competent agency to develop, set up and run the plant, generally in accordance with competitive bidding guidelines for long term power procurement issued by Ministry of Power. The project includes the following components:-

- i. Captive coal blocks: The captive coal blocks at Gidhmuri and Patoria villages in Surguja district, whose lease-hold rights vest with the CSEB, will be developed and used exclusively for the project.
- ii. Coal transportation from captive coal blocks to power plant (a distance of around 80 kilometers) as integral part of the project.
- iii. Power plant: The capacity of power plant will be in the range of 1200-1500 MW with a configuration of maximum of three units.
- iv. Transmission system: Dedicated transmission line of 400 KV of from Bhaiyathan to Raipur, approx. 390 km.
- v. Other Infrastructural facilities including railway line from nearest railway station at Surajpur for transporting plant, other equipment water intake pipeline etc.

CSEB has decided to get the project developed by a single company which shall be responsible for coal mining, coal transportation, power generation and power transmission upto the load centre. CSEB shall have ordinary equity share of 26% in the company, other than cash, in the project. In lieu of such 26% ordinary equity share, CSEB proposes to give freedom to the developer to sell of 35% of power generated by the project to third party(s) while 65% of the power would be taken by the CSEB. The right to develop and operate the coalmines for exclusive use of the proposed project shall also be of the developer. CSEB will also provide administrative assistance to the developer for obtaining mega status for the project. This sharing of equity to the extent of 26% in the company has been decided by CSEB in view of clause 8(iii) of the Captive mining guidelines, which is reproduced below:-

"The following dispensations are permitted for mining of coal from captive blocks. There can be a holding company with two subsidiaries i.e (i) a company engaged in any of the approved end uses and (ii) an associated coal company formed with the sole objective of mining coal and supplying the coal on exclusive basis from the captive coal block to the end user company, provided the holding company has at least 26% equity ownership in both the end user company and the associated coal company".

The SBD envisage that the procurer may avail the power at generator switchyard bus-bar or any other delivery point mentioned in Request For Proposal (RFP). Although it is the right of the procurer to decide the point from where he avails power, but considering the 390 kms length of proposed 400 KV transmission line and its cost, the Commission asked the petitioner to justify inclusion of this line as a integral part of the project. The petitioner has given the following justification in support of the decision to avail power at their load centre at Raipur.

"Any slippage of schedule on the associated facilities will have significant consequences and financial impact on both procurer (petitioner) and seller (the project company). It is therefore necessary to keep the transmission lines as part of the proposed project.

The transmission line being an integral part of the project, the bidders will structure the overall project to maximize the benefits of all possible financial incentives including but not limited to mega power benefits and tax holiday. Further, the developmental expenditure will be optimized due to integrated approach for development of project.

As CSEB wants the power at Raipur load centre, he has to set up the transmission line for off taking 65% of power due to the proposed project structure for this project. Additionally, there has to be an additional arrangement to facilitate the bidders in case the bidder wishes to utilize the transmission line for evacuation of excess power over and above the contracted capacity.

CSEB has reviewed the contractual arrangement and has concluded that the integrated approach for development of Bhaiyathan TPS would have ease of operation".

Commissions view

Although prima facie there is some justification for bringing power to Raipur load centre in the overall interest of the project, considering the proposed length of the transmission line, the cost involved, as also the projected growth of load, the Commission feels that it may be beneficial to bring the power to Bilaspur. Bringing it upto Bilaspur will reduce length of the transmission line by more than 100 kms. The Board may like to consider and get this examined.

2. Need for procurement of power by the petitioner from the proposed project:

As per section 86(1)(b) of the Act, the Commission is required to regulate electricity purchase and procurement process of distribution licensee. Hence, to assess the requirement of procurement of power by the petitioner from the project, the Commission asked him to provide details of projected availability and demand. In accordance with Ministry of Power, Govt's letter No. 23/11/2004-R&R (Vol.IV) dated 30.03.06, the petitioner has given the projected demand and availability in MW up to three years from the expected date of commissioning i.e. up to 2016-17 only, which is given below: -

Year	Projected CSEB Demand (MW)	Projected CSEB Availability (MW)	Surplus / Deficit
2011-12	3700	3786	86
2012-13	4033	4186	153
2013-14	4396	4186	(210)
2014-15	4792	4586	(106)
2015-16	5223	4986	(237)
2016-17	5692	4986	(706)

The projected availability excludes the availability of power from the proposed Bhaiyathan project but includes the availability of power from 2x500 MW IFFCO CSEB joint sector project and 2x500 MW Marwa project. The Commission does not have any information regarding any development having been made in these projects nor has the CSEB furnished any information regarding this. Their time schedule at present appears uncertain.

Commissions view

The Commission is of the view that considering the position of demand and availability in the coming years as projected by the petitioner, the procurement of power from the project to the extent as indicated in the petition is necessary for improving power supply position in the state.

3. Provisions of the guidelines for determination of tariff by bidding process for procurement of power by distribution licensee, issued by Ministry of Power on 19.01.05.

Section 63 of the Act envisages that the Appropriate Commission shall adopt the tariff if such tariff has been determined through the transparent process of bidding in accordance with the guidelines issued by the Central Government. The Central Government have issued competitive bidding guidelines

contemplated under Section 63 of the Act, titled “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” on January 19, 2005 (the guidelines). These guidelines have been amended on 30.3.2006 and 18.8.2006. The guidelines provide for issue of standard bid documents by the Central Government. The Central Government undertook the process of finalization of standard bid documents in September 2005 in consultation with the stakeholders and issued the standard bid documents on 31st March 2006 for the first time. The standard bid documents have been revised subsequently in May '06, Sept.'06 and 31st Jan. '07, the guidelines have been further amended on 27.09.07 and the SBD on 21.09.07. Since the bid process had already commenced in this case, the Commission has gone by the guidelines / SBD as prevailing prior to these latest amendments, except that wherever major changes have been made, cognizance has been taken in this order.

The specific objectives of these guidelines are as follows:

1. Promote competitive procurement of electricity by distribution licensees.
2. Facilitate transparency and fairness in procurement process.
3. Facilitate reduction of information asymmetries for various bidders.
4. Protect consumer interests by facilitating competitive conditions in procurement of electricity.
5. Enhance standardization and reduce ambiguity and hence time for materialization of projects.
6. Provide flexibility to suppliers on internal operations while ensuring certainly on availability of power and tariffs for buyers.

The salient features of the bidding process as laid down in the guidelines are discussed hereunder for convenience of reference:

- (a) The guidelines apply for procurement of base-load, peak-load and seasonal power requirements of distribution licensees through competitive bidding through the following mechanisms:
 - (i) Where the location, technology, or fuel is not specified by the procurer (**Case 1**)
 - (ii) For hydro-power projects, load centre projects or other location specific projects with specific fuel allocation such as captive mines available, which the procurer intends to set up under tariff based bidding process (**Case 2**)." The distribution licensees (referred to as 'procurers' for the purpose of competitive bidding) may adopt the guidelines for long-term procurement for a period of 7 years and above and medium term procurement for a period exceeding 1 year up to a period of seven years. (Clause 2.1 and 2.2)
- (b) The bid documents shall be prepared in accordance with the guidelines and the approval of the appropriate Regulatory Commission shall be obtained, unless the bid documents are as per the standard bid document issued by the Central Government. In such cases, an

intimation shall be sent by the procurer or its authorized representative to the appropriate Regulatory Commission about initiation of the bidding process. In the event of deviation from the bidding conditions contained in the guidelines, approval of the appropriate Commission shall be sought by the procurers or their authorized representative.(Clause 3.1)

- (c) For long-term procurement from the projects with pre-identified sites, the procurers or their authorized representative are required to complete such activities as site identification and land acquisition required for the project, environmental clearance, fuel linkage, water linkage etc. (Clause 3.2)
- (d) A two-stage bidding process comprising separate request for qualification (RFQ) and request for approval (RFP) shall be adopted for long-term procurement under the guidelines and the procurer or authorized representative shall prepare bid document including RFQ and RFP in line with the guidelines and standard bid document. (Clause 5.1)
- (e) The procurer shall publish a RFQ notice in at least two national newspapers, company website and preferably in trade magazines to accord it wide publicity. The bidding process shall necessarily be by way of international competitive bidding. RFP shall be issued to all bidders, who are qualified at RFQ stage. In case, the bidders seek any deviation and procurer finds that deviations are reasonable, the procurer shall obtain approval of the appropriate Commission before agreeing to deviation. (Clause 5.2 and 5.5)
- (f) The minimum number of qualified bidders should be at least two other than any affiliate company or companies of the procurer to ensure competitiveness. If the number of qualified bidders responding to the RFQ/RFP is less than two and the procurer still wants to continue with the bidding process, the same may be done with the consent of the appropriate Commission. (Clause 5.7)
- (g) The procurer shall constitute a committee for evaluation of the bid with at least one member external to the procurer organization and its affiliates. The external member shall have expertise in financial matters/bid evaluation. The procurer shall reveal past association to the external members directly or through its affiliates that could create potential conflict of interest.(Clause 5.9)
- (h) The eligible bidder shall be required to submit separate technical and price bids along with necessary bid-guarantee. The bid shall be opened in public and representatives of bidders desiring to participate shall be allowed to remain present. The bidder, who has quoted lowest levelled tariff as per evaluation procedure, shall be considered for award of the contract. (Clause 5.10 and 5.15)
- (i) The Power Purchase Agreements (PPAs) shall be signed by the procurers with the selected bidders consequent to the selection process in accordance with the terms and conditions as finalized in the bid document before the RFP stage. After signing of the PPAs, the Evaluation Committee shall provide appropriate certification on

adherence to the guidelines and to the bid process established by the procurer. The procurer shall also make the evaluation of bid public by indicating terms of minimum bid and anonymous comparison of all other bids and also the contract signed with the successful bidder. (Clause 6.11,6.12 & 6.13))

- (j) The applicant shall submit the final PPA along with the certification by the Evaluation Committee to the appropriate Commission for adoption of tariff in terms of Section 63 of the Act. (Clause 6.14).
- (k) In case there is any deviation from these guidelines, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 days.” (Clause 5.16).

4. Submission by the CSEB to the Commission prior to filing of petition.

- 4.1. CSEB vide its letter No 03-05/109-C/348 dated. 27.02.07, in its capacity of a distribution licensee, informed the Commission that in accordance with the National Tariff Policy it is desirous of procuring power on competitive basis from the proposed thermal power plant at Bhaiyathan. It informed that, in accordance with the guidelines it has identified the site at Bhaiyathan, district Surguja, for the proposed power plant. The Board further informed the Commission that M/s. SBI CAP Markets Ltd. had been retained as advisors for the bidding process of the project including preparation of tender documents.
- 4.2. In compliance with competitive bidding guidelines, CSEB submitted that the draft bidding documents prepared by them was in line with specific requirement of the project and structure of the project envisaged. They submitted the documents seeking approval of the Commission to release the draft bidding documents to the prospective bidders. It was further stated by the Board that based on the prospective bidder’s inputs, suggestions from other stakeholders, as well as any detail / enrichment and other processes as may be recommended/suggested by Commission, they would seek approval of the Commission for finalization the bidding documents.
- 4.3. As per clause 3.2 of the guidelines the following activities should be completed by the procurer, or authorized representative of the procurer, before commencing the bid process:
 - Site identification and land acquisition required for the project
 - Environmental clearance
 - Fuel linkage, if required (may also be asked from bidder)
 - Requisite Hydrological, geological, meteorological and seismological data necessary for preparation of Detail Project Report (DPR), where applicable.

As per the information furnished by CSEB the status of the above activities is as under:-

1. Site of the project has already been identified. Work of land acquisition for the project is in progress.
2. EIA study (rapid) has already been completed.
3. Captive coal mines for the project has already been allocated by Gol.
4. Water Resource Deptt. Govt. of Chhattisgarh has allotted water for the project.
5. Water intake study report and Project Report, including geo-technical study, topographical survey, area drainage study, socio economic study are available.

The Commission observed that such bidding process is being made in the state for the first time. From the point of view of saving time in the execution of the project and also for obtaining the views of interested bidders on the draft documents prior to approving the deviation from the guidelines and the SBD, the Commission allowed the petitioner to issue draft bidding documents to the bidders with the present state of completion of activities as envisaged in clause 3.2 of the guidelines.

- 4.4. The Commission asked the CSEB vide letter no. 17/INR/02/ Bhaiyathan/304 dtd. 05.03.07 to take actions as under:-
- (I) Ministry of Power vide letter no. 23/11/04-R&R (Vol.V) dated. 31.01.07 had revised the standard bidding documents. Certain amendments had been made in the bid document issued earlier. The CSEB might refer these revised standard documents and make necessary changes in their bidding documents accordingly.
 - (II) All deviations made in the bidding documents in comparison to the revised standard bidding documents should be tabulated para-wise and submitted to the Commission indicating detailed reasons/justification for deviations.
 - (III) The amendments as were agreed to by the CSEB to be incorporated in the bidding documents as a result of discussions held in the pre-bid conference should be taken care of while submitting the standard deviations for approval of the Commission.

The Commission also informed the CSEB that in its view qualification criteria for RFQ that the bidder should have experience of developing projects, not necessarily power projects, should be adopted, as inclusive of experience of developing a power project as a qualification may restrict the number of bidders. In response the CSEB vide letter No. 03-05/724 dtd. 29.03.07 informed the following:-

- a. Standard Bidding Documents:

The revised standard bidding documents as issued by Ministry of Power, Government of India had been perused and the CSEB bid documents were largely in accordance with revised bid documents.

However, the CSEB would again refer these revised standard-bidding documents while submitting final documents for approval to Commission.

b. Observations during pre-bid conference:

The CSEB informed that the bid documents were being released to bidders to ensure that comments of all stakeholders were obtained during pre-bid conference. The CSEB intended to incorporate all the amendment agreed to in final bidding documents that would be submitted to the Commission for final approval.

c. Qualification requirement for bidders:

While publishing notice inviting tender (NIT), CSEB had not mentioned the qualification criteria for the project. The CSEB informed that it was issuing the bidding documents to all the entities, who had requested for the documents irrespective of whether the party seeking the tender documents had the relevant power plant and or coal mining experience. The deviation had been proposed with the intention of having capability, quality, technical finesse and ultimate economy that comes from experience of execution of power projects with captive coal blocks attached to it. CSEB however, would review the qualification criteria for the project based on feedback from the bidders. It also agreed to submit to Commission if any deviations were being sought in the qualification criteria along with justification for these deviations.

4.5. The Commission vide letter no.17/inr/Bhaiyathan/20007/467 dated 03.04.07 directed that two suggestions given below should be incorporated in the documents irrespective of the outcome of the pre-bid conference:

- (I) The condition in the QR that the bidder should have experience of developing power projects should be deleted.
- (II) The condition in the QR that bidding company or any member (as of consortium) shall have developed coal mining with annual capacity of 1 million ton for a minimum period of three years should also be deleted.

CSEB vide letter dated 12.07.07 informed the Commission that 27 (twenty seven) bidders had purchased the tender documents and in accordance with the draft documents submitted to the Commission, it had arranged the pre bid meeting with the bidder on April 30 and June 15, 2007 as well as site visit on April 28 & 29, 2007. They further informed that documents had been revised based upon the structure of the project, experience of similar tariff based projects, inputs from the prospective bidders during the pre bid meetings and suggestion provided by the Commission. The CSEB submitted the bidding documents for approval of the Commission with this letter.

4.6. In view of the provisions of the section 63 of the Act, and provisions mandated under section 86(1)(b) of the Act, which empowers the Commission to regulate power purchase of a distribution licensee, for ensuring transparency in approval of deviations, the Commission decided that it should hear all the concerned parties. The Commission therefore, desired vide letter No. 1027 dated 01.08.07 that the CSEB file a petition before the Commission as early

as possible for approval of deviations to the above said guidelines and the SBD.

5. Filing of Petition for approval of deviations and public hearing.

5.1. CSEB filed a petition on 06.08.07 for approval of deviations from the guidelines and SBD for long-term procurement of thermal power on international competitive bid basis from Bhaiyathan thermal power plant (under case 2 of competitive bidding guidelines for procurement of thermal power). The CSEB filed the following draft documents with the petition:-

- (i) Request for qualification (RFQ)
- (ii) Request For Proposal (RFP)
- (iii) Power Purchase Agreement (PPA)
- (iv) Share Subscription Agreement (SSA)
- (v) Assistance and Operator Agreement (A&OA)
- (vi) Annexure A to the documents indicating deviation from guidelines and SBD.

The petitioner has sought approval of four deviations from the bidding guidelines, nineteen deviations from the standard RFQ documents, fifteen deviations from standard RFP documents and forty-two deviations from the standard PPA documents. The Ministry of Power has not specified any standard documents for SSA and A&OA, but the petitioner has separately submitted SSA and A&OA for approval. All the proposed deviations have been listed in the Annexure-1 to the petition, which is enclosed as **Annexure-1**.

5.2. After admission of the petition on 10.08.07 public notice was issued in Times of India, Delhi edition & Economic Times, Mumbai edition on 14.08.07 regarding public hearing on the deviation proposed by the petitioner on 14.09.07 at Raipur. Through this notice all concerned were informed that documents submitted by the petitioner with the petition were available on the petitioner's website www.cseb.gov.in. The public was also informed that apart from the website, the documents could be pursued in the office of Chief Engineer (PRG-I) CSEB, Raipur and also in the office of Commission at Raipur. Through this public notice, comments and suggestions were invited from interested bidders/persons to be received by the Secretary of the Commission by 10.09.07. Information regarding public hearing and invitation of comments / suggestions was also sent to 27 parties who had bought the bidding documents from CSEB. In response to the public notice comments / suggestions were received from the following four firms:

- (i) M/s. Reliance Power Ltd.
- (ii) M/s. Chambal Infrastructure Ventures Ltd.
- (iii) M/s. KSK Energy Ventures Pvt. Ltd.
- (iv) M/s. Lanco Infratech Ltd.

These suggestions/comments as received from these firms were sent to the petitioner for comments vide letter No. 1216 dated 12.09.07.

- 5.3. Public hearing was held at Raipur on 14.09.07 as scheduled. The following interested bidders attended the public hearing:

Sl. No.	Name of the rep. Present	Organization
1.	Shri L.R. Shrivastava	Chambal Infrastructure Ventures Ltd., Delhi
2.	Shri Pramthesa Mishra	Ispat Industries Ltd.
3.	Shri Ashutosh Sharma	Lanco Groups
4.	Shri I Venkatramana	GMR Group
5.	Shri R.K. Mishra	TATA Power
6.	Shri Navjit Gill	KSK Energy Ventures

From the Board's side the following officers and representatives of their consultant M/s. SBI Capital Market attended the public hearing:

Sl. No.	Name	Designation
1.	Shri Phuntsok Wangyal	SBI Capital Market
2.	Ojswi Gupta	SBI Capital Market
3.	Shri Kartik Iyer	SBI Capital Market
4.	Shri S.P. Chaturvedi	Member (Generation) (CSEB)
5.	Shri P.K. Baxi	ACE (CSEB)
6.	Shri P.K. Girtonia	SE (CSEB)
7.	Shri Gopal Sharma	ASE (PRG -I) (CSEB)

In the public hearing the representative of M/s. SBI Cap Market made a presentation on behalf of petitioner giving details of the project, bidding documents and the deviations proposed from standard bidding documents & guidelines issued by Ministry of Power. The proceeding of the public hearing giving gist of important comments/views expressed by the representative of the various firms before the Commission are at **Annexure-2**. During the public hearing the Commission informed that the interested parties could submit their written representation covering the views expressed during the hearing, to reach the office of the Commission by 21.09.07. In response representation from the following firms were received up to 21.09.07:

- I. M/s. Lanco Infratech Ltd., Hyderabad.
- II. M/s. Chambal Infrastructure Ventures Ltd., New Delhi
- III. M/s. KSK Energy Ventures Pvt. Ltd.
- IV. M/s. GMR Energy Limited
- V. Reliance Power Ltd., Mumbai

These representations were also sent to the petitioner vide letters No. 1224 dated 17.09.07, 1243 dated 19.09.07 & 1257 dated 21.09.07 for their comments by 22.09.2007. The petitioner vide Commission's letter No. 1243 dated 19.09.07 was further asked to furnish information mainly in respect of the following:

- i. Annexure A (pg 5&6) (deviation from standard bidding documents) gives the expected dates of completion of various activities to be undertaken by the procurer in view of the present status of these activities the Board was asked to furnish the revised dates by which these activities are expected to be completed including the date by which environment clearance is expected.
- ii. Revised schedule for opening of RFQ and selection of bidders etc.

Vide its letter no. 1964 dated 22.9.07 the Board has submitted its reply to the comments/suggestions given by M/s. Reliance Power Ltd., M/s. Chambal Infrastructure Ventures Ltd., M/s. KSK Energy Ventures P. Ltd. and M/s. Lanco Infratech Ltd. This document is at **Annexure-3**

Reply to the Commissions letter No. 1224 dated 17.09.07, 1243 dated 19.09.07 & letter No. 1257 dated. 21.09.07, letter no. 1966 dated. 24.09.07 has been received from CSEB, which is at **Annexure-4**.

6. Approval of deviations

6.1. After examining the documents placed on record by the petitioner at the time of filing the petition, proceedings of the public hearing, the written submissions of the stake holders and the replies submitted by the petitioner thereafter vide its letters dated 22.09.07, 24.09.07 & 27.09.07, the Commission has observed that there are only a few major deviations while most of the other deviations emanate from these and some others are on account of the project arrangement, such as CSEB being the single procurer for Bhaiyathan TPP, the non-applicability of Authorised Representative and non existence of Special Purpose Company for Bhaiyathan TPP during the bidding process etc.. The Commission has considered all the major deviations, which were subject of the public hearing and on which the interested bidders have submitted written representation to the Commission. These major deviations are discussed as under:

6.2. **The major deviations from the guidelines proposed by CSEB are as under:**

(1) Single stage vs. two stages as stated in the guidelines

As per the proposal of CSEB, the bidders are required to submit the request for qualification (RFQ) and request for proposal (RFP) documents simultaneously. The relevant provision of the guidelines on the bidding process is as follows:

“Two-stage process

For long-term procurement under these guidelines, a two-stage process featuring separate Request for Qualification (RFQ) and Request for Proposal (RFP) stage shall be adopted for the bid process under these guidelines. The procurer may, at his option, adopt a single stage tender process for medium term procurement, combining the RFP and RFQ processes. Procurer or authorized representative shall prepare bid documents including the RFQ and RFP in line with these guidelines and standard bid documents. (Clause 5.1)”

The Commission noted that the bidding process, as adopted by the petitioner, is not in accordance with two stage bidding process as stated in Competitive Bidding Guidelines. Petitioner has submitted that the bidding process, as adopted follows two stages selection process of successful bidder. The bid documents are released simultaneously to the bidders and petitioner has sought response to the bid documents together. Further, the petitioner proposes to follow the selection of successful bidder in two stages only i.e. the response to RFP, only for the qualified bidders would be opened. The petitioner has intimated to the Commission that he has taken the requisite steps to ensure good participation by the bidders for Bhaiyathan TPP. These steps include availability of adequate time to the bidders and availability of necessary information/ reports within reasonable timeframe. The petitioner has mentioned that he has furnished the information in line or prior to the stipulated timelines in other procurement of power based of bidding process including bidding process held for Ultra Mega Power Projects. The petitioner has conformed that he would provide all the requisite information to the bidders by 30.09.07, while the bid deadline is proposed to be extended up to December 03, 2007.

M/s Chambal Infrastructures in their written submission has stated that due to the submission of RFQ and RFP documents simultaneously, the Bid Bond of the disqualified bidder would be held up till the completion of bidding process. Besides, the huge efforts and money spent for preparation of bid document will be wasted if the bidder does not qualify. The company has suggested a two-stage bidding process.

Commission's view:

The Commission has observed that the proposed bidding process by petitioner is likely to bring in good participation since the qualification criteria are explicitly stated in the bid documents. The Commission is also of the view that in effect the two-stage process is being observed since the opening of RFP follows opening of RFQ for qualified bidders only. Hence this deviation is approved.

- (2) **Time frame for the bidding process:** The petitioner has sought approval to the deviation from condition under Competitive Bidding Guidelines with regard to the timeframe for the bid process, proposing reduction from 425 days to 290 days for the process. This is proposed with a view to expediting the bid process and the implementation of the project.

M/s Chambal has stated that many of the activities to be undertaken by procurer before initiating bidding process were not complete and the reports relating to water intake study, coal transportation system, transmission system, environment clearance etc. were yet to be provided to bidders. After getting this report further studies are required to be carried out by bidders for preparation of bid and therefore three months time may be given to qualified bidders for submission of RFP bids

The petitioner has informed the Commission regarding the likely time of completion of the various activities relating to the project as given below:-

S. No	Activity	Status on September 21, 2007
1	Site identification	Completed
2.	Issue of Section 6 notification, Declared price of land and draft R&R including cost of the same, relating to land required for the Power Plant	Section 9 (iii) for Power Station land already issued much in advance. Declared price of land and draft R&R including cost of the same, relating to land required of power will be sent to bidders by petitioner by Sept.30, 2007.
3.	Environmental and forest clearance for power plant	Petitioner expects to get environmental & forest clearance of power plant by December 15, 2007.
4.	Allocation of Captive Coal Mine(s) and geological report (GR) along with available mining plan.	Furnished to bidders on June 15, 2007.
5.	Tying up water linkage for the project requirement	MOM regarding allotment of 60 MCM is signed between petitioner and WRD on August 02, 2007
6.	Water intake study report and Project Report including geo-technical study, topographical survey, area drainage study, socio-economic study and EIA study (rapid)	Furnished to bidders on June 15, 2007
7.	Coal Transportation System: Feasibility report and details of walk through survey	Submitted to bidders on September 05, 2007 along with SECL's observation on proposed route
8.	Transmission system up to Delivery Point / Interconnection Point: Reconnaissance Survey	Furnished to bidders on September 05, 2007
9.	Details regarding the Interconnection Points and Facilities	Will be sent to bidders by September 30, 2007
10.	Indicative costs of the following: 1. Land for Captive Coal Mines and land for compensatory afforestation 2. Land for Fuel transport system. 3. Anicut & other infrastructure to be made for water linkage system:	Will be sent to bidders by September 30, 2007

	4. Rehabilitation and resettlement for 1,2 and 3 above; and 5. Compensatory afforestation, if any, for Captive Coal Mines area:	
11	The amount of consideration payable by the Selected Bidder to Procurer for developmental activities undertaken or proposed to be undertaken as per the RFP Project Documents	Will be sent to bidders by September 30, 2007

In view of above the petitioner has proposed the following important deadlines

Qualification, Technical and Price Bid Submission in response to bid document	December 03, 2007 at 15.00 hrs. IST
Opening of RFQ documents	December 03, 2007 at 16.00 hrs IST
Selection of qualified bidders	December 18, 2007
Opening of Envelope 1- RFP	December 26, 2007 at 16.00 hrs IST
Opening of Envelope-II-RFP*	January 10, 2008 at 11.30 hrs IST
Issuance of Letter of Indent	January 28, 2008
Signing of Agreement	February 20, 2008

As per clause 3.2 of the guidelines, environment clearance for the project should have been obtained before commencing the bidding process. The petitioner envisages to get the environment clearance by 15th of Dec. 2007 and open the envelope-II-RFP, which contains the financial bid on Jan 10, 2008. The possibility of delay in obtaining environment clearance by the petitioner cannot be ruled out.

Commission's view

The Commission has taken note of the fact that CSEB wants to compress the time schedule for the bid process with a view to expedite the implementation of this important project. The main objective of the prescribed timeframe is to ensure that the competitive bid process is fully gone through and that the process maximizes competition by providing the prospective bidders the requisite details and adequate time for their examination and satisfaction. The Commission also notes that the guidelines have been amended by Ministry of Power, Govt. of India on 27.9.2007 in which the present timeframe for the bid process, of 425 days, has been reduced drastically to 270 days. Thus, although the period of 290 days now exceeds the time frame as prescribed in the amended guidelines of 27.9.2007, the Commission approves the proposal. With the modification required consequent to this order of the Commission. The Commission has stipulated later in this order (para 7) that CSEB should convey the amendments required in the bidding

document consequent upon this order within 10 days of the date of this order. This period should now be reckoned and a clear 60 days period should be provided to prospective bidders for submission of bids. The schedule of events submitted by the petitioner may be revised accordingly and re notified to all concerned and submitted to the Commission. Similarly, the provision relating to obtaining environmental and forest clearance has also since been amended. The present dispensation as per the amendment of 27.9.2007 is that the requisite proposal for such clearance should have been submitted before the concerned administrative authority responsible for according final approval, in the Central/State Government, before the issue of RFP. Environmental clearance can now be obtained before PPA becomes effective. The proposal is thus no longer a deviation from the guidelines. The Board has intimated that they expect to get the required environmental clearance of power plant by 15th Dec. 2007. If they do not obtain approval by that date, CSEB should obtain the necessary environmental clearance before PPA becomes effective.

(3) Commencing of the bidding process:

As per clause 3.2 of the guidelines certain activities including environment clearance should be completed by the procurer, or authorized representative of the procurer, before commencing the bid process. The petitioner has started bidding process prior to completion of such activities.

Commission's View:

This issue has been discussed at para 4.2 above.

6.3. The major deviations from the Standard Bidding Documents proposed by CSEB are discussed below:-

(1). Financial Qualification

RFQ of Standard Bid Document states as follows:-

"Internal Resource Generation: Rs. 0.30 Crore or equivalent US\$ per MW of the maximum capacity specified by the Procurer, computed as five times the maximum internal resources generated during any of the last five years business operations;

Networth: Rs. 0.50 Crore or equivalent US\$ per MW of the maximum capacity specified by the Procurer, if the maximum capacity specified by the Procurer does not exceed 2000 MW. In case the maximum capacity specified by the Procurer exceeds 2000 MW the Networth requirement shall be Rs. 1000 Crore or Rs. 0.25 Crore per MW or equivalent US\$ of the maximum capacity specified by the Procurer, whichever is higher. The above computation shall be derived from any of the past three years annual accounts.

Annual Turnover: Rs. 1.20 Crore or equivalent US\$ per MW of the maximum capacity specified by the Procurer, if the maximum capacity specified by the Procurer does not exceed 2000 MW. In case the

maximum capacity specified by the Bidder exceeds 2000 MW, the annual turnover requirement shall be Rs. 2400 Crore or Rs. 0.60 Crore or equivalent US\$ per MW of the maximum capacity specified by the Procurer, whichever is higher. The above computation shall be derived from any of the past three years annual accounts"

The petitioner has stipulated the financial qualification criteria in line with Standard Bidding Documents except that in place net worth of matching the maximum capacity of plant, the petitioner has net worth for the specific capacity of power plant proposed by the bidder.

Commission's View :

This, in fact, is not a major deviation. The petitioner has stipulated financial qualification criteria mostly in line with Standard Bidding Documents. In view of this, the Commission approves this deviation.

(2) **Technical Qualification**

The petitioner's document requires that the bidder shall be a firm which has established/developed power project(s) a single unit of which is 200 MW or above or has projects with unit of the same size under implementation where financial closure has been achieved at least seven days before the date of submission of RFQ.

RFQ of Standard Bid Document states as follows:

"The Bidder must have experience of developing projects (not necessarily in the power sector) in the last 10 years whose aggregate capital costs must not be less than the amount equivalent to Rs. 0.75 Crore per MW of the maximum capacity specified by the Procurer. Out of these projects, the capital cost of at least one project should be equivalent or more than Rs. 0.125 Cr. Per MW of the maximum capacity specified by the Procurer. For this purpose, capital expenditure on projects that have been completed at least 7 (seven) days before the RFQ submission date shall be considered.

M/s KSK objected to the deviation proposed by CSEB relating to the technical qualification criteria. The company has stated that the qualifying criterion of experience of at least one unit of 200 MW or above capacity is restrictive. As per the proposed qualifying criterion, a developer having achieved financial closure of 200 MW unit shall also qualify. This qualifying criterion is therefore not a real indicator of experience and expertise in developing a coal based thermal power project. The company has suggested that this criterion must be relaxed so as to enable a developer having an overall composite experience of developing project and financial closure achieved for thermal projects of capacity 500 MW or above could be eligible. This will provide wider participation and encourage competition. The company further added that the qualifying criteria proposed by CSEB unnecessarily compels the developers to find a consortium partner. M/s Chambal Infra structure also opposed this technical qualification criteria. It has

asserted that it is a large enterprise having adequate financial capability to install a power project, but the qualification laid down restricted the firm from diversifying its business.

The petitioner has given the following justification for insisting in experience of development of power projects up to the financial closure:

"Considering that this project shall involve both power generation and transmission and considering the experience of many power projects allotted or proposed to be undertaken by developers having non-power sector experience, CSEB proposes that the developer shall have core competence in power sector. However, CSEB realises that operational experience is not utmost important as this may be outsourced. Further, CSEB has relaxed the requirement to the extent that the bidding consortium shall have one member having 26% of 74% of project equity to comply with such technical qualification.

Further, the CSEB has clarified that selection for 200 MW Unit for technical qualification is based on various aspects particularly understanding of technology, competition regarding response to bid, project capitalized cost (taking cognizance of qualification as mentioned in SBD) and permissible unit size of 200 MW for proposed power plant. Thus based on combination of all factors, it has been decided by the CSEB to specify minimum unit size as 200 MW and thus looking each aspect in individuality may not justify the stipulated requirement of 200 MW unit size for technical qualification.

The CSEB understands that unit size of 200 MW is not abundantly available in other sources of generation viz. Hydroelectric (only few new units coming up in private sector), nuclear (only with government entities not participating in such competitive bids) and non conventional (no such single unit available). However, reference of such unit may be possibly available globally but CSEB has discussed qualification criteria with the bidders, who have purchased the bid documents. Therefore CSEB has not specifically mentioned the experience of thermal power plant. CSEB has got 200 MW units, which are of established and proved reheat technology. During the pre bid meeting, it was even requested by few bidders to specify the operational experience that may bring in requisite competence in the project. However CSEB has mentioned the bidders' experience up to financial closure due to reason as mentioned above as well as to promote the competition".

Commissions view

Any deviation from the qualification criteria as given in the standard bidding document has to be considered a major deviation. The technical qualification criteria of experience of having established/developed power project(s) with a single unit of 200 MW or more refers to experience in the sector but the other stipulation that it should have projects of the same size under

implementation where financial closure has been achieved, does not amount to experience in the power sector; Therefore, in case the objective of this criterion is to ensure that only such of the firms bid for this project which have experience in the power sector, the objective is not met. Achievement of financial closure provides little experience of developing power projects. It has also been pointed out that there is no such restrictive qualification even for bidding for ultra mega power projects. A qualification not required for ultra mega power projects should not be a requirement of a plant of less than half the size of an ultra mega power project. The justification given by the CSEB is not convincing. It is not convincing that a company which has no experience in the power sector but has now developed a power project should be eligible for bidding while another company which has developed projects in the last ten years with a capital cost of more than Rs. 1000 crore is ineligible. The justification given during public hearing that even with the present criterion a number of prospective bidders are eligible would not support this restrictive clause. The present scenario in the power sector for reasons which are well known, is that private investment is very small and there are a limited number of companies which have experience in the sector. The objective of the Act is to attract private capital which is available in other sectors. That appears to be the reasons why the SBD specifically does not limit the experience of the bidder to experience of power project but emphasis on "experience of developing project (not necessarily in the power sector)". The objections raised by some of the bidders in the public hearing thus appear to be justified. We, therefore, do not approve of this deviation. CSEB should comply with the technical qualification of RFQ as in the standard bid document in the interest of larger competition in the very first unit being taken up under the competitive bidding route in the state.

- (3) **Equity Participation of CSEB:** The successful bidder is required to allot to petitioner 26% of the equity shares for the entire power project. The preamble G of the PPA document of CSEB specifies that the seller has to allot 26% of equity requirement to the procurer for consideration other than cash. The SBD does not specify such a condition i.e. allotment of equity shares to the procurer.

M/s Chambal Infrastructure suggested that sweat equity of 26% to the procurer should be mandatory for the coal mining operations only and not for the entire power project. M/s Lanco Infratech and M/s Reliance Power Ltd is of the view that this demand of CSEB will make tariff high as the free equity gets loaded on the capital cost of the project. M/s Reliance Power proposed that instead of seeking free equity the CSEB should invest in the equity.

The petitioner has clarified that such an arrangement is necessary to comply with "Guidelines of Allocation of Captive Blocks and Condition for Allotment (**Captive Mining Guidelines**)". These guidelines have been reproduced in the para 1 above.

Commission's View :

The Commission considers that such equity participation by CSEB is necessary as the mining lease of the coal block will remain with CSEB. The Commission understands that the equity participation by petitioner, for consideration other than cash, may result in increased tariff. However, the project structuring comprising of surplus power over and above contracted capacity to the extent of 35%, may offset the burden of equity participation by petitioner for consideration other than cash. Analyzing the present operation of the petitioner, the Commission considers this requirement reasonable.

(4) Bidding Consortium:

In para 2.5.1.1 of the RFQ document of CSEB a consortium of companies subject to the cap of three members has been specified for the bidders to submit the bid. The cap of three members has been decided by CSEB to have a manageable consortium. The petitioner has further added that the Lead Member is required to have 51% of equity excluding the equity subscribed to CSEB. Higher equity share has been stipulated to ensure sufficient commitment from the Lead Member

Para 2.5.1.1 of RFQ of Standard Bid Document is as under:

The submitted proposal must mention the Lead Member and the Lead Member should designate one person to represent the consortium in its dealings with the Authorised Representative and Procurers. The person designated by the Lead Member should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitment on behalf of the consortium, etc as per the format enclosed as Annexure 8.

It can be seen that the SBD do not specify about such cap for the bidding consortium.

Commission's View :

No objection has been raised during the public hearing or otherwise to this requirement. The Commission agrees that the limit of three (3) members for a bidding consortium will be of manageable size. The Commission therefore approves this deviation.

(5) Definition of the Lead Member

The petitioner has stipulated that the lead member shall have at least 51% of equity stake of the Bidding Consortium, that is 51% of entire equity requirement of the project less equity of 26% required to be allotted to petitioner

Clause 4.2.1 of RFQ of Standard Bid Document states the following:

There shall be only one Lead Member, which shall be a company committing at least 26% equity stake in the Bidding Consortium.

In justification of this deviation the petitioner has submitted that the lead member with 51% of equity stake of the Bidding Consortium will have the decisive control in the consortium. This will result into better operation of consortium and also ensure better accountability.

Commission's View:

In view of the justification given by the petitioner, the Commission approves this deviation.

(6) Limit on the number of units:

The CSEB in para 1.2 of the RFQ has mentioned that number of units for the project should not be more than 3 units with minimum unit capacity of 200 MW.

There is no limit on the number of units of a project in the SBD and also there is no limitation of unit size in the SBD. CSEB has restricted the number of units to 3 and unit size of minimum 200 MW, which constitutes a deviation.

M/s Reliance Power Ltd has contended that the restriction on the number of units to a maximum 3 should be relaxed and said that they should be allowed to install a maximum of 5 units.

In response to the bidders' concern, the petitioner has stated that limiting the number of units is essential due to the limitation of land availability and environmental emissions as a part of environmental clearance. The petitioner has submitted that as per the Competitive Bidding Guidelines, CSEB has to carry out site identification and obtain environmental clearance apart from other activities. The petitioner has further submitted that the land acquisition for power plant is in advanced stages and the identified land may have the constraint for putting up more than three units.

Commission's View :

The only justification given by the CSEB for restricting the number of units to three is the availability of land. The Commission has been informed that the land being assigned / acquired for the power house of the project is 665 acres which appears adequate for the power house. In any case, some of the prospective developers have visited the site and no developer is likely to submit a proposal without visiting the site. We are, therefore, not convinced why there should be any restriction on the number of units particularly when the minimum size of the unit to be established in the project is prescribed as 200 MW . There is also no technical justification for restriction on the number of units.

This may only go to restrict competition. We are, therefore, not in favour of limiting the number of units to three. The total number of units to be set up in the project within the available land is best left to the prospective developers. The Commission however agrees that the minimum size of unit as 200 MW may be specified.

(7) Provision of time schedule for monitoring interim progress of the project.

The petitioner has specified broad time schedule under Schedule 12 of PPA for monitoring of interim progress. Standard Bidding Documents do not have any such monitoring scheme.

The Commission agrees to specifying a broad time schedule to check the regular progress apart from progress report as specified in Standard Bidding Documents. In an integrated project like Bhaiyathan TPP, it is more important to have reasonable monitoring only after ensuring that such monitoring would not impact the construction philosophy of the successful bidder and hamper the progress of the project.

Commission's View :

The Commission considers that specifying such a broad time schedule is appropriate. The Commission approves this deviation.

(8) Payment Security Mechanism:

The petitioner has kept no provision in the document for escrow mechanism for payment security. The petitioner has specified only Letter of Credit as the payment security mechanism in the PPA. The SBD specifies the payment security mechanism of Letter of Credit along with escrow arrangement..

M/s Chambal Infrastructure and M/s Reliance Industry Ltd. suggested inclusion of escrow mechanism for payment security.

The petitioner has submitted that due cognizance of its sound financial health should be taken into account and unnecessary burden of additional charges for collateral arrangement should be not loaded. The petitioner has further submitted that this actually is in fact not a deviation from the Competitive Bidding Guidelines since the guidelines provide for both options of payment security viz. Letter of Credit or Letter of Credit backed by credible escrow mechanism. The petitioner as per the SBD is required to provide the additional comfort of invocation of the provisions of article 4.10 of the guidelines in case of any default by way of non-renewal of LC etc.

Commission's View :

In view of above explanation given by the petitioner, the Commission considers this deviation to be reasonable and thus approves this deviation.

(9) Other deviations to guidelines and SBD as per details given in Annexure 1 to the petition.

The Commission has observed that most of these deviations emanates from major deviations and the remaining deviations either emanates from these deviations or are on account of project arrangement viz due to CSEB being the single procurer for Bhaiyathan TPP, non applicability of Authorised Representative and non existence of Special Purpose Company for Bhaiyathan TPP during the bidding process. The Commission has examined all these deviations with reference to the guidelines and the SBD as given in Annexure-1 to this order.

Commission's View:

After examining these deviations which are minor, the Commission has come to the conclusion that there is adequate justification for these deviations. These are therefore approved

(10) Approval of SSA and A&OA, which are not the part of SBD.

The petitioner has sought approval of SSA and A&OA, which are not the part of SBD. The petitioner has proposed the inclusion of separate SSA and A&OA on the following grounds:-

- (a) Equity participation of CSEB limited to 26% of equity shares to be allocated by the successful bidding company/ successful bidding consortium for consideration other than cash. Thus it brings in Share Subscription Agreement as one of contractual arrangement for Bhaiyathan TPP, which was not envisaged in RFP (Request for Proposal) documents of Standard Bid Document.
- (b) CSEB shall retain the mining lease for captive coal block. However, CSEB shall allocate the captive coal block to successful bidder for exclusive use of Bhaiyathan TPP. In order to establish the coal availability for Bhaiyathan TPP, CSEB proposed a contractual arrangement viz. Assistance and Operator Agreement.

M/s Reliance Power Ltd. raised objections regarding CSEB's proposal for nominating two Directors on the Board of the proposed company. The company has stated that seeking two Director positions for holding below 26% does not seem justified. The company suggested that this provision be relaxed so that there is no directorship for holding below 5%.

Considering the bidder's suggestion, the petitioner has revised this provision. The revised clause will include the provision that CSEB shall have nominee director in pro rata to equity holding with minimum one nominee director so long as CSEB holds at least 5% of the Company's paid up equity share capital.

The petitioner has also proposed to revise clause 5.11(b) and clause 12.3 of SSA to read as follows:

Clause 5.11(b): "The CSEB Nominee Directors shall not be required to hold qualification shares and except when CSEB has more than two directors then only 2/3rd of directors and when CSEB hold more than one (1) director then for one CSEB Nominee Director, no other CSEB Nominee Directors shall be liable to retire by rotation".

Clause 12.3: "Assignment: The Company shall not assign its rights and remedies nor transfer its obligations under this Agreement to any third party other than its group/affiliate company(s) without prior written consent of CSEB. In any event, any assignment or transfer shall not operate to relieve the assigning party of any of its obligations hereunder, nor will nay such assignment impose any obligation on the assignee except in the case of an express written assumption by the assignee."

Commission's View:

The Commission has examined these documents and agrees with the views of the petitioner. The Commission permits the petitioner to make necessary amendments in SSA and A&OA as proposed by him and mentioned in the replies submitted by him to the Commission on 22nd Sept. '07 (Annexure-3) and 24th Sept. '07 (Annexure-4).

7. In sum, the Commission approves the deviations except as discussed as above. The above petitioner should modify the bid document accordingly. The Commission directs the petitioner to take action as follows:
- (I) To convey amendments in the bidding documents as per this order of the Commission, to all the bidder(s) within 10 days from the date of this order. The petitioner should revise clause 1.4 of RFQ in line with the qualification criteria mentioned in the RFQ document. The provisions in clause 1.4 have not been proposed as deviation and hence need modification.
 - (II) To make special efforts to obtain environment clearance for the project and ensure that the clearance hold good even for the higher unit sizes such as 600 MW, 660MW and above.
 - (III) The petitioner shall submit to the Commission the final PPA and certification by the evaluation committee for adoption of tariff in accordance with Section 63 of the Act.

The petition accordingly stands disposed off.

**Sd/-
MEMBER**

**Sd/-
CHAIRMAN**

TRUE COPY

**(N.K. Rupwani)
Secretary**