



Petition No 959 of 2014

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION LUCKNOW

Date of Order : 05.12.2014

PRESENT:

1. Hon'ble Sri Desh Deepak Verma, Chairman
2. Hon'ble Smt Meenakshi Singh, Member
3. Hon'ble Sri Indu Bhushan Pandey, Member

IN THE MATTER OF: Adoption of tariff (under section 63 of Electricity Act, 2003) discovered through Tariff Based Competitive Bidding Process as per the Bidding Procedure specified by Ministry of New & Renewable Energy, Gol, for procurement of 200 MW Solar Power from Grid Connected Solar PV Power Projects under Case-1 long term bidding route for the period of 12 years with fixed tariffs.

UP Power Corporation Limited,
(Through its Chairman)
7th floor, Shakti Bhawan,
14, Ashok Marg
Lucknow - 226001

Uttar Pradesh New & Renewable Energy Development Agency
(UPNEDA)
Vibhuti Khand, Gomti Nagar,
Lucknow, U.P. -2260102

-----Petitioner

Sri Colonizers & developers Pvt.Ltd.
S-14 Second floor, Jai Hind commercial center Lalbagh
Lucknow (U.P.)

Moserbear Clean Energy Ltd
235 Okhla Industrial Estate phase-3
New Delhi-110020

Jakson Power Pvt. Ltd.
A-43 PHASE –II Extn, Hosiery Complex Noida-201305



DK Infracon Pvt. Ltd.
C-51, Suchana Apartment, Vasundhra Enclave
Delhi-110096

Refex Energy (Rajasthan) Pvt. Ltd.
A-108, Sector-4
Noida – 201301

Azure surya Pvt. Ltd.
No. – 8 Ground floor LSC, Madangir, Pushp vihar
New Delhi – 110062

Essel Infraprojects Ltd.
Kohinoor City, 513 A – wing off LBS road, Kurla West
Mumbai - 400070

-----Respondents

The following were present in the hearing held on 09.09.2014:

1. Sri S.P.Pandey, CE, PPA UPPCL
2. Sri S.K. Sinha, SE PPA UPPCL.
3. Smt N. Kalra, P.O. UPNEDA
4. Sri Sachin Singh, AVP, Darashaw & Co. Pvt. Ltd.
5. Sri Anand Menonk, Sr. Associate VP Darashaw & Co. Pvt. Ltd.
6. Sri Ashish Nandan, Manager (RA) Hindustan Power.
7. Sri S.K. Gupta, EVA – IPP Jakson Power.
8. Sri R.S. Rawat, Samavist Energy Solution Pvt. Ltd.
9. Sri Ashok Sharma, Refex Energy (R) Pvt. Ltd.
10. Sri Makarnd Tone, AGM Essel Infraprojects Pvt. Ltd.

To give another chance of hearing to respondents absent in above hearing subsequent hearing held on 15.09.2014 in which followings were present:

1. Sri S.P.Pandey, CE, PPA UPPCL
2. Sri S.K. Sinha, SE PPA UPPCL.
3. Smt N. Kalra, P.O. UPNEDA
4. Sri Sanjay, Sr. GM. Azure surya Pvt. Ltd
5. Sri Rajdeep Gaur, MT.Project Azure surya Pvt. Ltd
6. Sri Rishi Arora, Sri Colonizers & developers Pvt.Ltd.



Order

(Date of Public Hearings: 09.09.2014 & 15.09.2014)

1. With the objective to improve availability of power in State by harnessing available solar energy, the Government of Uttar Pradesh proclaimed solar Power policy-2013.
2. In accordance with the clause 10.1 of above stated policy and government order no.1167/ 45- वि० (अति. ऊ.स्रो.वि.)/2013 dated 20 June, 2013, Uttar Pradesh New & Renewable Energy Development Agency (UPNEDA) was made the Nodal Agency for carrying out bidding process for procurement of solar power from grid connected solar power projects for total capacity of 200 MW.
3. As per the guidelines laid down by the Ministry of New & Renewable Energy (MNRE), GoI for tariff based competitive bidding process for grid connected power projects based on Renewable Energy(RE) and provisions of State Solar Power Policy-2013, UPNEDA initiated bidding process under case-1 route for 200 MW grid connected solar PV power at fix tariff for the period of 12 years.
4. On 15.03. 2013 the RfP was published in this regard in newspapers- The Times Of India and Business Standard as well as on the website of UPNEDA with 25.04.2013 as last date of submission of bid.
5. In line with the MNRE guidelines, in this Rfp, provision for payment security was made available to bidders in bid document.
6. Based on various inputs received from interested firms in pre-bid meeting held on 04.04.2013, modified RfP was published on website of UPNEDA as well as in newspapers on 25.04. 2013 with last date of bid submission extended till 15.05.2013.



7. In response against RfP for 200 MW power , 9 bids with total capacity 140 MW of power were received from followings -

Sl.No.	Name of the Bidding company	Capacity Quoted in MW
1.	Shri Colonizers & Developers Pvt. Ltd. Lucknow	20
2.	Jakson Power Pvt.Ltd. Noida	10
3.	DK Infracon Pvt. Ltd, Delhi	10
4.	Refex Energy (Rajasthan) Pvt.Ltd, Noida	10
5.	Azure Surya Pvt.Ltd. New Delhi	10
6.	Essel Infraprojects Ltd, Mumbai	50
7.	Moserbear Clean Energy Ltd. New Delhi	20
8.	Jyoti Build Tech Pvt. Ltd. Lucknow	5
9.	Navkan Mines & Minerals Pvt. Ltd. New Delhi	5

8. In compliance with clause 6.3 of MNRE guidelines, following Bid Evaluation Committee (BEC) was constituted vide GoUP order no. 846/45- वि० (अति. ऊ.स्रो.वि.) / 2013 dated 06.05.2013:

Sl.No.	Bid evaluation committee	
1.	Director UPNEDA	Chairman
2.	Secretary cum Chief Project Officer UPNEDA	Member
3.	Senior Project Officer UPNEDA	Member
4.	Project officer Solar Policy UPNEDA	Member
5.	Nominated representative of Principal Secretary, Additional Energy Sources	Member
6.	Nominated representative of Principal Secretary, Finance	Member(External)
7.	Nominated representative of Principal Secretary, Law	Member(External)

9. As per the minutes of meeting (**annexure-1**), non-financial bids were opened by the committee on 15.05.2013 in presence of representatives of various bidders and M/s Darashaw & Co. Pvt. Ltd (the consultant for bid



management). Following members of the committee were present during bid opening:

Sl.No.	Bid evaluation committee	
1.	Director UPNEDA	Chairman
2.	Secretary cum Chief Project Officer UPNEDA	Member
3.	Senior Project Officer UPNEDA	Member
4.	Project officer Solar Policy UPNEDA	Member
5.	Deputy Secretary, Additional Energy Sources	Member
6.	Special Secretary, Finance	Member (External)
7.	Additional LR, Law	Member (External)

10. Subsequently, those bidders having deficiencies in their documents were asked to furnish deficient documents by 12:30 pm on 22.05.2013. Thereafter the bid evaluation committee held its meeting on 22.05.2013 (**annexure-2**) to review the evaluation report of bid part-1 prepared by the consultant M/s Darashaw & Co. Pvt. Ltd. and opined that bid of Navkan Mines & Minerals Pvt. Ltd. New Delhi was not technically responsive since the corroborative document for establishing experience was not in line with the RfP. BEC found following eight bidders technically qualified and recommended to open their financial offer:

Sl.No.	Name of the Bidding company
1.	Shri Colonizers & Developers Pvt. Ltd. Lucknow
2.	Jakson Power Pvt.Ltd. Noida
3.	DK Infracon Pvt. Ltd, Delhi
4.	Refex Energy (Rajasthan) Pvt.Ltd, Noida
5.	Azure Surya Pvt.Ltd. New Delhi
6.	Essel Infraprojects Ltd, Mumbai
7.	Moserbear Clean Energy Ltd. New Delhi
8.	Jyoti Build Tech Pvt. Ltd. Lucknow



11. The financial bids of the above 8 technically qualified bidders were opened in their presence on 30.05.2013. As per the minutes of meeting (**annexure-3**), the result was as follows:

Sl.No.	Name of the Bidding company	Capacity Quoted in MW	Tariff offered per kwh for 12 years in Rs/Kwh	Location of the plant (tentative)
1	Shri Colonizers & Developers Pvt. Ltd. Lucknow	20	8.01	Banda District & Tehsil
2	Jakson Power Pvt.Ltd. Noida	10	8.44	Tappal, Tehsil-Khair, Dist. Aligarh
3	DK Infracon Pvt. Ltd, Delhi	10	9.33	Moth, Dist. Jhansi
4	Refex Energy (Rajasthan) Pvt.Ltd, Noida	10	9.24	Moth, Dist. Jhansi
5	Azure Surya Pvt.Ltd. New Delhi	10	8.99	Dist. Jhansi
6	Essel Infracorps Ltd, Mumbai	50	9.27	Bundelkhand region
7	Moserbear Clean Energy Ltd. New Delhi	20	8.97	To be provided at the time of financial closure
8	Jyoti Build Tech Pvt. Ltd. Lucknow	5	15.00	Village Pallari, Dist. Lucknow or any suitable location between Lucknow & Kanpur

Except Jyoti Build Tech Pvt. Ltd. Lucknow (@ Rs. 15/-) the rate of remaining 7 bidders were found within the range of (+/-) 10% of Rs. 8.75/ Unit (the tariff declared by the CERC for the year 2013-14 for solar power).

Further it was also taken into cognizance by the committee that in other States tariff rate for solar power for span of 25 years ranges between Rs.



6.45 to Rs. 12.50 whereas the tariff rates received against RfP were for the span of 12 years.

The BEC recommended to the empowered committee chaired by the Chief Secretary to approve tariff of 7 bidders except M/s Jyoti Build Tech Pvt. Ltd. Lucknow.

12.The above recommendation of the Committee was later approved by the empowered committee chaired by the Chief Secretary GoUP(**annexure-4**) and subsequently by the GoUP(**annexure-5**). The fixed tariff of successful bidders so approved is tabulated hereunder:-

Sl. No.	Name of the Bidding company	Capacity Quoted in MW	Tariff offered per kwh for 12 years in Rs/Kwh
1	Shri Colonizers & Developers Pvt. Ltd. Lucknow	20	8.01
2	Jakson Power Pvt.Ltd. Noida	10	8.44
3	DK Infracon Pvt. Ltd, Delhi	10	9.33
4	Refex Energy (Rajasthan) Pvt.Ltd, Noida	10	9.24
5	Azure Surya Pvt.Ltd. New Delhi	10	8.99
6	Essel Infraprojects Ltd, Mumbai	50	9.27
7	Moserbear Clean Energy Ltd. New Delhi	20	8.97

13.It is submitted in the petition that as per provision available in RfP at clause (2.10.2.2iii) “Companies shortlisted in RfP can also execute the project through a Special Purpose Vehicle (SPV)” M/s DK InfraconPvt. Ltd, Essel Infraprojects Ltd and Moserbear Clean Energy Ltd formed SPV for execution of PPA and Projects as follows:

1. Samavist Energy Solutions Private Limited



2. Essel Urja Private Limited
3. Moserbaer Energy & Infrastructure Ltd (MBEIL)

14. On 08.08.2013 within 145 days of date of publishing of RfP i.e. 15.03.2013, 7(seven) successful bidders were awarded Letter Of Intent (LOI) by UPNEDA and subsequently PPAs were signed between UPPCL and the bidder on dates as given below.

Sl. No.	Name of the Bidding company	Capacity Quoted in MW	Date of signing of PPA
1	Shri Colonizers & Developers Pvt. Ltd. Lucknow	20	28.03.2104
2	Jakson Power Pvt. Ltd. Noida	10	27.12.2013
3	DK Infracon Pvt. Ltd, Delhi	10	27.12.2013
4	Refex Energy (Rajasthan) Pvt. Ltd, Noida	10	27.12.2013
5	Azure Surya Pvt. Ltd. New Delhi	10	27.12.2013
6	Essel Infracore Pvt. Ltd, Mumbai	50	27.12.2013
7	Moserbear Clean Energy Ltd. New Delhi	20	27.12.2013

15. As per the guidelines of MNRE, the PPAs must be signed within 300 days of issue of RfP, otherwise approval from appropriate Commission needs to be sought. PPAs with all the successful bidders except Shri Colonizers & Developers Pvt. Ltd. Lucknow were signed within that stipulated time. In case of M/s Shri Colonizers & Developers Pvt. Ltd. Lucknow PPA was signed on 28.03.2014 (well after 300 days of publishing of RfP) hence prior approval from the Commission was necessary.

16. As per clause (7.3) of guidelines of MNRE, after the conclusion of bid process BEC has provided a certificate on conformity of the bid process evaluation according to provisions of RfP document (**annexure-6**).



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- 17.As per clause (7.3) of guidelines of MNRE, UPPCL, the procurer, has also provided a certificate on conformity of the bid process as per guidelines (**annexure-7**).
- 18.As per clause 7.4 of the guidelines of MNRE, on 17.06. 2014 publications were made in newspapers about the successful bidders and that UPPCL has entered into PPAs with successful bidders with all the documents available at the website of NEDA. (**annexure-8**).
- 19.On 18.06.2014 the petition was filed in UPERC jointly by UPNEDA & UPPCL for adoption of above discovered tariffs.
- 20.On 20.08.2014 public notice was issued by the Commission to stakeholders and interested parties to submit in writing comments/objection/suggestions to the above petition by 04.09.2014 with a copy to UPNEDA & UPPCL and that hearing was scheduled on 09.09.2014 in office of the Commission.
- 21.In the hearing held on 09.09.2014 along with the petitioners all the respondents were present except Shri Colonizers & Developers Pvt. Ltd. Lucknow and Azure Surya Pvt. Ltd. New Delhi.
- 22.The Commission expressed its displeasure over absent respondents and refused to consider their cases. The petitioner implored that the project of absent developers are moving at good pace and it is expected that soon power from these developers shall be available and requested that these absent developers may be given another chance for hearing.
- Considering the above plea of the petitioner, the Commission granted 15.09.2014 as the next date of hearing for absent developers.
- 23.In the hearing held on 09.09.2014 it was brought to the notice of the Commission by the UPNEDA officials that there is variation in the location of some of the projects. The Commission directed the petitioner to file an affidavit confirming final locations of all the projects.
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Subsequently, UPNEDA filed affidavit on 12.09.2014 confirming location of the projects as hereunder:

Sl. No.	Name of the Bidding company	Capacity Quoted in MW	Tariff offered per kwh for 12 years in Rs/Kwh	Location of the Plant
1	Shri Colonizers & Developers Pvt. Ltd. Lucknow	20	8.01	Village motiyatri Tehsil Naraini District Banda
2	Jakson Power Pvt.Ltd. Noida	10	8.44	Vill. Mehrauni Khund, Dist. Lalitpur
3	DK Infracon Pvt. Ltd, Delhi	10	9.33	Vill. Amarpur, Dist, Lalitpur
4	Refex Energy (Rajasthan) Pvt.Ltd, Noida	10	9.24	Vill. Amarpur, Dist, Lalitpur
5	Azure Surya Pvt.Ltd. New Delhi	10	8.99	Vill. Karhar Kala, Dist. Mahoba
6	Essel Infraprojects Ltd, Mumbai	50	9.27	Vill. Shahjahanpur Tehsil Kalpi Dist.orai
7	Moserbear Clean Energy Ltd. New Delhi	20	8.97	Vill. Bendo Tehsil Kulphadh Dist. Mahoba

24. In the subsequent hearing held on 15.09.2014, the representatives of Shri Colonizers & Developers Pvt. Ltd. Lucknow and Azure Surya Pvt. Ltd. New Delhi were present with the petitioner and tendered their apology for their absence in previous hearing that held on 09.09.2014.



25. In view of all above, the Commission takes cognizance of above referred MoMs of BEC and empowered committee, approval of GoUP, certificate on conformity of the bid process evaluation according to provisions of RfP document by the BEC (annexure-6) and certificate on conformity of the bid process as per guidelines (annexure-7) by the procurer UPPCL and considers that the tariffs have been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. Hence, the Commission adopts the tariffs as given hereunder:

Sl.No.	Name of the Bidding company	Capacity Quoted in MW	Fixed tariff offered per kwh for 12 years in Rs/Kwh
1	Shri Colonizers & Developers Pvt. Ltd. Lucknow	20	8.01
2	Jakson Power Pvt.Ltd. Noida	10	8.44
3	DK Infracon Pvt. Ltd, Delhi	10	9.33
4	Refex Energy (Rajasthan) Pvt.Ltd, Noida	10	9.24
5	Azure Surya Pvt.Ltd. New Delhi	10	8.99
6	Essel Infraprojects Ltd, Mumbai	50	9.27
7	Moserbear Clean Energy Ltd. New Delhi	20	8.97

26. As per clause 6.3 of MNRE guidelines-

“The procurer shall constitute committee for evaluation of the bids (Evaluation Committee) with at least one member external to the procurer’s organization and affiliates.....”

However, in this case the external member is from the GoUP, the affiliate of procurer. Hence the BEC does not seem to be in line with the spirit of guidelines. The Commission accepts the finding of BEC with advice to UPPCL/UPNEDA that in future BEC must be in line with the guidelines of MNRE.



27. PPA with Shri Colonizers & Developers Pvt. Ltd. Lucknow was signed on 28.03.2014 (well after 300 days of publishing of RfP) without prior approval from the Commission required in wake of jumping the timeline in signing of PPA. This is also approved by the Commission with the direction to UPPCL/UPNEDA that time lines given in the SBD must be honored and same must not be repeated in future.

28. The petition is disposed of.

(Indu Bhushan Pandey)
Member

(Meenakshi Singh)
Member

(Desh Deepak Verma)
Chairman

Place: Lucknow

Dated: 05.12.2014