**Petition No 911 of 2013**

**BEFORE**

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**Date of Order : 24.06.2014**

**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 (L-2, L-3, L-5 & L-6) obtained through bidding process under Case – 1 Standard Bidding Guidelines (SBG) of GoI for procurement of 6000 MW power.

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

**----------Petitioner**

PTC India Limited,
(TRN Energy Ltd.)
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi- 110 066

Lanco Power Limited (Babandh)
Plot No. 397, Udyog Vihar,
Phase 3, Gurgaon,
Haryana

M/s KSK Mahanadi Power Company Ltd.
8-2, 293/82/A/431/A,
Road No. 22, Jubilee Hills,
Hyderabad.

PTC India Limited,
(MB Power (MP) Ltd.)
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi- 110 066

**----------Respondents**

The following were present:

1. Sri Mahavir Jhala, DGM (Comm), Lanco Power Ltd.
2. Sri B. T. Kumar, G.M. KSK Mahanadi Power Company Ltd.
3. Sri S. K. Sekar, Lanco Power Limited (Babandh)
4. Sri Avadhesh Kumar Verma, UP Rajya Vidyut Upbhokta Parishad
5. Sri Suraj Das Guru, Lanco Power Limited (Babandh)
6. Sri Rama Shankar Awasthi, Consumer
7. Sri Prashant Mehrotra, CE (Planning), UPPCL
8. Sri Deepak Raizada, EE (Planning), UPPCL
9. Sri Vinay P. Srivastava, SE, UPPCL
10. Sri K. D. Pandey, Consumer
11. Sri A. N. Mishra, Consumer
12. Sri A.K. Arora, Resident Manager, NPCL
13. Sri M.K. Johar, Resident Manager
14. Sri Bharat Sharma, Manager, PTC India Ltd.
15. Sri Anuj V, Deloitte
16. Sri G.P. Gupta, Sr. Manager, MB Power (M.P.) Ltd.
17. Sri Ravi Arya , Sr. V.P. , MB Power (M.P.) Ltd.

## Order

(Date of Public Hearing 29.05.2014)

1. UPPCL, the authorized representative of the State Distribution Companies, initiated a Case-1 tariff based Competitive Bidding Process in July 2012 (as per the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees issued by Ministry of Power, GoI and as amended from time to time) (hereinafter referred to as "Bidding Guidelines") for procurement of 6000 MW base load power on long term basis. The power requirements of the four distribution utilities of the State was assessed as here under :

| Sr. No. | Distribution Utility | Capacity procurement (MW) |
|---|---|---|
| 1 | Paschimanchal Vidyut Vitran Nigam Ltd. | 2100 |

| | | |
|---|---|---|
| 2 | Purvanchal Vidyut Vitran Nigam Ltd. | 1300 |
| 3 | Madhyanchal Vidyut Vitran Nigam Ltd. | 1300 |
| 4 | Dakshinanchal Vidyut Vitran Nigam Ltd. | 1300 |
| | Total | 6000 |

The approval to initiate the bid process was accorded by the Commission on 23rd July 2012.

2. UPPCL has informed that the Request for Proposal (RFP), Power Purchase Agreement (PPA) and other RFP documents were issued by UPPCL on July 27th 2012 and the last date of submission of RFP Bids was 24th September 2012. Eleven (11) bidders submitted their RFP Bids offering a total capacity of 8771.6 MW by the due date. UPPCL has submitted that as per Para 5.9 of the Bidding Guidelines, a Committee was constituted for independent evaluation of Bids. The Evaluation of Non-Financial Bids was carried out and findings were putup before the Bid Evaluation Committee. Based on the recommendations of the Bid Evaluation Committee, suitable clarifications were sought from the Bidders and the same were reviewed by the Bid Evaluation Committee. Based on the recommendations of the Bid Evaluation Committee the Financial Bids of the Qualified Bidders were opened on 17th December 2012 and the responsiveness check was carried out. The findings of the Financial Bids were presented to the Bid Evaluation Committee on 18th January 2013. UPPCL has submitted that eleven (11) bidders were qualified. The list of those bidders with offered quantities in order of ranking is as follows:

| **Rank** | **Name of Bidder** | **Bid Capacity (MW)** |
|---|---|---|
| 1. | NSL Nagapatnam Power Ltd. | 300 |
| 2. | PTC-TRN Energy Ltd. | 390 |
| 3. | Lanco (Babandh Project) | 423.9 |
| 4. | RKM Powergen Pvt. Ltd. | 350 |

| | | |
|---|---|---|
| 5. | KSK Mahanadi Power Company Ltd. | 1000 |
| 6. | PTC-MB Power (MP) Ltd. | 361 |
| 7. | Krishnapatnam Power Corporation Ltd (KPCL) | 800 |
| 8. | PTC-DB Power Ltd. | 203 |
| 9. | Indiabulls (Nasik) | 1200 |
| 10. | Jindal Power Ltd | 300 |
| 11. | Indiabulls (Amravati) | 600 |
| 12. | Lanco (Amarkantak) | 1072.5 |
| 13. | NCC Power Projects Ltd. | 200 |
| 14. | Lanco (Vidarbha) | 454.2 |
| 15. | PTC - East Coast Energy Pvt. Ltd. | 300 |
| 16. | PTC-DB Power (MP) Ltd. | 302 |
| | **Total** | **8256.6 MW** |

3. UPPCL has submitted that based on recommendations of the Bid Evaluation Committee, the Energy Task Force (ETF), and approval of GoUP, Letter of Intent (LoI) was issued to L1 bidder on 21st January, 2013 and subsequently to L2, L3 and L4 bidder on 22nd May, 2013. The details of levelized tariff and quantum of power, for these four bidders in the order of their ranking are as below-

| Rank | Name of the Bidder | Bid Capacity | Levellized Tariff |
|---|---|---|---|
| L1 | NSL Nagapatnam Power & Infratech Pvt. Ltd. | 300 | 4.486 |
| L2 | PTC (TRN Energy Ltd.) | 390 | 4.886 |
| L3 | Lanco Power (Babandh Project) | 423.9 | 5.074 |
| L4 | RKM Powergen Pvt. Ltd. | 350 | 5.088 |

UPPCL has stated that out of the above (4) Bidders, PTC India Ltd. (L2) and Lanco Power Ltd. (L3) submitted the required Contract Performance Guarantee (CPG) and signed the PPA with UPPCL on 25th July 2013 and 8th August 2013

respectively. NSL Nagapatnam Power & Infratech Pvt. Ltd. (L1) and RKM Powergen Pvt. Ltd. (L4) did not submit CPG as per the provisions of RFP. UPPCL has added that on 12th Sept, 2013 the Bid Evaluation Committee, further recommended the issuance of LoI to L5, L6 and L7 Bidders as tabulated below. The Energy Task Force (ETF) also endorsed the issuance of LoI to L5, L6 and L7 on 19th Nov. 2013. Based on the recommendations of Bid Evaluation Committee, ETF and approval of GoUP, UPPCL issued LOI to L5, L6 and L7 bidders on 11th December, 2013 . The details of tariff and quantum of power, for these three bidders in the order of their ranking are as below-

| Rank | Name of the Bidder | Bid Capacity | Levellized Tariff |
|---|---|---|---|
| L5 | KSK Mahanadi Power Company Ltd. | 1000 | 5.588 |
| L6 | PTC- MB Power (Madhya Pradesh) Ltd. | 361 | 5.73 |
| L7 | Krishnapatnam Power Corporation Ltd. | 800 | 5.849 |

4. As per the provisions of the RFP, UPPCL filed this petition, for adoption of tariff of L2 and L3 bidders under Section 63 of the Electricity Act 2003, with prayer as follows:

(a) To adopt the tariff of the two bidders L2, L3 viz PTC India Ltd. (Source:TRN Energy Ltd.) and Lanco Power Ltd. (Source: Lanco Babandh Power Ltd.) under Section 63 of the Electricity Act, 2003; and

(b) To approve the extended timeframe for the closure of the bid process up to 19th November, 2013.

UPPCL has submitted that since L-1 & L-4 did not submit Contract Performance Guarantee (CPG) as per the provisions of RFP, they could enter into PPAs only with L-2 & L- 3 and the same was brought to the Commission for adoption under section 63 of the Electricity Act, 2003. UPPCL further requested

for extension of timelines for six months as they exceeded the timelines of 195 days as provided in the bidding documents.

The Commission showed its dissatisfaction over the Minutes of Meeting (MoM) (Annexure – 1) having certification of the bid evaluation committee as *"On the basis of report of the consultant and the recommendation of the UPPCL, the bid evaluation committee certifies that the bid process evaluation conforms to the provisions of RFP documents".* Whereas, as per the clause 6.2 of the SBG, the Evaluation Committee constituted for evaluation of RFP bids itself has to provide certification on conformity of the bid process evaluation according to the provisions of the RFP document. UPPCL had stated that in the same bidding process, down the line, they were in process of issuing some more Letter of Intents (LoIs) for which the Bid Evaluation Committee had given the appropriate certification as per the standard guidelines and requested that since the other certification had been issued in the same bid process, it might be construed as appropriate by the Hon'ble Commission for the whole bid process.

The Commission, vide order dated 21st Feb, 2014, directed UPPCL to submit an undertaking on affidavit stating that the certificate of conformity with Minutes of Meeting (MoM), issued in case of the Letter of Intents (LoIs) referred as above, shall construed to be applicable in case of these bids also. The Commission further directed to follow the provision of clause 6.3 of the Standard bidding guidelines as below:

> "*For the purpose of transparency, the procurer shall make the bids public by indicating all the components of tariff quoted by all the bidders, after signing of the PPA or PPA becoming effective, whichever is later. While doing so, only the name of the successful bidder shall be made public and details of tariffs quoted by other bidders shall be made public anonymously. The procurer shall also make public the PPA signed in accordance with clause 6.1. For above purpose, a notice will be published in at least two national newspapers and full details shall be posted on the website of the procurer for at least thirty days."*

The Commission also expressed that the publication may be made for these bids only or for all the bids together at the discretion of the UPPCL. The next hearing was to be public.

5. UPPCL, on 17.4.2014, has made submissions including their undertaking on affidavit (Annexure – 2) stating that the certificate of conformity issued by Bid Evaluation Committee on 12th Sept. 2013 (recommending selection of L5, L6 and L7 bidders) shall be construed to be applicable in case of certificate of conformity issued by Bid Evaluation Committee on 14th March, 2013 (recommending selection of L2, L3 and L4 bidders). UPPCL has also submitted MoM dated 12.9.2013 for L5, L6 & L7 (Annexure – 3). UPPCL has added that they have made publication of these bids through a notice in two National Newspapers and have posted full details, i.e. components of tariff quoted by all the bidders and PPAs signed (L2, L3, L5 and L6), so far, in the bidding process, on the official website of the Procurer's authorized representative i.e. www.uppcl.org only or for all the bids together at the discretion of UPPCL (Annexure – 4).

6. UPPCL has further stated that the Bidders (L5 and L6) have also submitted respective Contract Performance Guarantee (CPG) as per the provisions of the PPA. UPPCL has submitted that they have signed the PPA with L5 (on 18th January, 2014), and L6 (on 26th February, 2014). UPPCL has informed that the bidder L7 (M/s Krishnapatnam Power Corporation Ltd.) has sought additional timeframe for submission of CPG to sign PPA and the Default Escrow Agreement and Agreement to Hypothecate – cum – deed of Hypothecation with L2, L3, L5 and L6 bidders shall be signed at a later date. With this, UPPCL has also requested to adopt the tariff of L5 and L6 bidders.

7. UPPCL has submitted the Procurer's certificate on the conformity of the bid process to the Bidding Guidelines dated 17.4.2014 (Annexure – 5).

8. UPPCL has further stated that the tariffs put up before the Commission for adoption has been determined through transparent process of bidding established according to the Guidelines issued by the Central Govt. and since, Section 63 calls only for the adoption of such tariff by the Commission as such it appears that public hearing is not required in the instant petition. Further, it has also been stated that the Guidelines issued by the Central Government or RFP documents do not provide for holding public hearing for adoption of tariff.

9. On 17.4.2014, UPPCL has filed another application revising the request of extension of timelines for closure of bid process upto 30th June, 2014 which was earlier requested upto 19th November, 2013.

10. On the issue of Public Hearing, the Commission decided to convene it considering the fact that the electricity is being procured through bidding process under section 63 of the Act which states that the Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding. The Public Hearing ensures opportunity to all the stakeholders and to the public to comment on the concluded bid process before the Commission which is required for arriving to the conclusion regarding adoption of tariff.

11. During the hearing Sri Avadhesh Kumar Verma, UP Rajya Vidyut Upbhokta Parishad reiterated his objections which he had earlier raised in the letter dated 4.3.2014 and Sri Rama Shankar Awasthi, Consumer filed written objections dated 29.5.2014. UPPCL was directed to file the reply in writing which they have filed on 16.6.2014.

12. UPPCL has stated that in the above letter dated 4.3.2014, following statements have been made by U.P. Rajya Vidyut Upbhokta Parishad :

    a) UPPCL is contemplating purchasing power, sometimes from L1, L2, L3 and sometimes from L5, L6 and L7.

b) UPPCL is working on procuring additional quantum, over and above the quoted quantum from the bidders.
c) UPERC should request UPPCL to submit complete procedure pertaining to the bidding process including legal opinion and should direct UPPCL to put the entire procedure on the website of UPPCL.
d) The advice sought by Energy Deptt. Govt. of Uttar Pradesh from UPERC under section 86 (2) regarding L4 bidder is not appropriate.

The response on the above points have been given by UPPCL as below:

Point (a) above :

- Section 63 of Electricity Act, 2003 has provision that "*Notwithstanding anything contained in Section 62 the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*"
- Under the above provisions of Section 63 of the Act Ministry of Power, GoI, has notified "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Lincensees." dated 19th Jan. 2005 and as amended from time to time.
- Under these guidelines Ministry of Power, GoI has issued Standard Bidding Documents (Request for Proposal, Power Purchase Agreement). The guidelines mentioned that the Procurer or authorized representative shall prepare bid documents in line with these guidelines and Standard bid documents and in case there is any deviation from these guidelines the same shall be done with the prior approval of the Appropriate Commission.
- The Procurer/authorized representative has sought the approval of UPERC to initiate the bid process for procurement of 6000 MW power under Case-1 Standard Bidding Guidelines (SBG) along with a request for approval of RFP documents, which were as per the Standard Bidding Documents issued by Ministry of Power, GoI and sought certain deviations including revised (reduced)RFP timelines vide Petition no. 812 of 2012. UPERC vide its order dated 23rd July, 2012 have accorded approval to UPPCL to initiate the bid process for procurement of 6000 MW power under Case-1 SBG of GoI along with approval of the deviations in the RFP.
- As per Clause 3.5 of the RFP (Successful Bidder(s) Selection)

  *3.5.1 Bids qualifying in Step III shall only be evaluated in this stage.*

  *3.5.2 The Levelized Tariff calculated as per Clause for all Financial Bids of Qualified Bidders shall be ranked from the lowest to the highest.*

*3.5.3 The Bidder with the lowest Levelized Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.*

*3.5.4 The selection process of the Successful Bidder as mentioned above in Clause shall be repeated for all the remaining Financial Bids of Qualified Bidders until the entire Requisitioned Capacity is met or until the time when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.*

*3.5.5 At any step in the process in Clause, in case the Requisitioned Capacity has not been achieved and the offered capacity of the Bidder with the lowest Levelized Tariff amongst the remaining Financial Bids is larger than the balance Requisitioned Capacity, any fraction or combination of fractions offered by such Bidder shall be considered for selection, towards meeting the Requisitioned Capacity.*

*3.5.6 The selection process shall stand completed once the Requisitioned Capacity has been achieved through the summation of the quantum offered by the Successful Bidders or when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity. ……*

*3.5.8 The Letter(s) of Intent shall be issued to all such Successful Bidder(s) selected as per the provisions of this Clause.*

*3.5.9 There shall be no negotiation on the Quoted Tariff between the Authorized Representative/ Procurer and the Bidder(s) during the process of evaluation.*

- From the above it is evident that the RFP envisages a bucket filling approach i.e. selection of successful bidder(s) at their quoted tariff till the requisition capacity has been achieved. Following the above process of evaluation as per RFP, the Bid Evaluation Committee in its meeting(s) has recommended for acceptance of bids upto L7. Accordingly, UPPCL issued LoI to the successful Bidder(s) i.e. from L1 to L7.

  Thus, the statement by Upbhokta Parishad that UPPCL is purchasing power, sometimes from L1, L2, L3 and sometimes from L5, L6 and L7 exhibits lack of comprehension of the selection process laid down by the SBG & SBD issued by Ministry of Power. Govt. of India, New Delhi for selection of Seller(s) to meet the requisitioned capacity, which has been followed by UPPCL as the authorized representative of the Procurer.

Point (b) above :

The Petition no. 911/2013 filed by UPPCL on 11th Oct. 2013 and subsequent applications filed on 21st April, 2014 for adoption of tariff as per PPA(s) signed so far i.e. L2, L3, L5 and L6 bids has no mention any where regarding procurement of additional power from bidder(s), over and above their quoted quantum as in the RFP submitted by them, nor any prayer has been made regarding the same in the above Petition.

Point (c) above :

- The *Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Lincesees* dated 19th Jan. 2005 and as amended from time to time, have following provisions w.r.t. transparency of the bid process as per Clause 6.3 :

  *For the purpose of transparency, the procurer shall make the bids public by indicating all the components of tariff quoted by all the bidders, after signing of the PPA or PPA becoming effective, whichever is later.* ***While doing so, only the name of the successful bidder shall be made public and details of tariffs quoted by other bidders shall be made public anonymously.*** *The procurer shall also make public the PPA signed in accordance with clause 6.1. For above purpose, a notice will be published in at least two national newspapers and full details shall be posted on the website of the procurer for at least thirty days." (emphasis provided)*

- UPERC in the matter of adoption of tariff (L2 and L3) obtained through bidding process under Case-1 SBG of GoI in Petition no. 911 of 2013 has in its order dated 21st Feb. 2014 has also directed UPPCL to follow the above mentioned provision of Clause 6.3 of SBG, while also mentioning that the publication may be made for the above bids only or for all the bids at the discretion of the UPPCL.
- In compliance with the above provisions w.r.t. the transparency of the bidding process, UPPCL has published a notice in two national newspapers and has posted full details, i.e. components of tariff quoted by all the bidders and PPAs signed (L2, L3, L5 and L6), so far, in the bidding process, on the official website of the procurers authorized representative i.e. www.uppcl.org.
- Further, w.r.t. transparency of the bidding process following points are also to be considered :

  i) UPPCL has issued RFP documents which were the Standard Bidding Documents issued by GoI, and the deviations in the documents were approved by UPERC as per the provisions of the SBG.

ii) The RFP notice was published in at least two national newspapers along with UPPCL website as per the provisions of SBG. All the RFP documents were kept in public domain by way of hosting on UPPCL website as well as availability in the UPPCL office as per the details published in the notice.

iii) Govt. of Uttar Pradesh constituted a Committee for evaluation of the bids with one external member, as per provisions of SBG. The external member is Member, Central Electricity Authority, New Delhi or his representative.

iv) The Evaluation Committee constituted for evaluation of the bids has provided appropriate certification on conformity of the bid evaluation according to the provisions of RFP document. The procurer has also provided a certificate on the conformity of the bid process to these guidelines. The above certifications have been provided to UPERC in the Petition and application(s) filed for adoption of tariff of signed PPAs.

From the above points, it is evident that the procurers have followed the provisions of transparency as per the Standard Bidding Guidelines and as per the directives given by UPERC in its order w.r.t. initiation of the bid process, approval of the RFP documents and adoption of tariff of signed PPAs.

Point (d) above :

The petition no. 911/2013 filed by Uttar Pradesh Power Corporation Limited on 11th Oct ,2013 and subsequent applications filed on 21st April 2014 for adoption of tariff as on PPA's signed with L2,L3,L5 &L6 bids has no concern with L4 bid in any way.

However as far as decision taken by UPPCL & UP Govt. in case of L4 bid and the interest of state is concerned,facts are given below:-

(a) In the 6000 MW Case-1 bidding process being carried out by UPPCL as authorized representative of procurers, LoI was issued to L4 bidder on 22nd May, 2013 and the same was unconditionally accepted by the Seller, as per the provisions of RFP. Subsequently, on account of the request by the Seller for revaluation of his bid for changed fuel source and non fulfillment of further provisions of RFP by the Seller w.r.t. submission of CPG and signing of PPA, the LoI issued to the Seller was cancelled on 19th Dec. 2013. On cancellation of LoI, the L4 bidder submitted that they were ready to sign the PPA as per the RFP submitted by them. Since, the LoI issued to the bidder, stood cancelled and there was no explicit provision in the RFP as regards to such a situation, Govt. of Uttar Pradesh, on the basis of advice received from Law Wing of Govt. of Uttar Pradesh decided that it was in State's interest as well as to maintain the transparency of

the bid process to seek advice from UPERC as per the provision of Section 86 (2) (iv) of the Electricity Act, 2003.

(b)Section 86 of the Electricity Act, 2003 lists the Functions of the State Commission. Following provision exists in Section 86 (2) :

*The State Commission shall advise the State Government on all or any of the following matters, namely:*

*(i) promotion of competition, efficiency and economy in activities of the electricity industry;*
*(ii) promotion of investment in electricity industry;*
*(iii) reorganization and restructuring of electricity industry in the State;*
(iv) *matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by the Government*.

Thus by seeking advice from Uttar Pradesh Electricity Regulatory Commission under section 86(2)(iv) of Electricity Act 2003 w.r.t L4 bid Govt. of Uttar Pradesh was exercising it's right to explore the possibilities of procuring 350 MW electricity at cheaper rate (i.e Rs.5.088 per unit), completely in view of State's interest.

13. The point wise response submitted by UPPCL on comments/objection made by Shri Rama Shanker Awasthi, vide his letter dated 29th May, 2014 is as follows:

Point no. 1

Comment

Secretary UPERC in public notice dated 22.05.2014 inform to all general public that all bids including the component of tariff is available on UPPCL website i.e. www.uppcl.org but in website incomplete document of four bidders document are available in place of 16 bidders (PPA, detail of generating source, Security document).

UPPCL's Reply

As per Clause 6.3 of Standard Bidding Guidelines (SBG) issued by Ministry of Power Govt. of India, *"for the purpose of transparency, the procurer shall make the bids public by indicating all the components of tariff quoted by all the bidders, after signing of the PPA or PPA becoming effective, whichever is later.*

*While doing so, only the name of the successful bidder shall be made public and details of tariff quoted by other bidders shall be made public anonymously. The procurer shall also make public the PPA signed in accordance with clause 6.1.*"

Further vide its order dated 21-02-2014 UPERC has directed UPPCL to follow the above provisions of Clause 6.3 of SBG and further stated that the publication may be made for these bids only or for all the bids together, at the discretion of UPPCL. Accordingly UPPCL has hosted on its website all the component of tariff quoted by all 16 bidders, whose financial bids were opened, along with the levelized tariff and while doing so the names of the Seller (Successful bidder who submits the Contract Performance Guarantee and executes the PPA document) have been made public and details of tariff quoted by other bidders have been made public anonymously.

Thus all the requirements as per the above clause 6.3 of the SBG, as also, the directives given by UPERC vide its order dated 21-02-2014 have been fulfilled by UPPCL.

Point no. 2

Comment

No calculation detail are available related to evaluation of levelized tariff, then how public verification/calculate the levelized tariff of different bidders mention in website.

UPPCL's Reply

Clause 5.2 of the SBG states that the procurer shall publish the RFP notice in at least two National newspapers and also on Procurer(s) website. During the course of bidding process, all the RFP documents were kept in public domain w.e.f. 27-07-2012 till the bid submission deadline of i.e 24$^{th}$ September, 2012 and even thereafter. Section 5(ix) of the RFP document is *Illustration for bid evaluation and computation of levelized tariff.* Accordingly the tariff model by which levelized tariff is computed was hosted on the official website, in public domain, and the same tariff model was provided to the Bidders.

As per the provisions of RFP, the computation of levelized tariff is done up to 3 decimal places. During the financial opening, in presence of the bidders, not even a single computation of levelized tariff for any of the bid was disputed or challenged by any bidder. More over, as mentioned above, the methodology of computation of levelized tariff as per clause 3.4 of the RFP, and the tariff model have both been available in the public domain during the RFP process.

Point no. 3

Comment

In UPPCL website petition copy of petition no. 911 of 2013 filled before UPERC is not available for public.

UPPCL's Reply

As mentioned in response to point 1 above, for the purpose of transparency, Clause 6.3 of SBG, mandates that the procurer shall make the bid public of all the bidders and while doing so only the name of successful bidders shall be made public and details of tariff quoted by other bidders shall be made public anonymously.

The Petition no. 911/ 2013 and Applications filed therein, list the details of all Bids submitted viz. name of bidder, quantum of power, levelized tariff etc., hence it is evident that hosting the petition and application on the website would have been in contravention of the mandate of SBG that details of tariff quoted by bidders who are not successful bidder shall be made public anonymously.

Point no. 4

Comment

As per above objection, objector request to Commission that Commission should cancel today public hearing and further issue direction to petitioner for providing petition copy along with calculation of levelized tariff and other document related to all bidders to public by in website.

UPPCL's Reply

As UPPCL has followed the provision of clause 6.3 of SBG and the directives of UPERC vide order dated 21-02-2014 in petition no. 911/2013, in totality, the request made by consumer is not maintainable.

Point no. 5

Comment

As per Electricity Act, 2003 and regulations made by UPERC, it is clear that each licensee shall purchase power as per requirement directly from generating source or traders but in present case this was not happen.

UPPCL's Reply

Clause 2.4 of the SBG states that *"Procurement by more than one distribution licensee through a combined bid process shall be permitted and in such a case the Procurers shall have the option to conduct the bid process through an authorized representative."*

Thus the statement by the consumer that the combined power purchase through UPPCL is violation of Act & Regulations, exhibits ignorance of the above provisions of SBG & SBD issued by Ministry of Power, GoI.

Point no. 6

Comment

All four discom are working independently from 12.8.03 but till today they are not purchase power directly and not signed any single PPA till today. In present case also UPPCL signed PPA on behalf of all four discom this is clear cut violation of provision given in Act and Regulations issued by UPERC.

UPPCL's Reply

Consumer has stated that in present case UPPCL has signed PPA on behalf of all four discoms which is violation of provision given in Act & Regulations issued by UPERC.

The above statement of consumer shows his ignorance as in the present case, the PPAs have been signed between Seller and 4 Procurers viz MVVNL, DVVNL, PuVVNL & PVVNL. From the PPA hosted on the website it is evident that, UPPCL is not a signatory anywhere in the PPA.

Point no. 7

Comment

All Discom have different Geographical condition, financial position and requirement of power then why all Discom are not purchase power independently. May be if all Discom purchase power directly then Discom purchase cheaper power compare to present rate mention in petition. Commission should examine this matter.

UPPCL's Reply

Objection is speculative & hypothetical.

UPPCL has followed the provision of procurement by more than one distribution license through a combined bid process as per the provision of SBG issued by Ministry of Power, GoI.

Point no. 8

Comment

As per PPA Signed by bidder and UPPCL, if Procurer paid bill amount within time then procurer receive discount from seller but if they are not pay amount within time then procurer pay late payment surcharge to seller. In this case how UPERC bifurcate the actual amount received by each Discom as discount or actual amount paid by each licensee in case of late payment surcharge.

UPPCL's Reply

As per Article-8 (Billing & Payment) of the PPA, the Seller shall be issuing each Procurer a signed monthly bill and the provisions of rebate and surcharge shall be applicable to each individual procurer based on the billing & payment transactions between the Seller and individual procurer.

Thus the concern raised by the consumer regarding bifurcation of payment made by the discoms is unfounded and exhibits ignorance or lack of comprehension of provisions of PPA.

Point no. 9

Comment

As per provision of Electricity Act, 2003 each distribution licensee filled separate ARR before UPERC but if licensee are not signed independent PPA from seller then how licensee mention actual balance amount, actual quantum received, actual discount received from seller or paid late payment surcharge to seller in ARR.

UPPCL's Reply

Please refer to response to point no. 6 & 8 above.

Point no. 10

Comment

As per objector information there is not system available in UPPCL/Licensee that how much power received by each licensee from transmission end. So how Commission accept this petition.

UPPCL's Reply

The issue raised is not relevant to the present Petition. As stated earlier, the procurers are signatory in the PPA and the share of each discoms in the PPA is clearly mentioned.

Further this is to inform the as per section 32 of The Electricity Act, 2003, state load dispatch center is responsible for optimum scheduling and dispatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State and keep accounts of the quantity of electricity transmitted through the State grid.

Point no. 11

Comment

As per objector information power generate by UPRVUNL/ UPRJVNL's power plant and Lanco are much cheaper then present petition but in one side UPPCL/ Discom are not pay bill /arrear amount to such generating station and other side he purchase costlier power from the other sources.

UPPCL's Reply

As per provision of clause 3.1 (a) of SBG, UPPCL as authorized representative of procurer has sought approval of UPERC to initiate the bid process for procurement of 6000 MW power under case–1 bidding process, based on the supply and demand forecast for the State. UPERC vide its order dated 23-07-2012 has accorded its approval to initiate the bid process for procurement of 6000 MW power under case-1 as per SBG of GoI.

Thus the procurers have followed the provision of SBG for procuring quantum of energy to meet the demand forecast of the State as per 18$^{th}$ Electric Power Survey of CEA, New Delhi.

Point no. 12

Comment

Before approval of this petition Commission should examine levelized tariff shown in document and bid evaluation committee Certificate which is not present in document available in website.

UPPCL's Reply

Please refer to response to point no. 2 above.

14. During the hearing, Sri K.D. Pandey, Consumer submitted that in view of huge power outages and for meeting the growing power demand deficit, reliable and firm power for 25 years seems to be a pragmatic preposition. He has also stated that as per the bid details put up by UPPCL on web site, the tariffs quoted above are competitive and comparable to average power procurement price at which UPPCL is currently procuring power. Another consumer Sri Amar Nath Mishra has submitted that to boost economical and industrial growth and to create job opportunities, the industries require ensured power supply. In non availability of requisite power, industries have to run the gensets which produce costlier power. He has further submitted that in view of above, such procurement in a long term basis would certainly improve the power supply position in the State.

15. Regarding the request of extension of timelines for closure of bid process upto 30th June, 2014 which was earlier requested upto 19th November, 2013, the Commission considers and allows the same.

16. On the comments and objections of Sri Avadhesh Kumar Verma and Sri Rama Shankar Awasthi, the Commission finds that the written replies of UPPCL, as detailed above, is appropriate and sufficient.

17. Therefore, in view of the MoMs dated 14th March, 2013 and 12th Sept. 2013 by bid evaluation committee, the undertaking on affidavit dated 17th Aril 2014 by UPPCL, the certificate on the conformity of the bid process to the Bidding

Guidelines dated 17.4.2014 by UPPCL (Procurer) and the submissions, the Commission finds 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 in case of L2, L3, L5 and L6 as below:

| Rank | Name of the Bidder | Bid Capacity (MW) | Levellized Tariff (Rs./kwh) |
|---|---|---|---|
| L2 | PTC (TRN Energy Ltd.) | 390 | 4.886 |
| L3 | Lanco Power (Babandh Project) | 423.9 | 5.074 |
| L5 | KSK Mahanadi Power Company Ltd. | 1000 | 5.588 |
| L6 | PTC- MB Power (Madhya Pradesh) Ltd. | 361 | 5.73 |

18. The petitions are disposed of.

(Indu Bhushan Pandey)
Member

Meenakshi Singh)
Member

(Desh Deepak Verma)
Chairrman

Place : Lucknow
Dated: 24.06.2014

ANNEX-1

**Minutes of the Meeting of the Bid Evaluation Committee held on 14th March, 2013 on financial bid received for procurement of 6000 MW power on long term basis under Case-I Bidding process.**

Members present:- As per list enclosed.

The Bid Evaluation Committee was appraised that out of 6000 MW the LoI for 300 MW has been issued as per the decisions of Bid Evaluation Committee, ETF and the State Government. Now the decision regarding remaining bids is to be taken.

The Committee considered the report of the consultant which justifies the acceptance of the bids upto a levelised tariff of Rs. 5.60 per unit and the UPPCL in its supplementary recommendation recommended for acceptance of bids upto L-4. The Committee discussed the possibility of counter offer to bidders who have quoted rates more than Rs. 5.08 per unit. The consultant and the representative of the Law Department pointed out that this bidding process has been carried out as per the standard bidding document issued by Govt. of India and approved by UPERC which prohibits the negotiation from bidders. It was clarified by the representative of Law Department that even a counter offer will fall in the category of negotiation. Since the negotiation process may vitiate the sanctity of the bid process, therefore, the committee decided that as per the recommendation of UPPCL only bids upto L-4 as per following details may be accepted:

| Sl.No. | Name of the Bidder | Quantum | Levelised tariff |
|---|---|---|---|
| 1 | M/s PTC (M/s TRN Energy Ltd) | 390 MW | Rs. 4.886 |
| 2 | M/s Lanco Power. Ltd.(Babandh Power Ltd) | 423.9 MW | Rs. 5.074 |
| 3 | M/s RKM Power Gen Pvt. Ltd. | 350 MW | Rs. 5.088 |

The committee decided that the approval of ETF may be obtained for acceptance of the above recommendation and also on cancellation of remaining bids and closing the bid process.

On the basis of report of the consultant and the recommendation of the UPPCL, the Bid Evaluation Committee certifies that the bid process evaluation conforms to the provisions of RFP documents.

| | | |
|---|---|---|
| (Rakesh Saxena)<br>APO (Planning) | ( N.C. Jain )<br>Chief Engineer<br>Central Electricity Authority | ( S.K. Garg )<br>Director (Project)<br>UPPTCL |
| ( S.K. Agarwal)<br>Director (Finance) | (B.K. Singh)<br>Special Secretary (Finance) | (Brijesh Kumar)<br>Spl. Secretary (Law), |
| (A.P. Mishra)<br>MD (UPPCL) | (Sanjiv Mittal)<br>Principal Secretary (Energy),<br>Chairman (UPPCL) | (Sanjay Agarwal)<br>Principal Secretary<br>(Awasthapna Vibhagh) |

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5. It is also noted that the tariff of L7 bidder is Rs. 5.849/unit which is slightly higher than Rs. 5.75/unit, but it is observed that this bid is also attractive viz. a viz. bids of L5 and L6 bidder on the ground that the levelized tariff of Rs. 5.849/unit is based upon CERC fuel escalation rate of 15.66% being imported coal based supply. This escalation rate for 25 years, appears to be unsustainable. This is also substantiated by the fact that CERC escalation on same account as on 1st April, 2013 stands at 12.97% and for payment purposes, presently it is (-) 15.12%. Further, it is observed that the tariff of first ten years is less than the tariff of L5 and L6 bids.

6. The Committee also observed that the next two bids PTC-DB Power Ltd. and India Bulls – Nasik)bidders have same levelized tariff of Rs. 5.970/unit. This levelised tariff is more than the tariff of Tamilnadu i.e. Rs. 5.75/unit. Further, the tariff of PTC – DB Power Ltd. is front loaded being more than Rs. 5 to 6 per unit for the 1st 10 years (being Rs. 6.14/unit in the 1st Year). Further the levelised capacity charges are Rs. 3.662/unit which is considered to be high. These factors may be detrimental for financial health of Discoms. In view of this the bids having levelised tariff of Rs. 5.970/unit may not be accepted.

7. In view of the above, the Committee decided that the bids of L5, L6 and L7 bidders as per following details may be accepted :

| Sl. No. | Name of Bidder | Quantum | Levelized tariff |
|---|---|---|---|
| 1. | KSK Mahanadi Power Co. Ltd. | 1000 MW | Rs. 5.588/unit |
| 2. | M/s PTC India (MB Power {Madhya Pradesh Ltd.} Ltd.) | 361 MW | Rs. 5.730/unit |
| 3. | M/s Krishanapatnam Power Co. Ltd. | 800 MW | Rs. 5.849/unit |

8. The Committee decided to reject the remaining bids to enable to complete the process of bidding of procurement of 6000MW power under Case-1.

The Bid Evaluation Committee certifies that the bid process evaluation conforms to the provision of RFP documents.

12/9/13
(Dr. Anandeshwari Awasthi)
(Joint Director, Planning)

12/9/2013
(N.C. Jain)
Chief Engineer
Central Electricity Authority

(S.K. Garg)
Director (Project)
UPPTCL

(B.K. Singh)
Special Secretary (Finance)

(Brijesh Kumar)
Spl. Secretary (Law)

(Sumant Singh)
Special Secretary
(Audhyogik Vikas)

(A.P. Mishra)
MD (UPPCL)

(Sanjay Agakwal)
Principal Secretary (Energy),
Chairman (UPPCL)

(Alok Ranjan)
IIDC

3/3

**List of the participants in the meeting of Bid Evaluation Committee held on 14th March, 2013 on financial bid received for procurement of 6000MW power on long term basis under Case-1 Bidding process.**

1. Shri Sanjay Agarwal, Principal Secretary (Avasthapana Vibhag), GoUP, Lucknow
2. Shri Sanjeev Mittal, Principal Secretary (Energy) & Chairman, UPPCL, Lucknow
3. Shri B.K. Singh, Special Secretary (Finance), GoUP, Lucknow
4. Shri Brijesh Kumar, Special Secretary (Law), GoUP, Lucknow
5. Shri A.P. Mishra, Managing Director, UPPCL, Lucknow
6. Shri N.C. Jain, Chief Engineer, Central Electricity Authority, New Delhi
7. Shri S.K. Agarwal, Director (Finance), UPPCL, Lucknow
8. Shri S.K. Garg, Director (Works & Project ), UPPTCL, Lucknow
9. Shri Rakesh Saxena, A.P.O. Planning Department, GoUP, Lucknow

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ANNEX-2
1/2

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

NOTARIAL NOTARIAL

उत्तर प्रदेश UTTAR PRADESH

BA 824437

06 JUN 2017

## BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION, LUCKNOW

Affidavit

I, Prashant Mehrotra, son of Late Shri Bhola Nath Mehrotra, aged about 59 years, residing at 1/132, Viram Khand, Gomti Nagar, Lucknow do hereby solemnly affirm and state as under:

1. That I am the Chief Engineer (Planning) of Uttar Pradesh Power Corporation Ltd. the petitioner in the above matter and am duly authorized by the said petitioner to make this affidavit on its behalf.

2. "As per provision 6.2 of the 'Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees' issued on 19th January 2005, a certification from the Bid Evaluation Committee (BEC) constituted for evaluation of RFP bids is to be provided certifying the conformity of the bid process evaluation with the provisions of the RFP document.

LALTA PRASAD CHAURASIA
Advocate & Notary
82, Ram Gopal Marg
Lucknow U.P. (INDIA)
R. N. No. 31/2/2006

In this regard, it is submitted that BEC in the meeting held on 14th March 2013 vide its minutes of the meeting dated 14.03.2013 had recommended approval of bids upto L4 and issuance of LoA to the Bidders. Similarly, the BEC had in its meeting held on 12th September 2013 vide its minutes of the meeting dated 12.09.2013 had approved issuance of LoA to Bidders L5-L7.

In both these minutes of the meeting of the BEC, a certification regarding the conformity of the bid process according to the provisions of the RFP document has been mentioned. In addition, the minutes of the meeting dated 12.09.2013 clearly states the conformity of the bid evaluation in accordance with the provisions of the RFP and is therefore in line with the provision 6.2 of the Guidelines.
It is submitted that both the aforesaid minutes of the meeting of the BEC correspond to the same bidding process. Further, it is also submitted that the most of the members of the BEC, including the independent member from CEA, have remained the same during the issuance of both the minutes of the meeting. Therefore, the certification as per the minutes of the meeting dated 12.09.2013 may be deemed to be applicable for the entire bid process."

3. The statements made in above paragraphs are true to my knowledge and belief; no part of it is false and nothing material has been concealed there from and I believe them to be true.

Verified at Lucknow on the 17th April on the day of 2014

Deponent
Petitioner

**(Prashant Mehrotra)**
**Chief Engineer (Planning)**
**3rd Floor, Shakti Bhawan Extension.**
**Lucknow**
मुख्य अभियन्ता (नियोजन)
उ0 प्र0 पावर कारपोरेशन लि0
शक्ति भवन विस्तार तृतीय तल
लखनऊ

NOTARY * VISHWESWAR * GOVT. OF
Lalla Prasad Chaurasia
82, Ram Gopal Vidyut Marg
Lucknow
R.N. No. 31/32/2000

Sworn and Verified
before me.

LALTA PRASAD CHAURASIA
Advocate & Notary
82, Ram Gopal Vidyut Road
Lucknow U.P. (INDIA)
R N No 31/32/2000

I Identify the deponent/Executant
who has/have signed/put his before me

ANNEX-3

## Minutes of the Meeting of the Bid Evaluation Committee held on 12th September, 2013 On Financial Bid received for procurement of 6000 MW Power on Long Term Basis under Case-1 Bidding Process.

Members present - As per list enclosed

1. The Bid Evaluation Committee took note of the following decision taken in Energy Task Force (ETF) meeting held on 11.07.2013:-

   एल–4 बिडर की एलओआई निरस्त किये जाने के परिप्रेक्ष्य में आरएफपी के क्लाज 2.5 (बी) के प्राविधानों को दृष्टिगत रखते हुये शेष रिस्पॉन्सिव बिड्स पर विचार करने हेतु, उ0प्र0 शासन द्वारा गठित बिड मूल्यांकन समिति की बैठक आहूत की जाए तथा समिति की संस्तुतियॉ इनर्जी टास्क फोर्स के समक्ष प्रस्तुत किया जाये।

2. Regarding the clause 2.5 (b) (c) of the RFP, wherein Procurer may take any such measure as deemed fit in sole discretion of the procurer, the views were sought from the Consultant whether best reduced financial bids/ counter offer can be obtained from the remaining responsive bidders. The Consultant opined that clause of 3.5.9 of RFP specifically prohibits negotiations. Therefore, this is not permitted. The Committee also took note of the legal view of Law Wing of GoUP, in this regard. Law wing has opined that these measures will fall under ambit of negotiation which is not permitted. The representative from CEA, New Delhi also endorsed this view.

3. In light of the above, the Committee considered the next bids and made the following observations :

   i. The committee sought the view of the consultant on the level of reasonableness of tariff. The Consultant was of the opinion that the bids having quoted levelised tariff up to Rs. 6.00/unit could be considered on the following grounds:-

      - Establishment of a green field Thermal Power Project within the State supplying power from 2016 based on CERC regulations
      - Approved power purchased cost by UPERC with due escalation from 2016
      - Case-1 trend analysis

   ii. Further the consultant stated in a similar power procurement process in recent past under Case-1 in Tamilnadu, the lowest quoted levelized tariff for which LoI has been issued, is Rs. 4.910/unit which is based for 15 years procurement period and delivery date of Oct. 2013. Considering the various parameters of escalation as per CERC, the consultant has worked out this levelized tariff as equivalent to Rs. 5.75/unit for 25 years procurement period and delivery of power in Oct. 2016.

4. In view of the above, the tariff of bids having levelized tariff upto Rs. 6.0/unit has been deliberated and it is observed that levelized tariff of L5 and L6 bidder are Rs. 5.588/unit and Rs. 5.730/unit respectively, which is lower than the Tamilnadu tariffs and also within the level of reasonableness of tariff as established by the consultant.

ANNEX-1

ANNEX-4

सं. ..... जा0स0/पा0 का0 लि0 .....

# उत्तर प्रदेश पावर कारपोरेशन लिमिटेड

(उत्तर प्रदेश सरकार का उपक्रम)

जन सम्पर्क शाखा, शक्ति भवन

लखनऊ

समाचार पत्र का नाम The Times of India, Lucknow दिनांक 29-03-201

## PUBLIC NOTICE

**Details of the Bids received against Request for Proposal (RFP) issued by UPPCL for Selection of Seller(s) for Supply of Power for meeting the Base Load Requirements on Long Term Basis Under Case-1 Bidding Framework as per the Competitive Bidding Guidelines notified by Ministry of Power (MoP), Government of India (GoI).**

**UTTAR PRADESH POWER CORPORATION LIMITED**

**Chief Engineer (Planning)**
**3rd Floor, Shakti Bhawan Extension,**
**14-Ashok Marg, Lucknow-226001**

Uttar Pradesh Power Corporation Limited (UPPCL), in its capacity as the authorized representative for conducting a Case-1 Tariff based competitive bidding process, for procurement of **6000 MW Base Load Power** on a Long Term Basis had invited bids as per the provisions of competitive bidding guidelines notified by MoP, GoI.

This is to inform that as per the provisions of the bidding guidelines and the directive of Hon'ble Commission (UPERC) vide order dated 21st Feb. 2014 against petition no. 911/2013, UPPCL hereby makes public, the details of the financial bids of the Qualified Bidders. The details of the Bids including the components of tariff are available on the website www.uppcl.org. The signed copies of the PPAs have also been uploaded on the website for information.

**Chief Engineer (Planning),**
**UPPCL**

**Note:** The details published on website www.uppcl.org w.r.t aforesaid Case-1 bid process are for public information only. UPPCL hereby disclaims any/all claims against any interpretation made by any person/firm viewing the information.

Save Electricity for Nation, RO 113 dt 28.3/13 Sap 9481238 1

The Indian Express, Lucknow

## PUBLIC NOTICE

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**UTTAR PRADESH POWER CORPORATION LIMITED**
**Chief Engineer (Planning)**
**3rd Floor, Shakti Bhawan Extension,**
**14- Ashok Marg, Lucknow - 226001**

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**Chief Engineer (Planning),**
**UPPCL**

Note: The details published on website **www.uppcl.org** w.r.t. aforesaid Case-1 bid process are for public information only. UPPCL hereby disclaims any/all claims against any interpretation made by any person/firm viewing the information.

RO No: 113-PR dt 28.03.2014

ANNEX-1

ANNEX-5

**A.P. Mishra**
**Managing Director**

**U.P. Power Corporation Limited**
**(A U.P. Govt. Undertaking)**
**Shakti Bhawan, 14-Ashok Marg,**
**Lucknow – 226 001**
**Office : 0522 - 2288377**
**Fax : 0522 - 2288410**

No. 813 –Plg/UMPP/6000 MW/ Dated : 17-4-2014

**The Secretary,**
**Uttar Pradesh Electricity Regulatory Commission (UPERC)**
**Lucknow**

Dear Sir,

This is to certify that the bidding process being conducted by Uttar Pradesh Power Corporation Ltd. (UPPCL) for procurement of 6000 MW power to meet the base load requirements of Dakshinanchal Vidyut Vitran Nigam Ltd., Madhyanchal Vidyut Vitran Nigam Ltd., Purvanchal Vidyut Vitran Nigam Ltd. and Paschimanchal Vidyut Vitran Nigam Ltd is being conducted as per the Bidding Guidelines issued by Ministry of Power, GoI.

Yours faithfully,

**(A.P. Mishra)**
**Managing Director**

(A. P. MISHRA)
MD, UPPCL