

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Petition No.568/08

IN THE MATTER OF: Approval of 'Request for Proposal' (RFP) for 3X660 MW Prayagraj Thermal Power Project to be set up at Bara, Distt-Allahabad based on super critical technology and establishment of Transmission System of two single circuits of 765 KV transmission lines from Bara to Mainpuri through competitive bidding process.

AND

IN THE MATTER OF: Prayagraj Power Generation Company Ltd.
3rd Floor, Shakti Bhawan Extn.,
14, Ashok Marg,
Lucknow.

:Petitioner

The following were present:

1. Sri.Pradeep Shukla, Chairman, UPPCL
2. Sri. A.K. Awasthi, MD, UPPCL
3. Sri. Sourav Bhattacharya, M/s Isolux Corsan
4. Sri. B.S Rajput, Manager, NTPC Ltd.
5. Sri. Anil Kumar Rawal, Reliance
6. Sri. Sumeet Notani, Senior Manager, Reliance Power Ltd.
7. Sri. Sitesh Mukerjee, Advocate, JP Associates
8. Sri. M.P Singh, Manager, L&T
9. Sri. Lalchand , CE(Project), Prayagraj Power Generation Company Ltd.
10. Ms. K. Sinha, SE, Planning, UPPCL,
11. Sri. Prashant Mehrotra, EE, UPPCL
12. Sri. Tarun Srivastava, EE, Electricity 765 and 400 KV Transmission Design Circle
13. Sri. G.S Dixit, SE, Electricity 765 and 400 KV Transmission Design Circle
14. Sri. Shailesh Joshi, Consultant, Feedback Ventures Ltd.
15. Sri. Praful Katiyar, Dy. Manager, Feedback Ventures Ltd.
16. Sri. Jawahar Lal, CE(T), UPPTCL
17. Sri. Deepak Raizada, Sr.AE, Planning, UPPCL

ORDER

(Date of Hearing 3.11.08)

- (1) The above mentioned petition was filed for Approval of 'Request for Proposal' (RFP) for 3X660 MW Prayagraj Thermal Power Project to be set up at Bara, Distt-Allahabad based on super critical technology and establishment of Transmission System of two single circuits of 765 KV transmission lines from Bara to Mainpuri through competitive bidding process.
- (2) Since the proposal was for generation and transmission projects combined together, a reference was made for advice of Central Electricity Authority (CEA) on certain issues

vide Order dt.13.10.08 passed in this Petition. CEA has conveyed its opinion vide letter no.663/CEA/E&C/F&CA/425 dt.23.10.08 suggesting separation of generation and transmission projects for bidding taken up separately for each project in light of the facts that separate GOI guidelines exist under Section 63 of the Electricity Act,2003 (the Act) for these projects and that the proposed transmission lines associated with the generation project were not dedicated transmission lines which could be established, operated and maintained by a generating company under Section 10(1) of the Act. A copy of the said letter was sent to the Petitioner vide letter no.UPERC/D(G)/Secy/2008-447 dt.24.10.08. A copy of CEA letter was also kept on the website of the Commission. The hearing in the petition was fixed for 3.11.08 by a notice dt.24.10.08 with the direction to the Petitioner to inform the representatives of the parties, who were present in the hearing on 13.10.08, along with CEA opinion available on the website of the Commission.

- (3) In the hearing, the representatives of Isolux Corsan (Isolux), National Thermal Power Corporation Ltd.(NTPC), Reliance Power Ltd.(RPL), Jaiprakash Associates(J.P) and L&T confirmed to have in possession, the aforesaid letter of CEA, and read the contents. No party, including the Petitioner, expressed opinion in deviation to the suggestion made by CEA on exclusion of transmission lines from this RFP.

The Commission concurs with the opinion of the CEA and decides that transmission project shall be separated from generation project in preparation of 'Request for Proposal' (RFP) documents for 3X660 MW Prayagraj Thermal Power Project (the Generation Project) to be set up at Bara, Distt-Allahabad based on super critical technology through competitive bidding. However, purchase of power from additional units and its tariff shall remain as proposed in the RFP documents.

The Petitioner is further directed, in light of the above, to prepare RFP documents for the Generation Project with due regard to the 'RFP documents' approved earlier by the Commission by Order dt.24.1.08 (passed in Pet.no.503/07) read with Order dt.26.2.08 (passed in Review Pet.no.521/08) and Order dt.24.3.08 (passed in Pet.no.524/08) by incorporating all relevant provisions and other provisions drawn in line with the decisions taken by the Commission vide Orders dt.22.9.08 and 13.3.08 passed in Pet. No.560/08 in the matter of RFP of 2X660 MW Sangam Thermal Power Project. The clarifications issued in Para 5 of said Order dt.22.9.08 shall accordingly also be construed in respect of Prayagraj Power Generation Company Ltd.

The RFP documents so prepared shall be posted on the website of the petitioner by the end of 5th day of month of Nov, 08.

The issue of submission of response to RFP came up for discussion. REL and L&T needs one month time, J P needs 7 days and NTPC 6 weeks time for submissions. The Petitioner prayed to squeeze the timelines. In view of time required by various parties and prayer of the petitioner , the Commission decides that response to RFP shall be submitted by 30th Nov,08 and financial bids opened on 6th Dec,08.

- (4) Sri. Lal Chand, CE (Project), Prayagraj Power Generation Company Ltd. submitted that RFQ (approved by Order dt.22.8.08 passed in Pet.no.557/08) was for generation and transmission as a composite project and the technical and financial qualifying criterion were accordingly specified therein. As such the exclusion of transmission project at this stage would result in lowering the qualifying criterion which might put any competitor to a disadvantaged position if he could not respond to RFQ due to higher qualifying criterion and he prayed for providing an opportunity to any of such competitor. On a query by the Commission, the Petitioner confirmed that on exclusion of the transmission lines, the new qualifying requirements for this project shall be the same as approved by the Commission in Pet.no.469/07. The issue was discussed with all parties present in the hearing and none of them opposed the suggestion made by Sri. Lalchand. It was also informed that all bidders who had qualified at RFQ (including transmission lines) stage shall remain qualified for the new qualifying requirements also. It was informed by Sri. Shailesh Joshi, Consultant to the Petitioner, that M/s Torrent Power, GMR, Jindal Steel & Power Ltd. and CESC Ltd. were among the RFQ qualifiers of '*annulled bidding process*' who did not participate in '*fresh bidding process*'.

'Annulled bidding process' means the process identified with RFQ Pet.no.469/07 and '*fresh bidding process*' means the process identified with RFQ petition 557/08.

We do not exactly know the reasons why the above named companies did not participate in the '*fresh bidding process*' but only guess that it could either be due to higher qualifying criterion or inclusion of transmission system with the generation project or on account of unwillingness of the companies. The Commission is convinced that no one should be placed in disadvantaged position and an opportunity must be provided to any '*new competitor*' to respond to RFQ of this '*fresh bidding process*'. As a result of the said decision, technical and financial qualifying criterions in this '*fresh bidding process*' shall be the same as approved for the '*annulled bidding process*'. In light of the said decisions, the Commission directs the petitioner as below:

- (i) RFQ as now approved by the Commission shall be posted on the website of the petitioner by 5th Nov,08.
- (ii) the response to RFQ under Para 4(i) shall be invited, through a public notice in newspapers, from '*new competitors*' who could not participate earlier. However, all existing nine qualifiers of the '*fresh bidding process*' shall stand qualified.

The public notice should clearly indicate that RFP documents are already on the website and the prospective '*new competitors*' would have to respond to RFP documents by 30th Nov,08.

- (iii) Response to RFQ under sub para (ii) by the parties shall be submitted by 20th Nov,08
- (iv) the decision on responses to RFQ from new competitors shall be concluded by 23rd Nov,08 and all relevant information of the process be kept on the website.
- (v) all nine qualifiers of the '*fresh bidding process*' shall be informed of names of '*new qualifiers*' immediately.
- (vi) at the end of process under (i) to (v) above, the total number of RFQ qualifiers shall be the sum of 'nine existing qualifiers' and the 'new qualifiers'. All such qualifiers shall be entitled to make responses to RFP.

(5) Sri. Suresh Mukherjee, Advocate submitted on behalf of JP Associates that necessary co-ordination for availability of transmission system be established similar to that in Karchana so that the interest of the generating company for supplying power was protected. He suggested that Fuel Supply Agreement (FSA) should be signed by the procurers and force majeure created on account of non-availability of fuel be not made to the account of seller. Sri. Awanish Awasthi, MD, UPPCL informed that Northern Coal Fields Ltd. had inquired about the expected year of off-take of coal from NCL for Bara and Karchana projects to which UPPCL had informed on behalf of the procurers that these projects were expected to be commissioned by March,2012 as such the arrangement for coal supply from NCL Singrauli had to be made accordingly and as such there was no ground of doubting the availability of coal from the available linkage. Sri. Mukherjee further stressed on removal of liquidated damage clause on operation of the plant as it entails huge damages on seller equivalent to the tariff payable during 18 months.

The representative of NTPC suggested linking of FSA with the power purchase agreement and securing CWC clearance for use of water. Sri. Awanish Awasthi, MD, UPPCL apprised that CWC had made allocation of water from river Yamuna for the projects in UP out of which the GoUP has made specific allocation for the projects at Bara & Karchana. He further informed, in a reference to clarifications made in pre bid conference held for Prayagraj Thermal Power Project well before the submission of financial bids for Sangam Thermal Power Project, that a pump house shall be built by Irrigation Department of UP for lifting water from the river bed conveyed through common open channel or pipe lines up to a distance of 6 KM. thereafter, water shall be taken off through open channels or pipe lines to the projects at Bara & Karchana. The pump house shall be jointly operated by these projects or might be entrusted to irrigation. NTPC also raised issue of incentive be paid monthly; which was agreed.

L&T, RPL and Isolux did not make any other submission.

The Petitioner prayed for no change in RFP documents as sought by the parties in the hearing and the Commission agreed for the same.

- (6) The Petitioner shall act in accordance with the decisions and directions contained in this order and keep the Commission informed of each stage of the bidding process.
- (7) The petition is disposed of.

(R.D. Gupta)
Member

(P.N Pathak)
Member

Lucknow; Dated: 4th Nov, 2008