

Annexure-3



CHHATTISGARH STATE ELECTRICITY BOARD

No.03-05/109-C/ 1964

Raipur dtd. **22 SEP 2007**

To,

The Secretary,
Chhattisgarh State Electricity Regulatory Commission,
Civil Lines, GE Road,
Raipur.

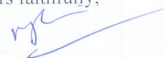
Sub: Petition for approval of deviations from the guidelines and standard Bid Documents issued by MoP, GoI for procuring power through bidding process from Bhaiyathan Project (Petition No.21 of 2007 (M)).

Ref: Hon'ble Commission letter No. P No. 21 of 2007 (M) / 2007 / 1216 dtd 12.09.07.

In reference to the above, the point-wise reply is enclosed here with for further action in the matter at your end please.

Thanking you,

Yours faithfully,


Secretary
C.S.E.B. : Raipur

Encl:- A1A

CLARIFICATION TO HON' ABLE COMMISSION

Reference: P No. 21 of 2007(M)/ 2007/1216 dated 12.09.2007

Tariff Based Bidding for Procurement of Power from 1200 – 1500 MW Bhaiyathan TPS

September 19, 2007

S. N	Clause No. & Existing Provisions	Clarifications Required	Suggested Text for Amendment	CSEB Reply
Lanco Infratech Limited - Ref. No LITL. Op-CSERC/(02)BPP/044 dated September 11, 2007				
1	<p>PPA Clause Premable G</p> <p>In accordance with Bid Documents, [Insert name of successful bidder] has agreed to allot 26.00% of Equity requirement of the Seller to the Procurer for consideration other than cash and has executed the Share Subscription Agreement.</p>	<p>This demand of CSEB will make tariff higher as the free equity get loaded on the Project Capital Cost</p>		<p>The structure of project is finalised after considering all the aspects including but not limited to optimisation of tariff and compliance with captive mining guidelines as prevalent at time of allotting captive coal blocks viz. Pathuria and Gidmuri coal block.</p> <p>In order to optimise the tariff, CSEB has made other provisions in the project structure including freedom to bidders for sale of excess electricity over and above Contracted Capacity of CSEB.</p> <p>Thus CSEB expect equity participation, for consideration other than cash, would not impact the competitiveness of tariff.</p>
2	<p>RFP Clause 2.1.1</p> <p>The Procurer plan to procure Contracted Capacity to the extent of 780 - 975 MW equivalent to 65% of Installed Capacity i.e. nameplate rating of Project ranging between</p>		<p>Purchase of entire Capacity of the proposed plant will optimise tariff. Normative Availability of 80% of Installed Capacity will be</p>	<p>During the detailed interaction with bidders in the pre bid meetings, it was appreciated by the bidders that the provision of excess power over contracted capacity by CSEB would</p>

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	nameplate rating of Project ranging between 1200 – 1500 MW at the Delivery Point as per the terms of the PPA.		considered for recovery of fixed cost.	<p>facilitate in optimising the proposed tariff to CSEB. Further, few of the bidders enquired that CSEB would really require 65% of available capacity; otherwise CSEB may extend more provision for third party sales. Thus the project structure is finalised after considering all the aspects.</p> <p>CSEB will not comment on working to arrive at recovery of fixed cost by the bidders. It is prerogative of bidder to adopt suitable calculation for recovery of fixed cost.</p>
3	<p>RFP Clause 1.1 :</p> <p>The Chhattisgarh State Electricity Board (hereinafter to be referred as “CSEB” or “Procurer”) wishes to invite Bids for procurement of power on long term basis from a Project comprising building, owning, operating, maintaining of 1200-1500 MW coal fired thermal power project at Bhaiyathan in District Surguja including development of Captive Coal Block, coal transportation and</p>		Interconnection point should be at Power Plant Switchyard Bus Bar and STU should facilitate total power plant to Raipur Load Centre from the scope of State Transmission Utility (STU) would optimise its use and cost of generation from the Power Plant	<p>CSEB desires the power at Raipur Load Centre and thus as an integrated plant, CSEB has structured the project by keeping the interconnection point at Raipur Load Centre. Further, CSEB opines that the integrated project will get various benefits including economy of scale, optimisation of tax implication including mega power benefits and others.</p>

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	power evacuation up to Raipur Load Center (Chhattisgarh), India			
4	RFP Definition the Project at Bhaiyathan		The project site is located around 80 km from the Captive Coal Blocks. This increases involvement on dedicated rail track and recurring costs on maintenance of rail tracks and haulage of coal. This will add to tariff over the entire period of plant operation. It would be better to locate the plant site close to coal blocks perhaps south Madanpur that will reduce cost for coal transport and power evacuation, as well resulting lower tariff.	After considering land availability as well as other infrastructure, the proposed site at Bhaiyathan was identified. Thus relocation or identification of new site is not envisaged and such exercise will delay whole process significantly.
5	PPA Clause 3.1.2 Satisfaction of Conditions Subsequent		A reasonable period upto 16 months instead of 10 months from the effective date for achieving financial closure and issuing NTP by the Successful Bidder is required.	CSEB has relaxed from originally envisaged smaller timeframe to the reasonable period of 10 months from effective date based on feedback during pre bid meetings. CSEB is of the opinion that financial closure may be achieved

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				within this timeframe as CSEB has furnished the requisite details and information to bidders in advance to expedite the process after effective date. Further CSEB will extend reasonable administrative support to selected bidder to achieve the financial closure at the earliest. Thus, CSEB is of opinion that stipulated time frame for financial closure is adequate.
RELIANCE ENERGY – Ref. Nil dated September 10, 2007				
6	RFQ Clause 1.2 The objective of this Bidding process is to identify Bidders for supply of 780 – 975 MW equivalent to 65% of Installed Capacity of Project ranging between 1200 – 1500 MW at the Delivery Point located at Raipur load center for a period of 25 years. The successful Bidders shall enter into a Power Purchase Agreement (PPA) with CSEB. The numbers of units for the Project should not be more than 3 units with minimum unit capacity of 200 MW. First		The maximum number of units may please be relaxed to 5 (instead of 3)	The proposed restriction for number of units is due to aspects of land availability and environment emissions for environment clearance. Thus CSEB wish to retain such restriction on number of units.

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	unit, among all the units to be commissioned, shall be the unit having largest capacity.			
7	<p>RFQ Clause 2.1.4</p> <p>The Bidding Company or any Member having minimum 26% of entire equity requirement of the Project less equity of 26% required to be allotted to CSEB in the Project Company (in case of a Bidding Consortium) shall be a firm who has established/ developed project(s) or have projects under implementation in power sector where financial closure has been achieved at least 7 (seven) days before the RFQ submission date. Power projects established/developed or under implementation for which financial closure has been should have at least a single unit of 200 MW or above. The Bidding Company / any Member (having minimum 26% of entire equity requirement of the Project less equity of 26% required to be allotted to CSEB in the Project Company) shall have 51% of equity stake in the power project which is having a unit size of 200 MW or above.</p>		<p>To be suitably modified.</p> <p>To bring in operation experience.</p>	<p>CSEB intends to qualify the agencies that have exposure to developmental activities for power plant. This qualification ensures that such bidding consortium has requisite information regarding the prevailing regulations, financial parameters for development of such projects and other associated aspects related to clearances and consents. It may be noted that CSEB has defined Financial Closure as the stage at which such developer are ready to draw down of funds.</p> <p>Further, the implementation and operation of such power plant may be outsourced. Thus CSEB wish to retain stipulated technical qualification parameter.</p>

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8	PPA Clause 11.4, Payment Mechanism	Payment Security Mechanism includes 1. Letter of Credit 2. Third Party Sale	Kindly include Escrow Mechanism as well	The Bidder shall give due consideration to the financial performance of CSEB. The Standard Bidding Guidelines provide both the options for payment security mechanism i.e. letter of credit and letter of credit backed by credible escrow mechanism. Thus CSEB has opted for first option based on healthy financial status.
9	26% equity to CSEB in kind	Free equity will substantially increase the tariff of the Project and thereby will dilute the objective of competitive bidding.		Please refer clarification at SN - 1.
10	SA Clause 3.7(II) that that so long as CSEB holds at least 5% of the Company's paid up Equity Share capital, CSEB shall be entitled to have nominee directors on the Company's Board of Directors as provided in this Agreement.		CSEB shall be entitled to Director position pro – rata to its equity holding in the Project. No directorship if holding goes below 5%.	The clause does not specific request for two nominee directors while CSEB holds paid up equity capital upto 5%. However, CSEB stipulates that there will be at least one nominee director of CSEB in the Company so long as CSEB holds at least 5% of the Company's paid up Equity Share Capital.

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				Considering the bidders' suggestion, the revised clause will include 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.
11	SA Clause 5.11 (a) During the Term of this Agreement, CSEB shall have the right to appoint and remove from time to time two directors on the Board of Directors of the Company, for every five directors otherwise appointed in the Company. Such Directors are hereinafter referred to as "the Nominee Director/s" or "CSEB Nominee Director/s".	Present proviso seeks Director position in the ratio of 2:3. In case there are 10 directors, CSEB seeks 4 directors i.e. 40% directors, which is not rational for 26% equity stake.	To be suitably modified	It is confirmed that the present proviso seeks Director position in the ratio of 2:5. In case there are 7 directors, CSEB seeks 2 directors i.e. 28% directors, which is rational for 26% equity stake.
12	SA Clause 5.11(b) The CSEB Nominee Directors shall not be required to hold qualification shares and except for one CSEB Nominee Director, no other CSEB Nominee Directors shall be liable to retire by rotation.	In case CSEB has more than two directors than as per companies act only 1/3 rd of directors' can be non retiring. As	To be suitably modified.	Agreed. Revised clause is as follows The CSEB Nominee Directors shall not be required to hold qualification shares and except when CSEB has more than two directors then only 2/3 rd of directors'

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	retire by rotation.	long as CSEB holds more than one (1) director, one director to be non retiring so that the investor (private developer) can also have similar facility.		two directors then only 2/3 rd of directors' and when CSEB holds more than one (1) director then for one CSEB Nominee Director, no other CSEB Nominee Directors shall be liable to retire by rotation.
13	SA Clause 7.1 Notwithstanding anything contained in this Agreement, during the Term of this Agreement, no resolution shall be passed or decision taken by the Board either at a meeting of the Board or on a circular resolution or otherwise in respect of any of the following matters unless an affirmative vote of the Nominee Directors appointed by CSEB is obtained in order for it to be validly passed or taken	The proviso seeking affirmative vote of minority shareholder are generally insisted by investor who invest his share of equity. According, CSEB's request would be justified if its share of equity is invested in cash. In case the request that CSEB to invest its share of equity is not accepted, seeking affirmative vote on	Notwithstanding anything contained in this Agreement, during the Term of this Agreement, no resolution shall be passed or decision taken by the Board either at a meeting of the Board or on a circular resolution or otherwise in respect of any of the following matters without approval of the Board.	It may please be noted that CSEB has kept affirmative vote only for limited actions by the Company, which will essentially facilitate the company to operate in compliance with set objectives. Thus CSEB intends to retain the affirmative vote limited to the activities as outlined under Clause 7.1.

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		such items does not seem to be rational by a free equity investor.		
14	SA Clause 12.3 Assignment: The Company shall not assign its rights and remedies nor transfer its obligations under this Agreement 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 any such assignment impose any obligation on the assignee except in the case of an express written assumption by the assignee	The company should be allowed to assign the rights to its group/ affiliate company (s) without written consent of CSEB	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 any such assignment impose any obligation on the assignee except in the case of an express written assumption by the assignee	Agreed.
15	A&OA Clause iv – Exclusion of Assignment	Whether selected bidder will able to		Yes it may be assigned in favour of lenders.

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		assign in favour of lenders.		
16	A&OA VI – Force Majeure	Should be in line with PPA/ SBD. Especially force Majeure related to natural calamities such earth quake etc may please be added.		Forced Mejure definition covers acts of god including earth quake. Further it covers “any other act beyond the control of the party affected” which broadly covers all aspects related Forced Mejure. Thus no revision is envisaged in the proposed clause.
17	A&OA VII – Term & Termination (4) In the event of any gross breach any of the terms and conditions of this Agreement, the other party shall give 90 days notice to the defaulting party to remedy the breach. In case defaulting party fails to remedy the breach within the said time period, the other party shall take such steps as deem fit and proper including terminating the Agreement. Provided however, that if CSEB fails or is unable to discharge any of its acknowledged and accepted payment liability (arising hereunder or otherwise) towards the Company or there is CSEB / Procurer Event of Default as	Clause 14.4.5 (i) of PPA statesProvided the Procurer shall have the liability to make payments for Capacity Charges based on Normative Availability to the Seller for the period three (3) years from the eighth day after the expiry of the Consultation Period..... Provided		Termination of PPA after payment of three years of Capacity Charges, as covered under Clause 14.4.5 (i), is termination out of procurer event of default. As explicitly covered under Term & Termination of A&OA that A&OA can not be terminated on termination of PPA due to Procurers' Event of Default. CSEB appreciates the bidders' concern as automatic termination “after payment of 3 years of capacity charges as referred” will be considered as Termination of PPA due to Procurer

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	<p>defined in Power Purchase Agreement, then CSEB shall not be entitled to nor shall the Company be obliged to, terminate the Agreement and / or vacate the Leasehold Area and the Company shall continue its such occupation and excavation activities till such time when the said acknowledged and accepted payment liability (arising hereunder or otherwise) or CSEB / Procurer Event of Default has been duly discharged and settled.....</p>	<p>further that at the end of the three year period, this Agreement shall automatically terminate and thereafter, the Procurer shall have no further Capacity Charge liability towards the Seller</p> <p>As can be inferred, if the above mentioned clause of PPA is read in conjunction with the Term & Termination clause of the Operators' Agreement (OA), the OA can get terminated after 3 years of Procurer EoD, the Seller will have the power plant without coal supply.</p>		<p>Event of Default. In order to avoid any ambiguity on this account, CSEB will modify the provision as given below:</p> <p>Provided however, that if CSEB fails or is unable to discharge any of its acknowledged and accepted payment liability (arising hereunder or otherwise) towards the Company or there is CSEB / Procurer Event of Default as defined in Power Purchase Agreement or termination of PPA in accordance with Section 14.4.5 (i) of PPA under Termination for Procurers' Event of Default, then CSEB shall not be entitled to nor shall the Company be obliged to, terminate the</p>

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		This needs to be suitably modified to ensure that power plant is assured of coal supply for 25 years from COD as was accepted in the pre-bid meeting held on June 15, 2007		
Chambal Infrastructure Venture Limited – Reference Nil dated September 07, 2007				
18	Clause 2.1.4 - RFQ	As per the SBD the Bidder must have experience of developing projects (not necessarily in power sector) in the last 10 years. However, CSEB have specified minimum experience of having 200 MW Power Plant due to which number		Considering that this Project shall involve both Power generation and transmission and considering the experience of many power projects allotted or proposed to 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

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		of serious parties are unable to participate in the bidding process even after meeting the entire financial criteria. This requirement was not there even in Ultra Mega Power Project.		bidding consortium shall have one member having 26% of 74% of project equity to comply with such technical qualification. CSEB wish to retain such qualification criteria.
19	Payment Security Mechanism	No Escrow facility		Please refer the clarification at SN. 8
20	Allotment of 26% of ordinary equity shares for the entire power project to CSEB	We suggest that sweat equity of 26% to the Procurer should be only mandatory for the coal mining operation and not for the power projec		Please note that there is only one project company to cater for coal mining and power generation. For allotment of 26% of ordinary shares to CSEB, please refer clarification at SN – 1.
21	RFQ Clause 1.5 The Project includes Power Station at Bhaiyathan, District Surguja, Chhattisgarh, mining of Gidhmuri and Paturia coal blocks (Captive Coal Mines) as per the terms of	Setting up transmission line of 390 km which will necessarily require a lot of clearances from	The Power shall be delivered at the generator switchyard bus bar.	Please refer clarification at SN. 3 for requirement of transmission line as integral part of the project.

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	Assistance and Operator Agreement, coal transportation of coal upto Power Station and supply of power from Power Station upto and at Raipur Load Centre through 400 kV transmission line for the term of PPA.	state government viz. right of way, way leaves, land acquisition and forest clearance.		Further CSEB confirm to extend all administrative support to expedite the requisite clearances and permission for such transmission line.
22	Nil Single Stage bidding process	The response to RFQ and RFP need to be submitted together in single stage bidding. In case any of the bidder gets disqualified due to any reason, his bid bond of Rs. 40 crores is held up till the completion of bidding process through he is not participating in the RFP stage. Also huge efforts and money spent for preparation of bid shall go waste if he is not qualified.	RFQ and RFP stages are followed in sequence. Only qualified bidders are given RFP documents and allowed to submit bids.	<p>There are inherent advantages of requesting response to RFQ and RFP at same time including reduction in bidding process period, enhancing competition and others. However CSEB has ensured that adequate time and information shall be furnished to the bidder to prepare such competitive bid.</p> <p>CSEB is of opinion that the qualification criteria are explicit and the competent bidders may evaluate their chances of qualification before submitting their response to bid documents. Thus CSEB wish to retain the proposed mode of bidding process.</p>

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23		The international arbitration should be allowed to attract foreign companies and participate, even as, JV partners.		This provision of CSEB is in line with such provision of Standard Bidding Documents.
24		Under Force Mejeure clause CSEB should look in providing Political Risk as force Majeure, which is not provided right now.		CSEB does not envisage to incorporate any such provision. It is not included in any other competitive bidding for procurement of power on long term in the country.
KSK Energy Ventures Private Limited – Reference CSERC/NG/1351 dated August 23, 2007				
25	Qualification Criteria			Please refer clarification at SN – 06 and SN 18.