

**CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION,
RAIPUR**

Petition No. 26 of 2007 (M)

Petitioner : Chhattisgarh State Electricity Board

Review application against the order dated 3.10.2007 passed by this Commission in petition No. 21 of 2007(M) for approval of deviations from standard bidding documents for long term procurement of thermal power on international competitive bid basis in respect of Bhaiyathan thermal power plant.

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

**ORDER
(Passed on 30.10.2007)**

The review petition is filed by the Chhattisgarh State Electricity Board (CSEB or the Board, for short) against the order dated 3.10.2007, passed by the Commission in Misc. Petition No. 21/2007(M), in the matter of approval of deviations to Standard Bidding Documents (SBD), issued by the Government of India, for long-term procurement of thermal power on competitive bidding basis, in respect of Bhaiyathan thermal power plant of the Board. The review petition has been filed specifically against paragraphs 6.3(2) and 6.3(6) of the impugned order. The factual position is that CSEB intends to develop a 1200 to 1500MW coal-based thermal power plant at Bhaiyathan in the State, through a developer selected on international competitive bidding basis, under clause 2 of the competitive bidding guidelines for procurement of thermal power issued by the Ministry of Power, Government of India. The Board had filed a petition before this Commission

which was registered as Petition No.21/2007(M), for approval of certain deviations from the guidelines and the SBD aforementioned. The Commission vide order dated 3.10.2007, while approving the deviations proposed, has not approved two major deviations proposed by the Board. The first relates to technical qualification and the second to restriction on the number of generating units to three in the project. The Commission has directed the Board to follow the provisions in the guidelines and the SBD in these two matters. It is against order in respect of these two deviations that this review application has been preferred.

2. As regards the first deviation referred to in para 6.3(2) of the impugned order, the Board had proposed that the bidder shall be a firm which has established/developed power project(s), a single unit of which is 200MW or above, or has projects with unit of the same size under implementation where financial closure has been achieved at least seven days before the submission of Request for Qualification (RFQ). The SBD does not require any experience of developing projects specifically in the power sector, but experience of developing comparable size projects. The Commission in its order considered this stipulation as restricting competition and hence disapproved this deviation from the SBD in the interest of larger competition in the very first unit being taken up under the competitive bidding route in the State for reasons given in the order.

The second deviation, which was proposed and dealt with in para 6.3(6) of our order relates to the limits placed by the Board on the number of units in the project. The Board has proposed that the project should not have more than three units with a minimum unit capacity of 200MW. This was also considered a deviation which would restrict competition and limit the options of a developer not only with regard to the unit size but also the technology he may adopt and hence was not approved by the Commission in the impugned order, for reasons given in para 6.3(6) of the order.

3. The review petition has been submitted on the ground that the Commission did not take into account all the relevant factors on consideration

of which CSEB had proposed these important deviations and that rejection of these deviations would entail considerable delay in the implementation of this very first project through competitive bidding, which involves development and operation of coal mines assigned to this project and development of the required transmission network.

4. On admission of the petition, notice was issued to all the prospective developers to whom notice was issued during public hearing in the original case, with a copy of the review application, for their comments, if any. Comments were received from Sterlite Energy Ltd., KSK Energy Ventures Pvt. Ltd. and Reliance Power. M/s GMR Energy Ltd informed that they had no comments on the review application. Of these, Reliance Power was the only one which appeared for personal hearing. M/s Tata Power also appeared on the date of hearing for seeking clarification on certain issues relating to the project and not in connection with the review petition.

5. We have heard the Board in detail as also Reliance Power. We have taken into account the comments received from Sterlite Industries, KSK Energy Ventures and Reliance Power. On the first issue of deviation from SBD with regard to technical qualification, the Board's contention is that past experience of power projects has been considered important because this is the first project being taken up under the competitive bidding route and it is a large project. The selection of 200MW unit's experience for technical qualification is based on various considerations, particularly understanding of technology, competition regarding response to bid and as also the project structure of Bhaiyathan TPS. The Board's contention, in brief, is that a unit size of 200MW is available largely in the thermal power sector, which is based on established reheat technology. Experience of operation of a thermal power plant has not been insisted upon as that would have been too restrictive. It has widened the scope to include such a power project which has gone up to financial closure that would provide sufficient background knowledge to a developer about power projects. On this issue we are clearly of the view that if the Board wants the developer to have experience of having developed a

power plant of the minimum unit size of 200MW and more, it should insist on development and operational experience of a power plant of this size. In fact, the insistence should be on experience of a plant of 500MW looking to the size of the project. The Commission is clearly of the view that taking a project up to the stage of financial closure does not provide a developer enough experience which can be actually termed as experience in the power generation sector. This was the view of most of the developers who participated in the public hearing held by the Commission on 14.9.2007. In fact, the comments received from Reliance Power, Sterlite Industries and KSK Energy Ventures more or less endorse the views of the Commission. Sterlite feels that if experience in the sector is required then the cumulative experience of establishing/ developing a 500MW capacity plant should be insisted upon for a project of the proposed size. KSK Energy Ventures has contended that for reheat technology the size of the plant need not be 200MW. Even 135MW units have reheat technology. If technology related competence is required to a developer, the best thing would be to insist on experience on operation of a coal-based thermal power plant. If not, we should stick to the SBD. Reliance Power was also of the same views. Relevant experience according to them is successful implementation and operation of a power project not achieving financial closure. We agree with the above views. As we have mentioned in the impugned order, even for ultra mega power projects of 4000MW, experience in the power sector was not insisted upon.

6. In view of the above, there is no ground for review of our order with regard to the qualification criteria. We reiterate our decision that with regard to technical qualification criteria, the qualification laid down in the SBD be followed.

7. As regards the restriction on the number of units to three, the Board has made the following submissions. The Board, in the original petition, had primarily pleaded constraints of land as the basis for such restriction. In this review application the Board has adduced certain other grounds which were only mentioned in the original petition but not insisted upon. The Board has

pleaded the following: (i) As per the Competitive Bidding Guidelines and SBD, environment clearance is required to be obtained by CSEB prior to issuance to letter of intent to the perspective developer. The Ministry of Environment & Forest (MOEF), Government of India, has already approved the TOR of the power plant for a configuration of 3x500MW. The number of units has been limited to three. The limitation of three units allows various combinations of configuration to the developer such as 3x500MW, 2x750MW, 2x660MW, 2x600MW + 200MW, 2x600MW + 300MW etc. Thus this limit on the number of units is not likely to restrict competition. But if the number of units is now changed the whole process of environment clearance will have to go through afresh. The present position is that the TOR for three units of the project each of 500MW have been approved by the Ministry of Environment and Forest, Government of India and an application has been submitted to the State Environment Conservation Board for public hearing. Public hearing is likely to take place soon. In case the numbers of units are now increased, the Board has to again go through the process of approval of TOR which will delay the project considerably. The representative of Reliance Power, in the hearing of the case, did not agree with the contention of the Board. They have submitted that all that is required is to approach the MOEF, GOI to validate the environment clearance for the revised configuration and the process of clearance need not be started from the beginning. They have cited the example of Sasan Ultra Mega Power Project, the environment clearance for which was obtained with the configuration of 5x800MW, with the permission to change the configuration as long as the total capacity was less than 4000MW. Reliance Power has pleaded that the same course could be adopted in the case of Bhaiyathan project. So long as the maximum size of the project is retained at the proposed level and the technical parameters regarding prevention of pollution are adhered to the process of revalidating environmental clearance would not take much time. CSEB insists that it would take considerable time because the TOR have been got approved for three units of 500MW only. Any change in the size of the unit so long as the total number remains three or less than three is not likely to pose any problem but

increase in the number of units beyond three will entail processing of the case from the beginning which will delay the project. In fact, this is the only important ground on which CSEB has pleaded that the deviation be approved. As regard the limitation of land and water these have been reiterated in the review application but not insisted upon. The other important point made with regard to the number of units is that the proposed restriction on the number of units to three would require the unit size of at least two units of 500MW or more. It is well known that the larger the size of the unit the more efficient it is in terms of fuel consumption and other parameters. CSEB has a coal-block allotted for the project by GOI which it is assigning to the project. It would like efficient utilization of the coal resources available to the project and that would be ensured if the size of the units is at least 500MW. Although Reliance Power has argued that the same level of efficiency can also be obtained from a 300MW unit by adopting latest technology but normally units of higher size are preferred due to obvious reasons. To ascertain the likely delay in obtaining MOEF clearance again if the number of units is increased, we have had the benefit of the views of the senior officers of the State Environment Conservation Board. They are of the opinion that any increase in number of units or change in configuration of units as mentioned in the TOR will necessitate submission of fresh proposal to the MOEF which will be treated as a fresh application. Since too many applications for environmental clearance are pending before the MOEF in view of Government of India's ambitious plan for capacity addition in the power project during eleventh five-year plan, the revised proposal may take considerable time for clearance by the MOEF.

8. In view of the above and particularly with a view to reduce the probability of delay which change in the number of units might entail, in getting environmental clearance which is an important requirement of a project of this size, the Commission agrees to review its order of 3.10.2007 in so far as it relates to the number of units. Paragraph 6.3(6) of our order is accordingly reviewed and we approve the deviation as proposed by CSEB in this regard in its original petition. However, as regards the technical qualification there appears to be no ground for review of our orders.

9. The Commission orders accordingly. The CSEB is required to provide bidders, at least two months' time after issue of these amendment(s) for submission of bids as per para 2.6 of the amendment to the guidelines for determination of tariff by bidding process for procurement of power by distribution licensee, issued vide Resolution No.23/11/2004-R-R(Vol.VI) of Ministry of Power, Government of India, on 27th September, 2007.

**sd/-
Member**

**sd/-
Chairman**