

In Re: Sasan Ultra Mega Power

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Court : Central Electricity Regulatory Commission CERC

Decided On : Oct-17-2007

Judge : B Bhushan, R Krishnamoorthy

Appellant : In Re: Sasan Ultra Mega Power

Judgement :

1. The present application has been made by Madhya Pradesh Power Trading Company Limited under Section 63 of Electricity Act, 2003 for adoption of tariff determined through international competitive bidding process for supply of electricity from Sasan Ultra Mega Power Project (hereinafter referred as 'Sasan UMPP').

2. Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') envisages that 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. The Central Government in Ministry of Power has issued the guidelines contemplated under Section 63 of the Act, titled "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees" (hereinafter referred to as 'the guidelines') vide Resolution No.23/11/2004 R&R (Vol.II) dated 19.1.2005. The salient features of the bidding process as laid down in the guidelines are discussed hereunder for convenience of reference: (a) The guidelines are applicable for procurement of base-load, peak-load and seasonal power requirements of distribution licensees through process of competitive bidding. The distribution licensees (referred to as

procurers for the purpose of competitive bidding) may adopt the guidelines for long-term procurement for a period of 7 years and above and medium term procurement for a period exceeding 1 year up to a period of seven years.

(b) Procurement by more than one distribution licensee through a combined bid process is permitted and in such a case, the procurer has the option of conducting the bid process through an authorized representative.

(c) The bid documentation is required to be prepared in accordance with the guidelines and the standard bid documents issued by the Central Government. In such cases, intimation shall be sent by the procurer to the appropriate Regulatory Commission about initiation of the bidding process. In the event of deviation from the bidding conditions contained in the guidelines, approval of the Appropriate Commission shall be sought by the procurers or their authorized representative.

(d) For long-term procurement from the projects with pre-identified sites, the procurers or their authorized representative are required to complete such activities such as site identification and land acquisition required for the project, environmental clearance, fuel linkage, water linkage etc.

(e) A two-stage bidding process comprising separate Request for Qualification (RFQ) and Request for Approval (RFP) shall be adopted for long-term procurement under the guidelines and the procurer or authorized representative shall prepare bid documents including RFQ and RFP in line with these guidelines and standard bid documents.

(f) The procurer shall publish a RFQ notice in at least two national newspapers, company website and preferably in trade magazines to accord it wide publicity. The bidding process shall necessarily be by way of international competitive bidding. RFP shall be issued to all bidders, who are qualified at RFQ stage. In case, the bidders seek any deviation and procurer finds that deviation is reasonable, the procurer shall obtain approval of the appropriate Commission before agreeing to such deviation.

(g) Formation of consortium shall be permitted. In such cases the consortium shall identify a lead member and all correspondence for the bid process shall be done through the lead member. The procurer may specify technical and financial criteria, and lock in requirements for the lead member of the consortium, if required.

(h) The minimum number of qualified bidders should be at least two other than any affiliate company or companies of the procurer to ensure competitiveness. If the number of qualified bidders responding to the RFQ/RFP is less than two and the procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(i) The procurer shall constitute a committee for evaluation of the bids with at least one Member external to the procurer organization and affiliates. The external Member shall have expertise in financial matters/bid evaluation. The procurer shall reveal past association with the external Members directly or through its affiliates that could create potential conflict of interest.

(j) Eligible bidders shall be required to submit separate technical and price bids along with necessary bid-guarantee. The bid shall be opened in public and representatives of bidders desiring to participate shall be allowed to remain present. The bidder, who has quoted lowest levellised tariff as per evaluation procedure, shall be considered for award of the contract.

(k) The Power Purchase Agreements (PPAs) shall be signed by the procurers with the selected bidders consequent to the selection process in accordance with the terms and conditions as finalized in the bid document before the RFP stage. After signing of the PPAs, the Evaluation Committee shall provide appropriate certification on adherence to the guidelines and to the bid process established by the procurer. The procurer shall also make the evaluation of bid public by indicating terms of minimum bid and anonymous comparison of all other bids and also the contract signed with the successful bidder.

(l) The applicant shall submit the final PPA along with the certification by the Evaluation Committee to the appropriate Commission for adoption of tariff in terms

of Section 63 of the Act.

3. The applicant, a company incorporated under the Companies Act, 1956 and a Government of Madhya Pradesh Undertaking, has been authorized by all the procurers (Distribution licensees of the States of Delhi, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh, and Uttarakhand) as the Lead Procurer for discharging all the rights and obligations of the Procurers for procurement of power from the Sasan UMPP. In discharge of its obligations as Lead Procurer under the Guidelines and the Power Purchase Agreement, the applicant had requested Power Finance Corporation (PFC) to take all necessary actions in this regard and authorized Shri G. Dastidar, AGM, PFC to submit the application to the Commission for adoption of tariff under Section 63 of the Electricity Act, 2003 and take further action in the matter.

4. The applicant has stated that Sasan Power Ltd.(hereinafter referred to as 'the Company') was incorporated under the Companies Act, 1956 as a wholly owned subsidiary of Power Finance Corporation, a Government company, to undertake the various preliminary developmental activities and to carry out the international competitive bidding as the Authorized Representative of the Procurers to select the bidder, who would build, own, operate and maintain Sasan UMPP to be located at Village: Sasan, District: Sidhi, Madhya Pradesh in terms of competitive bidding process issued by the Central Government.

5. The applicant has stated that allocation of power from Sasan UMPP along with other UMPPs was discussed and tentatively finalized in a meeting taken by Secretary (Power), Government of India on 16.2.2006 with the Principal Secretaries/Energy Secretaries of the beneficiary states. The allocation of power from the Sasan UMPP was finalized in the subsequent meetings taken by Secretary (Power) on 22.9.2006 and Additional Secretary (Power) on 29.9.2006 by re-allocating 250 MW and 50 MW from the earlier allocations of Chhatishgarh and Delhi respectively to Madhya Pradesh. The final allocation of power from Sasan UMPP is as under:

6. The procurer-wise allocations of power from Sasan UMPP and the name of authorized entity are as under:

7. The applicant has submitted that competitive bidding process was initiated on 31.3.2006 with the issue of RFQ for selection of bidder to build, own, operate and maintain the 3960 MW Sasan UMPP with captive coal for supply of contracted power to the procurers for 25 years. The Commission was duly informed about the initiation of the bidding process vide the applicant's letter dated 10.4.2006. The process was completed on 1.8.2007 with issue of Letter of Intent (LOI) to the successful bidder, M/s. Reliance Power Limited. The key milestones in the bid process were as under:

8. The applicant has stated that in all, 15 bidders as listed below submitted their bid at the RFQ stage: It has been further stated that the bids of M/s. EIG Energy Infrastructure Group AB and Suez Energy India Pvt. Ltd. did not meet the qualifying criteria and were rejected at RFQ stage. Subsequent to filing of bids at RFQ stage, M/s. Torrent Power AEC Ltd. merged with the Torrent Power Ltd. and the latter was declared qualified at RFQ stage. Thus in all, 13 bidders qualified at RFQ stage.

9. The applicant has submitted that the RFP documents were finalized by an Empowered Committee comprising of the officials from CEA, MOP, PFC, CERC, SBI and distribution licensees from four states in line with the Standard Bidding Documents for procurement of power under Case 2 issued by Ministry of Power, Government of India as amended from time to time.

10. The evaluation of the RFP bids was undertaken by an Apex Evaluation Committee, which was assisted by an Expert Committee and financial consultant, M/s Ernst & Young. The composition of the Apex Evaluation Committee constituted with the approval of the Board of Directors of the Company was as under: Shri Sanjay Bandopadhyay, Secretary (Energy), Government of Madhya Pradesh 11. The applicant has submitted that in response to the RFP issued by the Company, 10 bidders submitted their bids. The consultant, Ernst & Young carried out a responsiveness check of the non-financial bids submitted by the bidders as per the conditions of the RFP and found the bid submitted by M/s Torrent Power Ltd. as non-responsive and recommended the remaining nine bids as responsive for opening of financial bids. Accordingly, the financial bids

submitted by the nine bidders were opened on 18.12.2006 in the presence of the bidders' representatives and the members of the Apex Evaluation Committee and the Expert Committee. The details of financial bids are reproduced in the summary table below: 12. The levellised tariffs as per the bid evaluation report prepared by the Expert Committee are indicated as under: 13. The Apex Evaluation Committee in its meeting held on 18.12.2006 accepted the recommendations of the Expert Committee and declared M/s Lanco-Globeleq Consortium as the successful bidder with an equivalent levellised tariff of Rs.1.19617 /kWh. The Apex Evaluation Committee, as per the minutes placed on record, has confirmed that there was no deviation in the financial bids submitted by the responsive bidders.

The Board of Directors of the Company in its meeting held on 21.12.2006 accepted the recommendations of the Apex Evaluation Committee declaring M/s. M/s Lanco-Globeleq Consortium as the successful bidder.

Accordingly, Letter of Intent (LoI) was issued to the consortium of Globeleq Singapore Pte Limited and Lanco Infratech Limited on 28.12.2006.

14. After issue of the LoI to M/s Globeleq-Lanco Consortium, certain changes took place in the equity holding of M/s Globeleq Singapore Pte Limited which was the Lead member of the consortium. It emerged that its holding company, Globeleq Limited, UK had sold its entire stakes in Globeleq Singapore Pte Limited to the following companies:(a) M/s Prince Stone Investments Limited, Mauritius ... 40% (holding company of M/s Lanco Infratech Limited)(b) M/s Jindal Steel and Power Limited, India ... 60% Subsequent to the above changes, the Board of Directors of the Company considered the issues regarding the qualification of M/s Globeleq-Lanco Consortium in consultation with Ministry of Power, Ministry of Law and Justice, and other concerned authorities.

15. The validity period of bids submitted by the bidders in response to RFP was up to 5.6.2007. Since the resolution of the issue arising out of the sale of entire stakes by M/s Globeleq Limited, UK was likely to take further time, all responsive bidders were asked to extend the validity of their bids and associated extension of the Bid Bonds.

Following four bidders out of the nine responsive bidders extended the validity of their bids till 5.7.2007 along with the validity of the bid bonds which was subsequently further extended till 4.8.2007: 16. The applicant has stated that Government of India constituted an Empowered Group of Ministers (EGoM) on 14.6.2007 for facilitating expeditious decisions in all cases concerning UMPPs. The EGoM considered the issues relating to award of Sasan UMPP to Globeleq-Lanco consortium and, as conveyed in Ministry of Power Office Memorandum dated 26.7.2007, decided that the Procurers should: (a) Cancel the Lol issued to the Globeleq-Lanco Consortium as the Consortium was not qualified even at the RFQ stage and its response to the RFQ was void ab initio.

(b) Return the bid bond of the Consortium after deducting a sum of Rupees one crore for the misrepresentation which had delayed the project.

(c) Hold negotiation with the remaining bidders (whose bids remained valid till 4th August,2007) and seek their final bid for levelised tariff. Once the final bids of the remaining bidders were received, the EGoM would take a final view on the issue of award of Lol.17. The Board of Directors of the Company in its meeting held on 26.7.2007, in compliance with the decisions of EGoM, decided to seek the best revised lower tariff offers from the remaining three bidders by 1600 hours on 28.7.2007 and constituted an Evaluation Committee consisting of the following for evaluation of the best revised lower tariff offer of the remaining three bidders: 18. The Evaluation Committee in its meeting held on 28.7.2007 opened the revised tariff offers (financial bids) received from the three bidders in the presence of their representatives. The Committee noted that M/s Jaiprakash Associates in their offer submitted a letter to the effect that their best revised lower tariff offer was the one which was submitted as a part of their bid dated 7.12.2006. M/s NTPC Ltd.in their offer stated that they were unable to arrive at specific numbers due to short time available and their earlier offer would hold. M/s Reliance Power Limited submitted a lower tariff offer and its levelled tariff was calculated as per clause 3.3.2 of the RFP by applying the bid evaluation model. It bears mention here that the name of the company Reliance Energy Generation Limited has been changed to Reliance Power Limited and a certificate to that effect has been issued on 7.7.2007 by Registrar of Companies, Maharashtra, Mumbai. The competitive

position of the revised financial bids of the bidders as tabulated is as under: The Evaluation Committee came to the conclusion that the revised financial bid of M/s Reliance Power Limited was the lowest levelled tariff offer. The Committee also endorsed that bidding process followed for selection of successful bidder conformed to the Guidelines for Competitive Bidding and the directions of the EGoM.¹⁹ The applicant has stated that the Board of Directors of the Company in its meeting held on 29.7.2007 considered the report of the Evaluation Committee and decided to convey the comparative position of revised offers to Ministry of Power for placing it before the EGoM for consideration. The EGoM in its meeting held on 30.7.2007 considered the comparative position of revised offers and, as conveyed through Ministry of Power Office Memorandum dated 30.7.2007, advised that "the Procurer should take up for immediate consideration the issuance of Lol to the bidder who has quoted the lowest revised tariff bid for Sasan UMPP". The Board of Directors of the Company in its meeting held on 1.8.2007 considered the advice of EGoM and decided to issue Lol to Reliance Power Limited who had quoted the lowest levelled tariff of Rs.1.19616 per kWh. Accordingly, Lol was issued to Reliance Power Limited vide the Company's letter No.03:07:Sasan:27 dated 1.8.2007.

20. It has been submitted that as per the provisions of RFP documents, an amount of Rs. 28.12 crore was paid by the successful bidder, Reliance Power Limited, to PFC for acquiring 100% share of the company at par (50000 shares of Rs.10 each amounting to Rs.5 lakhs) and for taking over all assets and liabilities of the Company subject to adjustments as per the audited account of the Company as on the date of transfer. The 100% share of the Company was transferred to M/s Reliance Power Limited on 7.8.2007.

21. The applicant has also submitted that the provisions of paras 5.9, 6.12, 6.13, and 6.14 of the Guidelines have been complied with and has placed on record necessary documents in support of the same.

22. The applicant has prayed that the tariff quoted by M/s Reliance Power Limited in respect of Sasan UMPP be adopted by the Commission under Section 63 of the Electricity Act, 2003.

23. It is pertinent to mention here that in contrast to the elaborate role of the Commission in tariff determination under Section 62 of the Act, its role in case of tariff discovery through the competitive bidding process undertaken under Section 63 is essentially confined to adoption of tariff, on being satisfied that transparent process of bidding in accordance with the guidelines have been followed in determination of such tariff. While adopting the tariff discovered through the competitive bidding process, the Commission is not required to go into the merits or analysis of the tariff so discovered. Neither is it possible for the Commission to do so as no supporting details are required to be submitted by the bidders.

24. We have perused the application and other relevant documents placed on record by the applicant. Our observations are given as under: (a) Para 3.1(i) provides that the bid documentation shall be prepared in accordance with the guidelines and the approval of the Appropriate Commission shall be obtained in case the bid documents deviate from the standard bid documents issued by the Central Government. As per para 3.1(ii) of the Guidelines, approval of the Commission shall be sought in the event of deviations from the bidding conditions following the process laid down in para 5.16 of the Guidelines. We have perused the bid documents such as RFQ, RFP and PPA etc. and find that the documents have been prepared in accordance with the standard bid documents issued by the Central Government.

(b) As per para 5.9 of the guidelines, the procurer is required to reveal past association with the external members-directly or through its affiliates-which could create potential conflict of interest. The applicant has placed on record necessary declarations from the procurers in which the procurers have confirmed that "but for their association in connection with the transaction, arrangements, dealings and interactions in the ordinary course of their business or in their official capacity, directly or through their affiliates, they did not have any past association with the external members of the Apex Evaluation Committee constituted by the Board of Directors of Sasan Power Limited in its 8th meeting held on 8.11.2006 for evaluation of bids received on 7.12.2006 against RFP issued for Sasan UMPP or with the external Members of the Committee constituted by the Board of Directors of Sasan UMPP in its meeting held on 26.7.2007 for evaluation of revised tariff

offers submitted on 28.7.2007 that could create potential conflict of interest". We are satisfied that the declarations meet the requirements of Para 5.9 of the guidelines.

(c) We are satisfied that there was sufficient competition at the RFQ and RFP stages. The evaluation of the responsive bids has been done by the experts considering the appropriate escalation indices and discount factors notified by the Commission.

(d) As per the clause 6.11 of the guidelines, PPA is required to be signed with selected bidder consequent to the selection process in accordance with the terms and conditions as finalized in the bid document before the RFP stage. Accordingly, the applicant has signed the PPA on 7.8.2007 with the procurers on the terms and conditions as provided in the PPA with minor modifications. The modifications in Recitals B and C of the PPA which pertain to Forest Clearance for the Power Station/notification by Government of Madhya Pradesh under the Land Acquisition Act for land for the power station and adoption of tariff by the Commission, reflect the factual position as on date of signing of the PPA. The modifications are considered to be essential in the facts and circumstances of the case and do not affect the tariff discovered.

(e) Throughout the bidding process, wide publicity had been given in the Indian and foreign media for the development of Sasan UMPP. At every stage of the bidding process both procurers and bidders had been duly involved with the process. The applicant had published a notice on 23.8.2007 in the Times of India (all editions), Nav Bharat Times (Mumbai and Delhi) and Maharashtra Times (Mumbai) to the effect that the terms and conditions of the winning bid and anonymous comparison of other bids together with details of contracts signed by the procurers with the successful bidder are available on the PFC website: www.pfcindia.com. In response to the public notice, the Commission has not received any comments/suggestions. We are satisfied that requirements of Para 6.13 of the guidelines have been complied with.

(f) The PPA has been signed by the procurers with Sasan Power Limited after purchase of 100% of shares of the Company by the selected bidder i.e. Reliance

Power Limited as per the provisions of the RFP documents. Since the PPA has been signed by Sasan Power Limited, a wholly acquired company of the selected bidder, Reliance Power Limited with the procurers, we are satisfied that the requirements of para 6.11 of the guidelines have been complied with.

(g) The applicant has placed on record appropriate certification from the Evaluation Committees (constituted by the Board of Directors of the Company for evaluation of the revised bid offers) on adherence to the Guidelines and to the bid process established by the Procurer. We are satisfied that the requirements of para 6.12 have been complied with.

(i) It has been confirmed by the applicant that 100% of equity shares of Sasan UMPP were transferred to Reliance Power Limited by Power Finance Corporation on 7.8.2007. An amount of Rs.28.12 crore has been paid by Reliance Power Limited to Power Finance Corporation for acquiring the shares of the Sasan Power Limited and for taking over its assets and liabilities.

25. Based on the submission in the application and the documents placed on record, we find that tariff discovery for the Sasan UMPP has been carried out through a transparent process of bidding in conformity with the "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees". Accordingly, in terms of Section 63 of the Act, we adopt the tariff as quoted by the selected bidder, M/s Reliance Limited for Sasan Ultra Mega Power Project for supply power to the procurers as per their respective shares as indicated in para 6 above. The year-wise tariff for 25 years quoted by M/s Reliance Power Limited and adopted by the Commission is enclosed as Annexure-1 to this order. The adopted tariff shall be charged in accordance with Schedule 7 of the PPA signed on 7.8.2007.

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