

RECORD OF PROCEEDINGS

DATE OF HEARING : August 21, 2007 at 16.00 hrs
CASE No. : 35 of 2007
PETITIONERS : Maharashtra Electricity Distribution Company Limited (“MSEDCL”)
RESPONDENTS : None
MATTER : Petition filed by MSEDCL seeking post facto approval of the Request for Qualification (“RFQ”) issued to bidders on April 11, 2007 for the development of power stations near Dhopave village, Ratnagiri, Maharashtra, under International Competitive Bidding Process (Case 2), prepared in deviation from the Standard Bidding Documents notified by the Government of India-Ministry of Power
QUORUM : Chairman, Member-Technical, Member-Finance

MSEDCL filed a Petition on July 25, 2007 seeking post facto approval of deviations in the Request for Qualification (“RFQ”) issued to bidders on April 11, 2007 for the development of a power station near Dhopave village, Ratnagiri, Maharashtra, under International Competitive Bidding Process (Case 2), from the Standard Bidding Documents notified by the Government of India-Ministry of Power under Resolution No. 23/11/2004-R&R (Vol. II) issued on January 19, 2005 titled “*Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees*”, as amended thereafter (“CBG”). The Commission scheduled the hearing in the matter for August 21, 2007 in the presence of consumer representatives authorized on a standing basis under the Electricity Act, 2003 (“EA 2003”). Notices were issued accordingly.

2. At the hearing held in the matter on August 21, 2007, Shri. Shailesh Joshi, M/s. Feedback Ventures, consultant to Maharashtra State Power Generation Company Limited (“MSPGCL”), submitted that the proposed project of setting up a coal-based power station near Dhopave village, Ratnagiri, Maharashtra is a collaborative effort of MSPGCL and MSEDCL. MSEDCL and MSPGCL have initiated the bidding process under the CBG-Case 2 Process. The RPQ has been issued by MSPGCL (as authorized representative of MSEDCL) on April 11, 2007, to identify a developer for the supply of the targeted 1600 MW, minus 10% thereof, which enables the bidder to configure the project according to his requirement. The present petition has been filed to seek approval of the various deviations in the said RFQ from the standard RFQ as notified under the CBG-Case 2 method.

3. Shri. Shailesh Joshi submitted that in the present case, while issuing the RFQ, the following deviations been made from the standard RFQ as notified under the CBG-Case 2:

- (i) Under the CBG (paragraph 3.2 thereof) the bidding process should commence only after completion of site identification and land acquisition, obtaining environmental clearance, effecting fuel and water linkages and obtaining requisite hydrological, geological, meteorological and seismological data necessary for preparation of DPR for the proposed project. However, in the present case, MSEDCL has only commenced processes for land acquisition and obtaining of environmental clearances (including the environmental clearance for the construction of a jetty on the Vasisthi river). The requisite studies for preparation of DPR are also pending completion, though being carried out on a time-bound regime where no slippages are

expected in due completion. It was submitted that considering the exigency of commissioning the Dhopave project, the required clearances and studies can be obtained/performed in parallel with the bidding process. It was further submitted that the successful bidder would be provided sufficient time to peruse and/or consider the various clearances and studies that are being obtained or performed in parallel with the bidding process, and accordingly RFP would be structured in the most optimal manner.

- (ii) So far as specification of minimum and maximum capacity of power procurement is concerned, the RFQ as issued on April 11, 2007 recognises the gross installed capacity to be procured as 1600 MW, with a relaxation of 10% thereof, to provide flexibility in plant configuration. This aspect of contractual capacity has been settled with the prospective bidders through a separate clarification issued after the pre-bid conference wherein, it was decided that the ex-bus generating capacity shall be appropriately defined during the issuance of RFP. The Commission observed that the contractual capacity for generation should be adequately specified during the issuance of RFQ, which will enable prospective bidders to bid.
- (iii) The standard RFQ as notified under the CBG-Case 2 requires the submission of certain necessary information under specified formats. While the format/s for submission of financial and technical information, letter of consent from consortium lenders, and certificate stating the exact relationship between the “parent” and the “affiliate” of a group company, are not yet specified, necessary formats have been drafted in-house in uniformity with the specified formats. Submission of the information under the said formats have been sought after obtaining due certification from the Chartered Accountants, Directors and Company Secretary of MSEDCL.
- (iv) The share acquisition price (i.e., the price for transfer of the special purpose vehicle to the successful bidder) has not been fixed at present owing to the various developmental expenditures being incurred towards land acquisition, project studies and obtaining of requisite environment clearances and permissions. The exact transfer price shall be determined during the issuance of RFP. The Commission observed that MSEDCL should employ absolute reasonableness at each stage of the bidding process. Thus, though the exact transfer price has not been fixed, MSEDCL should provide the various cost items and the principles of determining them that would be employed in the transfer price of fixation to the bidders in the Bidding document upfront.
- (v) The standard RFQ as notified under the CBG-Case 2 defines the term “Developing Project” as the successful commissioning of a project in which the bidder held an equity stake of not less than 26% at the time of commissioning. However, the said definition has been modified in the RFQ to mean “*successful commissioning of a project in which the Bidder held an equity stake of not less than 26% from the date of Financial Closure till the date of commissioning of the project*”. It was submitted that by Shri. J.K. Srinivasan, CGM(F), MSPGCL, that the creation of such a stringent definition for the Dhopave project will ensure more reliability and commitment from the bidder’s end. It will bar any opportunist financial investor to enter into bidding by making an equity investment of 26% at the time of commissioning and claim the rights of a bidder. The commitment of such a bidder may not be sustainable for such a long-term project.

- (vi) The standard RFQ as notified under the CBG-Case 2 defines the term “Affiliate” as a company that either directly or indirectly, controls or is controlled by, or is under common control of a bidding company (in the case of a single entry) or a Member (in the case of a consortium), where control means ownership by one company of at least 26% of the voting rights of the other company. However, in order to provide more clarity, MSEDCL in the present case has maintained that an affiliate shall also mean the “*company/companies who along with the bidding company/consortium member, are commonly controlled by a parent company either directly or indirectly.*” It was submitted by Shri. J.K. Srinivasan that the said modification of the definition of the term affiliate is in the nature of a clarification and not a deviation.

The Commission observed that the recommendations of the Committee constituted by the MoP in connection with UMPP, in this regard may also be kept in view and incorporated.

4. It was submitted that at present 10 bid offers have been received by MSPGCL.

5. The Commission directed MSPGCL to submit the current status of the project, including the status with respect to site identification and land acquisition, obtaining of environmental clearances, effecting fuel and water linkages and obtaining of requisite hydrological, geological, meteorological and seismological data, and the targeted timeline for completion of these tasks, within a period of one week. The Commission also directed MSPGCL to submit the revised schedule envisaged for completing the bidding process.

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List of Persons present at the hearing on August 21, 2007

1. Shri. J.K. Srinivasan, CGM(F), MSPGCL.
2. Shri. R.K. Goel, CGM(G), MSPGCL.
3. Shri. Shailesh Joshi, M/s. Feedback Ventures.
4. Shri. Sameer Dargi, M/s. Feedback Ventures.
5. Shri. G.S. Trimukhe, C.E.(P.P.), MSEDCL