

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

Petition No. 23/2008

In the matter of: Procurement of Power on Short/Medium Term basis.

AND

In the matter of:

North Delhi Power Ltd.
Through it's **CEO**
Grid Sub- Station Building,
Hudson Lines, Kingsway Camp,
Delhi.

BSES Yamuna Power Ltd.
Through it's **CEO**
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

BSES Rajdhani Power Ltd.
Through it's **CEO**
BSES Bhawan, Nehru Place,
New Delhi-110019.

Coram:

**Sh. Berjinder Singh, Chairman & Sh. K. Venugopal, Member &
Sh. Shyam Wadhera, Member.**

ORDER

(Dated: 10.06.2009)

1. The present application has been made by North Delhi Power Limited, on it's behalf as well as on behalf of the BSES Rajdhani Power Limited and BSES Yamuna Power Limited for procurement of power on short/medium term basis through competitive bidding process.
2. Section 63 of the Electricity Act, 2003 (hereinafter referred 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 Government of India. The Government of India, 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 and amendments thereof. 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 Government of India. 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) A two-stage bidding process comprising separate Request for Qualification (RFQ) and Request for Proposal (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.
- (e) 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.

- (f) 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.**
 - (g) 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 of interest.**
 - (h) 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 levelled tariff as per evaluation procedure, shall be considered for award of the contract.
 - (i) 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.
 - (j) 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 BSES Rajdhani Power Limited and BSES Yamuna Power Limited have authorized North Delhi Power Limited (NDPL) to act on their behalf for

short/medium term power procurement from various sources in order to meet the future short/medium term power requirement. The NDPL on behalf of all the three DISCOMs in NCT of Delhi invited bids for short/medium power procurement from various sources. Further for the purpose of identifying and selecting the successful bidder, NDPL has issued the tender and draft Power Purchase Agreement and had invited bids from applicants interested in supply of power to Delhi DISCOMs.

4. The NDPL/Joint Power Procurement Committee constituted by the Licensees of Delhi had forwarded the draft bid documents (RFP and PPA) and same were accorded "in principle" approval by the Commission on 22.8.2006. Subsequently, NDPL had forwarded the revised bid documents for Procurement of Power to the Commission. The Commission perused the major changes/modifications proposed in the various sections of the revised document and the considered views of the Commission were communicated to the NDPL/procurer to take a final decision with respect to short/medium Power Procurement vide letter dated 23.3.2007. Accordingly, NDPL had issued the bid documents to the following interested bidders:

- (a) M/s. Tata Power Trading Company, Mumbai.
- (b) M/s. Reliance Energy Trading Ltd., New Delhi.
- (c) M/s. Adani Enterprises Ltd., Gurgaon.
- (d) M/s. Corporate Ispat Alloys Ltd., Nagpur.
- (e) M/s. Jindal Power Ltd., New Delhi.
- (f) M/s. Jindal Steel & Power Ltd., New Delhi.
- (g) M/s. Lanco Electric utilities Ltd., New Delhi.

5. In response to the tender issued to the above mentioned short listed bidders the following bid offers had been received.

- (a) **M/s. Corporate Ispat Alloys Ltd., Nagpur (CIAL):** M/s. CIAL had offered medium-term power for the period starting from April 2009 upto March 2012. A total of 22.5 MW of power had been offered at DTL boundary at a rate of Rs. 5.89 per unit. According to NDPL, the bid of M/s. CIAL did not meet the stipulated criteria in Clause No. 2.2.1 of the tender document whereby the minimum capacity permissible for bidding is 50 MW for base and intermediate loads.

(b) **M/s. Jindal Power Ltd., New Delhi (JPL):** M/s. JPL had offered medium-term power of 100 MW for the period commencing April 2008 to June 2008 and 250 MW power from July 2008 upto March 2012 at DTL boundary. The per unit cost of energy comes to approximately Rs. 4.68 per unit in April, 2008, which according to them was very high considering the current market situation and the expectation of the lower tariff for the medium-term of offered contract. Therefore, NDPL had expressed that buying such costly power may not be considered at this point of time.

6. In view of the above, NDPL had recommended that the tender be put to re-bid to the same set of short listed bidders and all of them were asked to submit fresh/revised offers, however, Commission was of the view that as out of seven short listed bidders only two have given their offers and of which only one bidder qualifies for consideration, it would not be advisable to restrict the re-bidding process to the same set of short listed bidders as has been proposed by the NDPL. In the communication dated 09.08.2007, it was suggested that NDPL/procurer may consider taking up the bid process afresh, giving a wider publicity to seek competitive offers from utilities all over the country in view of the fact that this bid is for the medium term and not confining the same to the seven numbers bidders short listed earlier.
7. In accordance with the directions of the Commission, fresh tenders for short/medium Power Procurement were issued in September, 2007. Two offers were received. The bids were opened in presence of representatives of bidders, NDPL and BRPL. Summary of the bids received from M/s. Jindal Power Limited and M/s. Maithon Power Limited is given hereunder:

| Year | | 2008-09 | 2009-10 | 2010-11 | 2011-12 |
|---|---------------|----------|---------|---------|---------|
| Procurer's Demand (MW) | Base Load | 200 | 309 | 309 | 309 |
| Offered Capacity (MW) | Jindal Power | No offer | 100 | 100 | 100 |
| | Maithon Power | No offer | 0 | 309* | 309 |
| Offered price (Rs./kWh) at NDPL periphery | Jindal Power | NA | 6.573 | 6.58 | 6.585 |
| | Maithon Power | NA | NA | 3.48 | 3.67 |
| * Indicated capacity is from October 2010 on the condition that Liquidated Damages/ penalty is not applicable for the period between October, 2010 to March, 2011 . | | | | | |

The above tariff has been worked out considering base availability to the extent of 80%. The above tariff is inclusive of the Transmission charges, the Scheduling charges and the applicable transmission losses are accounted for as per the following details:

| | Total Transmission charges (Rs. per MW per Day) | Total Scheduling charges (Rs. Per month) |
|---------------------------|--|---|
| For Maithon Power Limited | 76061 | 212800 |
| For Jindal Power Limited | 65208 | 212800 |

The Transmission charges work out to around 11~13 paise per unit while the Scheduling charges would be to the extent of 0.1~0.4 paise per unit.

Transmission Losses:

| | ER Loss (%) | NR Loss (%) | Delhi Loss (%) | Net Loss (%) |
|---|------------------------|------------------------|---------------------------|-------------------------|
| For Maithon Power Ltd. (ER to NDPL) | 3.5 | 4.0 | 1.0 | 8.29 |

| | WR Loss (%) | NR Loss (%) | Delhi Loss (%) | Net Loss (%) |
|---|------------------------|------------------------|---------------------------|-------------------------|
| For Jindal Power Ltd. (WR to NDPL) | 4.5 | 4.0 | 1.0 | 9.25 |

8. The NDPL has informed the Commission that M/s. Maithon Power Limited (MPL) is a joint venture between the Tata Power Company and the Damodar Valley Corporation, (DVC). The Tata Power Company holds 76% equity shares in this project and rest 24% equity shares is held by the DVC. It appears that the bid from M/s. Maithon Power Limited is a bid from an affiliate company or companies of the procurer i.e. NDPL which attracts clause 5.7 of the Guidelines and requires specific consent of the appropriate Commission for the entire bidding process.
9. Section 63 of the Act envisages that notwithstanding anything contained in section 62, 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 Government of India.
10. Further, Clause 5.7 of the Guidelines provides that to ensure competitiveness, the minimum numbers of qualified bidders should be at least two other than any affiliated company or the companies of

procurer. If the number of qualified bidders responding to the RFQ/RFP is less than two and procurer still wants to continue with the bidding process same may be done with the consent of the appropriate Commission.

11. The present matter specifically falls under Clause 5.7 of the Guidelines and accordingly the entire bidding process *ab initio* needs consent of the appropriate Commission. On perusal of the application alongwith other documents, the Commission has observed the following:

(a) RFP and model PPA were prepared in accordance with the Guidelines and deviations duly approved by the Commission.

(b) A single stage tender process was adopted, combining RFP and RFQ stages for medium term procurement in accordance with the Guidelines issued by the Central Government.

(c) The tender was released on 17.9.2007 and was published in two leading newspapers i.e. Times of India and Economics Times dated 17.9.2007 and on the website of NDPL and BSES.

(d) Last date of purchasing tender document was 27.9.2007 and the following have purchased the tender documents:

- (i) M/s. Jindal Power Ltd;
- (ii) M/s. NTPC Vidyut Vyapar Power Ltd;
- (iii) M/s. Maithon Power Limited;
- (iv) M/s. Tata Power Trading Company Ltd;
- (v) M/s. Simhapuri Energy (P) Ltd;
- (vi) M/s TOSS Mini Hydel Power Project.

12. A bid clarification/ pre bid meeting was held on 04.10.2007. Some clarifications were sought by the parties mentioned above and the same were clarified by NDPL/procurer in it's letter dated 9.10.2007 to all the interested parties.

13. On the request of the interested parties, the last date of submission of technical and price bids was extended upto 30.10.2007. Accordingly time line for rest of the activities was also changed. The revised schedule were as follows:

- (a) Technical and price bid submission – 30.10.2007 at 1500 hours.
 - (b) Technical bid opening – 30.10.2007 at 1600 hours.
 - (c) Price bid opening of technically qualified bidders – 6.11.2007 at 1600 hours.
 - (d) Short listing of applicants and issue of letter of intent (subject to the Commission's approval) – 18.12.2007.
 - (e) Signing of agreements (PPA) – within seven days of issue of LOI.
 - (f) On the last date of submission of bids i.e. 30.10.2007 only M/s. Maithon Power Limited and M/s. Jindal Power Limited had submitted their bids. The technical bids of M/s. Maithon Power Limited and M/s. Jindal Power Limited were opened on the same day i.e. 30.10.2007 in the presence of both the bidders - M/s. Maithon Power Limited and M/s. Jindal Power Limited.
14. The technical bid from M/s. Maithon Power Limited and M/s. Jindal Power Limited were evaluated and both bidders were found qualified for opening of price bid.
15. Financial bids from M/s. Maithon Power Limited and M/s. Jindal Power Limited were opened on 6.11.2007 in the presence of both the bidders. An Internal Evaluation Committee of M/s NDPL was constituted to analyse the short/medium term power procurement bids. The Internal Evaluation Committee consists of the following:
- (a) Shri Ashish Kumar Dutta, Manager Power Procurement and Generation.
 - (b) Shri Dheeraj Bengani, Senior Executive Finance.
 - (c) Shri Bharat Sharma, Executive, Power Procurement and Generation.
16. Further, the Delhi Power Procurement Group (DPPG) also evaluated the bids submitted by M/s. Maithon Power Limited and M/s. Jindal Power Limited. M/s. Maithon Power Limited has emerged as the lowest bidder out of the two qualified bidders. Both the Evaluation Committees have recommended for issuing a Lol to M/s. Maithon Power Limited. The members of the DPPG are as follows:
- (a) Sh. Sunil Kakkar, BRPL;
 - (b) Sh. Sanjay Srivastava, BYPL;
 - (c) Sh. Devendra Daruwala, NDPL;

- (d) Sh. B. D. Prasad, G. M. (Commercial), DTL;
- (e) Sh. Madan Pal (NDMC).

17. The DPPG, in the process of evaluating the price bids has noticed that:

- (a) M/s. Maithon Power Limited and M/s. Jindal Power Limited have submitted the bid as per the approved documents and not given any deviation in the bid.
- (b) M/s. Jindal Power Limited earlier also offered the bid during the first round of tendering which was on higher side (Rs. 4.86/kWh) and the same was not considered by the procurer. This time also the rate quoted by the M/s. JPL @ Rs. 6.57/kWh are on very high side, whereas the rates quoted by the M/s. Maithon Power Limited i.e. Rs. 3.48/kWh at NDPL/BRPL periphery found to be very reasonable considering the present power supply position and rates quoted in the market.
- (c) M/s. Maithon Power Limited had offered the power with the condition that Liquidated Damages is not applicable during October 2010 to March 2011 and liquidated damages are applicable only during April 2011 to March 2012.
- (d) The DPPG was informed by the procurer that before floating the tender, BYPL agreed that entire procured power will be shared in the ratio of 50:50 between NDPL and BRPL only.

18. The Commission is of the view that the bidding process adopted by the NDPL/procurer from the initial stage till the evaluation of financial bid by the Evaluation Committee is in accordance with the Guidelines issued by the Government of India and the modifications proposed by the Commission in the revised bid document. The bid of the M/s. Maithon Power Limited is lowest @ Rs.3.48 per kWh at NDPL/BRPL periphery which appears to be reasonable in the present scenario of the power supply position in the NCT of Delhi. The procurement of power under medium term power procurement @ Rs.3.48 per kWh seems to be in public interest also duly taking into account the commissioning schedule of various generating stations for which long term PPAs have been signed by the distribution utilities of Delhi. Further, entire bidding process is transparent in accordance with the Guidelines issued by the Government of India and

as per Section 63 of the Electricity Act, which provides for determination of tariff by bidding process. In the interest of the consumers of the NCT of Delhi, the Commission hereby accord its consent to the bidding process adopted by the NDPL/procurer.

19. In this backdrop and in consideration to the recommendation of the Evaluation Committee, letter of intent (LOI) was issued to M/s. Maithon Power Limited according to the terms and conditions provided in the bid documents with the direction to proceed further in the matter of signing of PPA, etc. The NDPL/procurer has placed before the Commission certificate of conformity of bid process and separate Power Purchase Agreement signed between M/s. Maithon Power Limited & NDPL and M/s. Maithon Power Limited & BRPL respectively. The NDPL/procurer prayed that the tariff quoted by M/s. Maithon Power Limited be adopted by the Commission under Section 63 of the Electricity Act, 2003.
20. 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 has 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 it is possible for the Commission to do so as no supporting details are required to be submitted by the bidders.
21. We have perused the application and other relevant documents placed on record by the applicant. Our observations are given as under :-
 - a) Clause 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 Government of India. As per Clause 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 Clause 5.16 of the Guidelines. We have perused the bid documents and PPA etc. and find that the documents have been

prepared in accordance with the standard bid documents issued by the Government of India.

- b) We are satisfied that there was sufficient competition at the bidding stage. The evaluation of the responsive bids has been done by the experts.
- c) Further, Clause 5.7 of the Guidelines provides that to ensure competitiveness, the minimum numbers of qualified bidders should be at least two other than any affiliated company or the companies of procurer. If the number of qualified bidders responding to the RFQ/RFP is less than two and procurer still wants to continue with the bidding process same may be done with the consent of the appropriate Commission.
- d) The present matter specifically falls under Clause 5.7 of the Guidelines and accordingly the entire bidding process *ab initio* needs consent of the appropriate Commission. On perusal of the application alongwith other documents, the Commission has observed the following:
 - RFP and model PPA were prepared in accordance with the Guidelines and deviations duly approved by the Commission.
 - A single stage tender process was adopted, combining RFP and RFQ stages for medium term procurement in accordance with the Guidelines issued by the Government of India.
- e) As per the Clause 6.11 of the Guidelines, PPA is required to be signed with the selected bidder consequent to the selection process in accordance with the terms and conditions as finalised in the bid document. Accordingly, the NDPL/procurer has signed the PPA with M/s. Maithon Power Ltd. on 12.05.2008 and BRPL signed the PPA with M/s. Maithon Power Ltd. on 18.07.2008 on the terms and conditions as provided in the PPA.
- f) As per 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 finalised in the bid document. Accordingly, the Applicant (NDPL & BRPL) have signed

the PPA on 12.05.2008 and 18.07.2008 with M/s. Maithon Power Ltd. on the terms and conditions as provided in PPA. We are satisfied that the requirement of Clause 6.11 of the Guidelines have been complied with.

g) The NDPL/procurer has placed on record appropriate certification from the evaluation Committee on adherence to the Guidelines and the bid process established by the procurer. We are satisfied that the requirement of Clause 6.12 have been complied with.

h) As per Clause 5.9 of Ministry of Power Guidelines one Member in the Evaluation Committee shall be external to the procurer organization and affiliates. In the Delhi Power Procurement Group GM (Comml) DTL, AE (Power), NDMC were present who were not from the procurer organisation. Moreover the General Manager (Comml), DTL has sufficient knowledge in financial matters, thus the conditions of Clause 5.9 of Ministry of Power Guidelines have been fulfilled. In this matter Commission has accorded its consent to the acceptance of Minutes of meeting/report of DPPG may be taken as a certificate of Evaluation Committee required under Guidelines.

22. Based on the submission in the application and the documents placed on record, we find that tariff discovery for the M/s. Maithon Power Ltd. 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 Licensee. Accordingly in terms of Section 63 of the Act, we adopt the tariff as quoted by the selected bidder, M/s Maithon Power Ltd. for supply power to the procurer as per their respective shares as indicated above.

23. Ordered accordingly.

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN