

Bihar Electricity Regulatory Commission
Patna

Petition No. SBD – 1 of 2011

In the matter of

Approval of deviations from the Standard Bid Document (SBD) under Case-2 based on the Guidelines for procurement of power through tariff based competitive bidding by the Distribution Licensees issued by Ministry of Power, Govt. of India vide notification dated 19.01.2005 and subsequent amendments thereto, for the selection of successful bidder(s) to Build, Own, Operate and Maintain the Coal based thermal power projects proposed at Chausa, District-Buxar; Kajra, District-Lakhisarai and Pirpainti, District Bhagalpur in Bihar

AND

Bihar Power Infrastructure Company Pvt. Ltd. Petitioner

Present: **Shri U.N.Panjiar, – Chairman**
 Shri R.N.Sharma – Member

Patna, dated the 6th August, 2011

Order

M/s Bihar Power Infrastructure Company Private Limited, a Joint Venture of Government of Bihar, Bihar State Electricity Board (BSEB) and Infrastructure Leasing and Financial Services Ltd. (IL&FS Group) having its registered office at 4B, First Floor, Shri Krishna Puri, Patna – 800 001, who have been authorized to undertake bid process for the selection of Successful Bidder by the BSEB vide letter no. 613, 614 and 615 dated 5.04.2011 of the Chief Engineer (Transmission O&M), BSEB Patna for Pirpainti (Bhagalpur), Kajra (Lakhisarai) and Chausa (Buxar) thermal power projects respectively, has filed an application on 05.05.2011 for approval of deviations in the Standard Bid Document (SBD) Case-2 based on the Guidelines for procurement of power through tariff based competitive bidding issued by Ministry of Power, Govt. of India vide notification dated 19.01.2005 and subsequent amendments thereto for the selection of successful bidder(s) to Build, Own, Operate and Maintain the Coal based thermal power projects proposed at Chausa, District-Buxar; Kajra, District-Lakhisarai and Pirpainti, District-Bhagalpur

on affidavit. At the stage of filing the petitioner, BPIC did not deposit any application fee for consideration of the petition by the Commission.

A presentation of the proposal contained in their application was made before the Commission by BPIC on 24.05.2011. During the presentation BSEB officials Shri R. P. Chaudhary, Chief Engineer Trans. (O&M) and Shri Rakesh, EEE (Inter-State), BSEB were also present. The deviations proposed were discussed in detail during the presentation and BPIC was directed to file revised proposal in light of the discussions held during the presentation.

BPIC submitted the revised proposal on 08.06.2011 for approval of the deviations separately for Chausa (Buxar), Kajra (Lakhisarai) and Pirpainti (Bhagalpur) thermal power projects proposed to be developed through tariff based competitive bidding under Case-2.

The commission discussed the revised deviations proposed by BPIC on 23.07.2011 and 04.08.2011, during which officials of BSEB and BPIC were also present. Based on the deviations, BPIC submitted the final revised proposal along with the table indicating proposed deviations.

During discussion, BPIC submitted that there is no specific provision regarding application fee in the BERC (Fees, Fines and Charges) Regulations, 2005 to be deposited to the Commission for approval of such deviations in the SBD and so BPIC has not deposited application fee with the petition. In this context, Serial No. 19 of the Schedule of BERC (Fees, Fines and Charges) Regulations, 2005 is relevant which specifies that fee for any other matters not covered under the Schedule shall be decided by the Commission. Taking into consideration the volume of work required, the Commission decided that a fee of Rs. 1, 00, 000 /- (Rupees one lakh) for proposal in respect of each project shall be deposited by BPIC.

The deviations from the SBD are discussed in detail below:

1. As per competitive bidding guidelines issued by Ministry of Power, Govt. of India, a two-stage process featuring separate Request for Qualification (RfQ) and Request for Proposal (RfP) stages shall be adopted for the bid process.

The BPIC intends to invite the bid in single stage and have proposed simultaneous submission of both Request for Qualification (RfQ) and Request for Proposal (RfP). It has been stated that this will help in reducing the total time of commissioning of the project and shall provide power to the state at an earlier time. It has been contemplated that in effect of the two-stage process the inviting of RfP follows the inviting of RfQ for the qualified bidders which will consume more time than the single stage bidding.

2. As per competitive bidding guidelines issued by Ministry of Power, Govt. of India, if fuel linkage or captive coal mine(s) are to be provided, the same should be available before the publication of RFQ. In case, bidders are required to arrange fuel, the same should be clearly specified in the RFQ.

Regarding the coal linkage BPIC has proposed to deviate from the guidelines of MoP stating that coal linkage has not been provided as yet for the three power projects. However BSEB has taken steps to get coal linkage for Chausa (Buxar) project and the procurer BSEB will be responsible for providing the fuel linkage. But in case of Kajra (Lakhisarai) and Pirpainti (Bhagalpur) power projects, the bidder has to arrange the necessary fuel for the entire term of the Power Purchase Agreement (PPA).

3. As per competitive bidding guidelines issued by Ministry of Power, Govt. of India, Rapid Environmental Impact Assessment (EIA) report should be available before issue of RfQ and requisite proposal for environment clearance shall be submitted to appropriate administrative authority for final approval before issue of RfP.

BPIC has stated that the Rapid EIA report is available but requisite proposal for environment clearance has not been submitted to the appropriate administrative authority for final approval as no coal linkage has been provided for the projects at Chausa (Buxar), Kajra (Lakhisarai) and Pirpainti (Bhagalpur). It has been stated that source of coal is a pre-condition mentioned in the Terms of Reference approved by Ministry of Environment & Forest (MOEF) for submission of EIA report and therefore the EIA report has not been submitted to administrative authority.

Taking into consideration the proposal of BPIC and justification for deviation brought before the Commission as discussed above, the Commission approves the following:

A. Single Stage Bidding

Considering the urgent need of power in the State, the Commission feels that instead of two stage bidding, single stage bidding i.e. inviting RfQ and RfP simultaneously will reduce the time. Therefore the Commission allows BPIC to invite RfQ and RfP simultaneously but the evaluation of RfQ will be done first and the RfP of bidders who qualify in RfQ shall be considered.

In respect of coal linkage, the Commission feels that it will not be proper to stop the process for procurement of power under Case-2 for want of coal linkage. In case of Chausa (Buxar) Power Project, the procurer BSEB has taken responsibility to arrange coal linkage and for the Kajra (Lakhisarai) and Pirpainti (Bhagalpur) the developer shall arrange the coal linkage.

Therefore, the Commission approves the deviation proposed by the BPIC for single stage bidding and in respect of provisions of coal linkage as stated above.

Deviations in the Guidelines of Ministry of Power, Govt. of India as proposed by BPIC and approved by the Commission are detailed at **Annexure A** of this Order.

B. Timelines

The Timelines proposed by BPIC for process of bidding to procure power under Case-2 bidding, and approved timelines by the Commission are detailed at **Annexure B** of this Order.

C. RfQ, RfP and PPA

The deviations in RfQ, RfP and PPA, due to deviations proposed by BPIC in SBD in respect of stages of bidding and coal linkage and observation/decision of the Commission are detailed at **Annexure C** of this Order.

Sd/-
(R.N. Sharma)
Member

Sd/-
(U.N. Panjiar)
Chairman

Deviations in the Guidelines of Ministry of Power, Govt. of India as proposed by BPIC and observation/decision of the Commission

The bid document is based on the standard bid documents approved by Ministry of Power, Govt. of India on 12-03-2010, which inter alia is based on the competitive bidding guidelines issued by Ministry of Power. The bid document is prepared in such a manner so as to keep the deviations as minimum as possible, without affecting the spirit of the competitive bidding.

Deviations from Competitive Bidding Guidelines

Sl. No.	Competitive bidding guidelines issued by Ministry of Power	Reference in bid document	BPIC Proposal	Justification for deviation in process	Observation / decision of the Commission
1.	Provision 3.2 (ii) Rapid EIA report should be available before issue of RfQ and requisite proposal for environment clearance shall be submitted to appropriate administrative authority for final approval before issue of RfP. Env. Clearance shall be obtained before PPA is effective	RFQ Clause 1.7	Rapid EIA report is available but requisite proposal for environment clearance has not been submitted to appropriate administrative authority for final approval as no coal linkage has been provided for the projects at Buxar, Lakhisarai and Pirpainti. It is proposed to the Hon'ble commission to approve, in light of the above consideration, the initiation of Bid process Management without submission of EIA report to MoEF.	As per the Terms of Reference issued by EAC, MOEF, the fuel linkage is a must for the submission of proposal for environment clearance. Final EIA report is ready. Proposal for Environment Clearance shall be submitted to MOEF by the seller after the source of coal is identified.	Approved
2.	Provision 3.2 (iv) Fuel Arrangements: If fuel linkage or captive coal mine(s) are to be provided, the same should be available before the publication of RFQ. In case, bidders are required to arrange fuel, the same should be clearly specified in the RFQ	RFQ Clause 1.12	<u>Buxar Thermal Power Project</u> The responsibility of providing the coal linkage for the project either during or after the bid process shall be of the procurer (BSEB).	The fuel linkage application for the projects was made in May 2008. Buxar power project has been included in 12th plan list of the projects and have received recommendations from CEA and MOP	

Sl. No.	Competitive bidding guidelines issued by Ministry of Power	Reference in bid document	BPIC Proposal	Justification for deviation in process	Observation / decision of the Commission
			<p><u>Lakhisarai & Pirpainti Thermal Power Projects</u> The bidder has to arrange necessary fuel for the entire term of the PPA.</p> <p>It is proposed that the Hon'ble commission may consider this deviation and approve the initiation of the Bid process Management without the firm fuel linkage.</p>	<p>for award of coal linkage. It is likely that the linkage may be awarded in the next Standing Linkage Committee meeting; therefore the bidding procedure may be initiated, so that the projects construction may be started in time. This may enable early commissioning of the project and hence may make the availability of power to the state.</p> <p>Section 4 notifications and Section 6 declarations under LA 1894 have been completed for entire private land.</p>	Approved
3.	<p>Provision 5.1 and annexure I For long-term procurement under these guidelines, a two-stage process featuring separate Request for Qualification (RFQ) and Request for Proposal (RFP) stages shall be adopted for the bid process under these guidelines.</p>	RFQ Clause 2.6.2	<p>It is proposed to combine the RFQ and RFP stages with simultaneous submissions in response to RFQ and RFP in separate envelopes. (It is clarified that the RFQ envelope will be opened first and evaluated. The RfP envelopes of the bidders, who qualify in the RfQ stage, shall only be opened and evaluated)</p> <p>The Hon'ble Commission may consider and approve the above deviation.</p>	<p>To reduce the timelines for commissioning of the project and thus to provide the power to the state at an early date , both RFQ & RFP stages are considered with simultaneous submission. The RFQ envelope will be opened first and evaluated. The RfP envelopes of the bidders, who qualify in the RfQ stage, shall only be opened and evaluated.</p>	Approved

Annexure- B

Proposed timelines for the bidding procedure and approved by the Commission are as below:

Timelines under Standard process	under Bidding	Proposed timelines		Observation /decision of the Commission
Date		Date	Event	Date
To		To	Commencement of Sale of Bid Documents	To
*		To + 20	Last Date of Sale of Bid Document	To + 20
*		To + 40	Last Date Submission of queries/clarifications/ amendments if any, on the RfQ/ RfP documents by the Bidders	To + 40
*		To + 45	Pre – Bid Conference	To + 45
*		To + 60	Revision of RfQ and RfP documents (if reqd.) and issuance of revised RfQ and RfP documents	To + 60
To + 150		To + 90	Bid submission and opening of Non financial bids	To + 120
*		To + 105	Opening of financial bids of qualified bidders	To + 135
To + 165		To + 125	Shortlisting of successful bidders & issue of Letter of Intent (LOI)	To + 150
To + 195		To + 150	Signing of RfP documents	To + 180

*Note: These timelines are not provided in the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees.

Annexure - C

Deviations in the Standard Bid Document (SBD) for Location and Fuel specific Project (Case 2) as proposed by Bihar Infrastructure Company Private Limited (BPIC) and Bihar State Electricity Board (BSEB) and observation/decision of the Commission

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
(A) REQUEST FOR QUALIFICATION (RfQ)				
1.		Definitions	“Bid documents” shall mean the Request for Qualification (RfQ) and RFP Documents	Approved
2.	The objective of this bidding process is to identify the Successful Bidder for supply of minimum A MW and maximum B MW of power for a period of z years. This range has been arrived at taking the gross capacity of the power station as [] MW. As per the Bidding Guidelines, the Successful Bidder shall enter into a Power Purchase Agreement (PPA) as detailed out in the Model PPA forming part of this document.	Clause 1.3	The objective of this bidding process is to identify the Successful Bidder for supply of 1125 MW of power for a period of 25 (twenty five) years. This contracted capacity has been arrived at taking the gross capacity of the power station as 1320 MW. <u>The Successful Bidder shall have the option to sell any surplus power over and above the contracted capacity to third party(ies).</u> As per the Bidding Guidelines, the Successful Bidder shall enter into a Power Purchase Agreement (PPA) as detailed out in the Model PPA forming part of this document.	Approved
3.	The Project shall be based on [insert type of fuel]. Procurers have obtained fuel linkage. (procurers to provide details of fuel linkage) or Procurer have obtained allocation of following coal mine(s) [Provide details] or	Clause 1.12	<u>For Buxar project:</u> The Project shall be based on domestic coal. The Procurer shall be responsible for obtaining fuel linkage for the power station. The Procurer has already applied for firm fuel linkage on long term for the power station and has been continuously following-up with Ministry of Coal, Ministry of Power and Central Electricity	Approved

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
	<p>Bidder has to arrange necessary fuel and shall submit a comfort letter from a fuel supplier for fuel linkage for the entire term of the PPA at the time of submission of proposal in response to the RfP. (applicable for fuel other than imported coal) or</p> <p>Bidder shall be responsible to make arrangement for the necessary quality and quantity of coal required for the term of the PPA (applicable for projects where imported coal is mandatory)</p>		<p>Authority for early consideration and issuance of the Letter of Assurance.</p> <p><u>For Lakhisarai & Pirpainti projects:</u></p> <p>The Project shall be based on coal. The responsibility for getting the fuel linkage for the power station shall be with the Seller.</p>	Approved
4.	The Normative Availability required to be met by the Bidder, over and above which incentives shall be paid, shall be 80%.	Clause 2.2.1	The Normative Availability required to be met by the Bidder, over and above which incentives shall be paid, shall be 90%.	Approved
5.	The Lead Member of the Consortium is not allowed to be changed. If the Bidding Company intends to form a Consortium after submission of the RfQ, then the Bidding Company shall be the Lead Member of such Consortium and shall fulfill all the requirements of RfQ, including technical requirements. No change in composition of a Consortium or a change from Bidding Company to Consortium or a Change in Ownership shall be permitted in the period between thirty days prior to Bid Deadline and issuance of Letter of Intent. Accordingly, no request for a proposed change in composition of a Consortium or request for approval of the Change in Ownership shall be entertained during this period.	Clause 2.5.1.4	<p><u>Replaced with the following:</u></p> <p>The Lead Member of the Consortium is not allowed to be changed after the bid submission. No change in composition of a Consortium or a change from Bidding Company to Consortium or a Change in Ownership shall be permitted.</p> <p>It is clarified that a Bidding Consortium can participate in the bidding process for the Project if any Member of the Consortium has purchased the bid document for such Project.</p> <p>Requirement relating to equity lock-in would be as specified in the RfP.</p>	Approved

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
	<p>Subject to the above and to the provisions of clause 2.5.1.6 any request for change in the membership of the Consortium or, change from Bidding Company to Bidding Consortium may be considered only upon the Bidder making a prior written application to the Procurer/Authorised Representative seeking its approval for such change. In case of a Change in Ownership, the Bidding Company or Lead Member in case of a Consortium shall make a request for approval of such change within seven (7) days of such Change in Ownership.</p> <p>Any such change may be permitted, provided that the Bidder after such change is qualified as required by the provisions of the RfQ, including technical and financial requirements and also meets the provisions of clause 2.5.1.5 and clause 2.5.1.6 .</p> <p>The Procurer/ Authorised Representative reserves the right to seek additional information from the Bidder, if considered necessary. The Procurer/ Authorised Representative shall convey its decision on the request within fifteen (15) days from the date of receipt of complete information from the Bidder making the request, as required by the Procurer/ Authorised Representative.</p> <p>It is clarified that a Bidding Consortium can participate in</p>			

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
	<p>the bidding process for the Project if any Member of the Consortium has purchased the RfQ document for such Project.</p> <p>Requirement relating to equity lock-in would be as specified in the RfP.</p>			
6.	<p>Subject to the condition that after the Change in Ownership the Bidder shall be qualified as required by the provisions of the RfQ, including technical and financial qualification, a Change in Ownership may be permitted in the following cases:</p> <p>the Bidder with any of its Affiliates</p> <p>Parent/ Affiliate (whose technical and / or financial credentials were used at the time of RfQ) with any other Affiliate of the Bidder</p> <p>Parent/ Affiliate/Ultimate Parent / Bidder with any other company provided</p> <p style="padding-left: 40px;">the company is not a Bidder for the Project ,</p> <p style="padding-left: 40px;">Parent/ Affiliate/Ultimate Parent of the company is not a Bidder for the Project,</p> <p style="padding-left: 40px;">the company is not Parent/ Affiliate/Ultimate Parent of any Bidder for the Project</p>	Clause 2.5.1.5	Omitted	Approved
7.	The Bid is to be submitted in a sealed envelope which should be transcribed in the following way;	Clause 2.7.1	Response to RFQ to be submitted in envelope – I. Response to RFP to be submitted in Envelope II & III.	<u>BERC agreed with slight modification</u>

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
	<p>“Bid for supply of power to Procurer”</p> <p>“Name of the Office”</p> <p>“Name of the Bidder ”</p>			<p><u>and approved as stated below:</u></p> <p>One sealed envelope (envelope I) containing response to RfQ and two sealed envelopes (envelope II & envelope III) containing non-financial and financial bids in response to RfP will be placed in one single envelope which will be transcribed in the following way:-</p> <p>“Bid for supply of power to Bihar State Electricity Board”</p> <p>“Name of the Office”</p> <p>“Name of the</p>

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
				<p>Bidder” Envelope I , II & III should be transcribed in the following way:</p> <p>Envelope I “Bid for Supply of power to BSEB” Bidder’s Name _____</p> <p>– Due for opening on _____</p> <p>Response to RfQ” Envelope II “Bid for Supply of power to BSEB” Bidder’s Name _____</p> <p>– Due for opening on _____</p> <p>Response to RfP: Non Financial Bid” Envelope III “Bid for Supply of power to BSEB”</p>

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
				Bidder's Name _____ – Due for opening on _____ Response to RfP: Financial Bid”
8.	All pages of the Bids submitted must be initialed by the authorised signatories on behalf of the Bidder.	Clause 2.8.2 (v)	All pages of the Bids submitted must be <u>serially numbered along with an index and be</u> initialed by the authorised signatories on behalf of the Bidder.	Approved
9.		Clause 2.8.2	<u>Substituted at (vii)</u> Bidders will be bound by all the conditions of various authorizations received for the Power Station by the Authorised Representative. The copy of that is also provided with the bid document.	Approved
10	Power of Attorney for signing of Bid	Annexure 8	Amended as enclosed in the bid documents	Approved
(B) REQUEST FOR PROPOSAL (RfP)				
11	The objective of the bidding process is to select a Successful Bidder for development of the Project as per the terms of the RfP. The Project will have a Contracted Capacity of minimum of [] MW and maximum of [] MW in accordance with the terms of the PPA.	Clause 1.3	The objective of the bidding process is to select a Successful Bidder for development of the Project as per the terms of the RfP. The Project will have a Contracted Capacity of 1125 MW in accordance with the terms of the PPA. This contracted capacity has been arrived at taking the gross capacity of the power station as 1320 MW. <u>The Successful Bidder shall have the option to sell</u>	Approved

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
			<u>any surplus power over and above the contracted capacity outside the Power Purchase Agreement.</u>	
12	The Procurer will transfer the Project site (details along with the site map enclosed in Annexure 5) to the Seller at a price of [] Crore after signing the PPA/Share Purchase Agreement (as applicable). [The same site along with all the assets builds as part of the project will be transferred back to the Procurer at the end of the term of PPA. The Bidder as part of the Bid should submit the terminal value for transferring the assets back to the Procurer at the end of the term of PPA.]	Clause 1.6	The Procurer will transfer the Project site (details along with the site map enclosed in Annexure 5) to the Seller at a price of [] Crore after <u>signing of RfP Documents, including the Share Purchase Agreement</u>	Approved with condition that price will be indicated to the potential bidders in pre bid conference or at least 15 days before the last date of submission of bid.
13	The Procurer plan to procure Contracted Capacity to the extent of [] MW to [] MW at the Delivery Point as per the terms of the PPA, and have appointed [Insert the name of the SPV] as their Authorised Representative for this purpose (insert if applicable). The [Insert the name of the SPV] in its capacity as Seller shall execute the PPA and the other RfP Project Documents (except the SPA) with the concerned parties, including the Procurer, the Procurer Banks and the Port Operator prior to the Bid Deadline. Bidders shall be provided with copies of such signed documents prior to submission of the Bids	Clause 2.1.1	The Procurer plan to procure Contracted Capacity to the extent of 1125 MW at the Delivery Point as per the terms of the PPA, and have appointed Bihar Power Infrastructure Company Pvt. Ltd. as their Authorised Representative for this purpose. This capacity has been arrived at taking the gross capacity of the power station as 1320 MW. The Successful Bidder shall have the option to sell any surplus power over and above the contracted capacity to third party(ies).	Approved
14	All Bidders are required to ensure compliance with the conditions mentioned in Format 3 of Annexure 6. In the	Clause 2.1.2	All Bidders are required to ensure compliance with the conditions mentioned in Format 3 of Annexure 6. In the event of non-	

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
	event of non-fulfillment of any of the conditions specified in Format 3 of Annexure 6, the Bid may be considered by the Procurer/Authorised Representative to be non-responsive. The Bidders are allowed to change the Unit configuration after the Effective Date as per provisions of PPA. Provided that the configuration of the Unit sizes is in accordance with the provisions of the RfP.		fulfillment of any of the conditions specified in Format 3 of Annexure 6, the Bid may be considered by the Procurer/Authorised Representative to be non-responsive.	Approved
15	A Fuel Supply Agreement has been signed between the Procurer and the fuel supplier. The same agreement has a clause whereby the Procurer has a right to assign this agreement for a specific period, within the term of the Fuel Supply Agreement (FSA) to a third party. Accordingly, the FSA will be assigned to the Selected Bidder during the term of the PPA.	Clause 2.1.3	<p><u>For Buxar Power Project:</u></p> <p>The Procurer has assumed the responsibility of obtaining fuel linkage for the power station. The Procurer has already applied for firm fuel linkage on long term for the power station and has been continuously following-up with Ministry of Coal, Ministry of Power and Central Electricity Authority for early consideration and issuance of the Letter of Assurance. On getting the Letter of Assurance for fuel linkage, the successful bidder shall be required to sign Fuel Supply Agreement as per the terms and conditions of Letter of Assurance.</p> <p><u>For Lakhisarai and Pirpainti Power Projects:</u></p> <p>The Seller shall be responsible for obtaining fuel linkage for the power station.</p>	Approved
16	Once the fuel supply agreement as per 2.1.3 has been assigned to the Seller, any penalty for not procuring the minimum guaranteed fuel shall be borne by:	Clause 2.1.3A	<p><u>In case of Buxar Project</u></p> <p>Once the fuel supply agreement as per 2.1.3 has been assigned to the Seller, any penalty for not procuring the minimum</p>	Approved

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
	<p>i) The Procurer, if the availability of the Seller's generating plant has been more than the minimum offtake guaranteed by the Procurer; and</p> <p>ii) The Seller, if the availability of Seller's generating plant has been less than the minimum availability guaranteed by the Seller.</p>		<p>guaranteed fuel shall be borne by:</p> <p>i) The Procurer, if the availability of the Seller's generating plant has been more than the minimum offtake guaranteed by the Procurer and the Procurer does not draw the minimum guaranteed offtake; and</p> <p>ii) The Seller, if the availability of Seller's generating plant has been less than the minimum availability guaranteed by the Seller.</p> <p><u>In case of Lakhisarai & Pirpainti Projects</u></p> <p>Any penalty for not procuring the minimum guaranteed fuel shall be borne by:</p> <p>i) The Procurer, if the availability of the Seller's generating plant has been more than the minimum offtake guaranteed by the Procurer and the Procurer does not draw the minimum guaranteed offtake; and</p> <p>ii) The Seller, if the availability of Seller's generating plant has been less than the minimum availability guaranteed by the Seller.</p>	
17	Conditions for change in bidding consortium after RFQ submission	Clause 2.7.3.1	No change in the Bidding Consortium or change from Bidding Company to Bidding Consortium is allowed.	Approved
18	<p>Method of bid submission:</p> <p>Envelope I – Non financial bid</p> <p>Envelope II – financial bid</p>	Clause 2.10.1	<p>Method of bid submission:</p> <p>Envelope II – Non financial bid</p> <p>Envelope III – Financial bid</p>	<u>BERC agreed with slight modification and approved as stated below:</u>

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
				<p>One sealed envelope (envelope I) containing response to RfQ and two sealed envelopes (envelope II & envelope III) containing non-financial and financial bids in response to RfP will be placed in one single envelope which will be transcribed in the following way:- “Bid for supply of power to Bihar State Electricity Board” “Name of the Office” “Name of the Bidder” Envelope I , II & III</p>

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
				<p>should be transcribed in the following way:</p> <p>Envelope I “Bid for Supply of power to BSEB” Bidder’s Name _____</p> <p>– Due for opening on _____</p> <p>Response to RfQ”</p> <p>Envelope II “Bid for Supply of power to BSEB” Bidder’s Name _____</p> <p>– Due for opening on _____</p> <p>Response to RfP: Non Financial Bid”</p> <p>Envelope III “Bid for Supply of power to BSEB” Bidder’s Name _____</p>

Sl. No.	Particulars in the Standard bid document	Reference of Clause no. in bid document	Deviations proposed by BPIC	Observation/ Decision of the Commission
				– Due for opening on _____ Response to RfP: Financial Bid”
19	The two sealed Envelopes (mentioned in Clause 2.10.1) for the Bid submitted by Bidders should be packed in a single sealed cover envelope, with the following superscript: “Bid for supply of power to Procurer/Authorised Representative” Bidder’s name _____ Due for opening on [insert date of opening of Non Financial Bid	Clause 2.10.2	As mentioned in Clause 2.10.1 of RfP	Approved
20	Cost of RFP document	Clause 2.11.2	Omitted	Approved
21	Any request for change in composition of a Consortium or change from Bidding Company to Bidding Consortium or Change in Ownership has not been permitted by the Procurer/ Authorised Representative.	Clause 3.2 (viii)	Omitted	Approved
22	Gross calorific value & price of fuel	Clause 3.3.1.3 (a) - (6) & (7)	For Buxar Power Project: GCV indicated as 3500 Kcal/Kg. Price of fuel - Price of Eastern Coal Fields, which is seven (7) days prior to the Bid Deadline	Approved

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			For Lakisarai and Pirpainti Power Projects: GCV and price are not applicable.	
23	Power of Attorney for signing of Bid	Annexure 10	Same as modified Annexure 8 to RfQ	Approved
(C) MODEL POWER PURCHASE AGREEMENT (PPA)				
24	Normative Availability Means equal to eighty per cent (80%) Availability at the Delivery Point on Contract Year basis.	Definitions	Normative Availability Means equal to Ninety per cent (90%) Availability at the Delivery Point on Contract Year basis	Approved
25	Terminal Price Payment The Terminal Price payment to be made by Procurers to Seller, as mentioned in this Article 1.1 should be paid within ten (10) days from the last day of Term of the Agreement.	Clause 2.3	Omitted	Approved
26	Appointment, roles & responsibilities of lead procurer The Procurers hereby appoint and authorise "Procurer No. XX" [Insert name of the Procurer in whose area of supply the Project is located] [hereinafter referred to as the "Lead Procurer"] to represent all the Procurers for discharging the rights and obligations of the Procurers, which are required to be undertaken by the Procurers jointly as mentioned in Schedule 12 of this Agreement. Accordingly, all the Procurers shall follow and be bound	Clause 2.5	Omitted	Approved

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	<p>by the decisions of the Lead Procurer on all such matters. Each Procurer agrees that any decision, communication, notice, action or inaction of the Lead Procurer on such matters shall be deemed to have been on its/his behalf and shall be binding on each of the Procurers. The Seller shall be entitled to rely upon any such action, decision or communication from the Lead Procurer. It is clarified that this Article 2.5 is not intended to and shall not render the Lead Procurer liable to discharge individual Tariff payments of the other Procurers.</p> <p>The Procurers hereby also appoint and authorise "Procurer No. YY" [Insert name of the Alternate Lead Procurer] (hereinafter referred to as the "Alternate Lead Procurer"), to act as Lead Procurer as per the provisions of this Article 2.5.1, on the occurrence of any Event of Default specified in Article 14.2 by the Lead Procurer. In such an event, the Seller may, at its option, within a period of fifteen (15) days from the date of issue of the Preliminary Default Notice referred to in Article 14.4.2 and if the said default by the Lead Procurer subsists, specify in writing to all the Procurers that the Alternate Lead Procurer shall thereafter act as the Lead Procurer. In such a case, if the Seller so notifies, the Alternate Lead Procurer shall, thereafter, act as Lead Procurer for the purposes of this Agreement, and the Lead Procurer earlier appointed under this Article 2.5.1 shall automatically</p>			

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	<p>cease to be the Lead Procurer. It is clarified that all decisions taken by the Procurer XX in its capacity as Lead Procurer before such change, shall continue to be valid, in accordance with this Agreement.</p> <p>In the event of Procurer YY becoming the Lead Procurer as per this Article, all the Procurers shall also appoint any of Procurers, other than Procurer XX, as an Alternate Lead Procurer and thereafter the provisions of this Article 2.5.1 shall be applicable.</p> <p>Notwithstanding anything contained above, any decision which is required to be taken by the Procurers jointly under the provisions of Article 14 shall be taken by all the Procurers and in case of difference amongst the Procurers, the said decision shall be taken by the Majority Procurers as defined in Article 2.5.3 below.</p> <p>Any decision taken by Procurers who taken together constitute minimum sixty five per cent (65%) of the Contracted Capacity of the Power Station and constitute in number atleast fifty per cent (50%) of the total number of Procurers (“Majority Procurers”), shall be binding on the Lead Procurer and all other Procurers. The Majority Procurers shall also have the right to replace the Lead Procurer by any other Procurer of their choice.</p>			
27	<p>Seller’s obligation, subsequent to signing of PPA</p> <p>The Seller agrees and undertakes to duly perform and</p>	Clause 3.1.2	<p>Seller’s obligation, subsequent to signing of PPA</p> <p>The Seller agrees and undertakes to duly perform and complete</p>	

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	complete the following activities within (i) [Insert] Months from the Effective Date or (ii) [Insert] Months from the date of issue of Letter of Intent, whichever is later, unless such completion is affected due to the Procurers' failure to comply with their obligations under Article 3.1.2A of this Agreement or by any Force Majeure event or if any of the activities is specifically waived in writing by the Procurers jointly:		the following activities within (i) <u>12</u> Months from the Effective Date or (ii) <u>12</u> Months from the date of issue of Letter of <u>Assurance for the coal linkage</u> , whichever is later, unless such completion is affected due to the Procurers' failure to comply with their obligations under Article 3.1.2A of this Agreement or by any Force Majeure event or if any of the activities is specifically waived in writing by the Procurer:	Approved for Chausa (Buxar) project. For Pirpainti (Bhagalpur) and Kajra (Lakhisarai) projects no deviation in Clause 3.1.2 is allowed
28	The Seller's obligation to build, own and operate the Project	Clause 4.1.1	<i>Seller's Obligations:</i> <i>Inserted:</i> <i>For Lakhisarai & Pirpainti Power Projects:</i> Clause 4.1.1 (b) Obtaining the fuel linkage for the Power Station and executing Fuel Supply Agreement and Fuel Transportation Agreement	Approved
29	<u>Seller's Obligation</u> obtaining (other than Initial Consents) and maintaining in full force and effect all Consents, required by it pursuant to this Agreement and Indian Law	Clause 4.1.1 (a)	<i>Sellers obligation</i> obtaining (other than Initial Consents) and maintaining in full force and effect all Consents, <u>including the open access for transmission of power</u> , required by it pursuant to this Agreement and Indian Law;	Approved
30.	<u>Procurers obligation</u> Clause 4.2 (a)	Clause 4.2	<u>Clause to be inserted in Sellers obligation</u> In case of Buxar Power Project	In case of Chausa (Buxar) Clause

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	<p>shall be responsible for procuring the Interconnection and Transmission Facilities-to enable the Power Station to be connected to the Grid System not later than the Scheduled Connection Date;</p>		<p>Clause 4.1.1 (g) shall be responsible for procuring the Interconnection and Transmission Facilities to enable the Generating Power Station (Name of the Power Station) to be connected <u>upto the Delivery Point for the supply of contracted power to the Procurer</u>, not later than the Scheduled Connection Date;</p> <p>In case of Lakhisarai & Pirpainti Power Projects</p> <p>Clause 4.1.1 (h) shall be responsible for procuring the Interconnection and Transmission Facilities to enable the Generating Power Station (Name of the Power Station) to be connected <u>upto the Delivery Point for the supply of contracted power to the Procurer</u>, not later than the Scheduled Connection Date;</p>	<p>4.2(a) will be omitted. A new clause 4.1.1(g) will be added under Seller's Obligation as follows</p> <p>Clause 4.1.1(g) "Shall be responsible for procuring the Interconnection and Transmission Facilities to enable the Generating Power Station (Name of the Power Station) to be connected <u>upto the Delivery Point for the supply of contracted power to the Procurer</u>, not later than the Scheduled Connection Date"</p> <p>In case of Kajra</p>

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				(Lakhisarai) and Pirpainti (Bhagalpur) projects the relevant clause may be modified as above.
31.	<p><u>Procurers obligation</u></p> <p>shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to the availability of transmission lines and</p>	Clause 4.2 (d)	<p><u>Procurers obligation</u></p> <p>In case of Buxar Power Project</p> <p>Clause 4.2 (d) shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station <u>beyond the Delivery Point</u>; subject to the availability of transmission lines and</p> <p>In case of Lakhisarai & Pirpainti Power Projects</p> <p>Clause 4.2 (c) shall make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station <u>beyond the Delivery Point</u>; subject to the availability of transmission lines and</p>	Approved
32.	The Seller shall not itself use any of the electricity generated by the Power Station during the term of this Agreement, except for the purpose of meeting the Power Station's auxiliary load requirements, as per the norms laid down by the Appropriate Commission, load requirements of the captive coal mine as per applicable	Clause 4.4.4	The Seller shall not itself use any of the electricity generated by the Power Station during the term of this Agreement, except for the purpose of meeting the Power Station's auxiliary load requirements, as per the norms laid down by the Appropriate Commission.	The seller shall not itself use any of the electricity generated by the power station (name of the

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	Law [Applicable in case where coal block is allocated] and housing colony for the staff.			power station) during the term of this agreement except for the purpose of meeting the power stations auxiliary load requirements as per the norms laid down by the Commission and for the housing colony for the staff.
33.	Information Regarding Interconnection Facilities The Procurers (jointly) shall provide the Seller, on a timely basis, all information with regard to the Interconnection and Transmission Facilities as is reasonably necessary to enable the Seller to design, install and operate all interconnection plant and apparatus on the Seller's side of the Interconnection Point.	Clause 5.3	Omitted	Approved
34	The Procurers shall jointly prepare and submit to the Seller a monthly progress report, in the Agreed Form, regarding the Interconnection and Transmission Facilities	Clause 5.7.1 (b)	Omitted	Approved
35	Third party sales on default by Procurers	Clause 11.5.2	Omitted	Approved

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36	For every cumulative increase/decrease of each Rupees [Insert amount] in the Capital Cost over the term of this Agreement, the increase/decrease in Non Escalable Capacity Charges shall be an amount equal to [Insert amount] of the Non Escalable Capacity Charges.	Clause 13.2 (a)	For every cumulative increase/decrease of each Rs. 17 Crores (Rupees Seventeen Crores Only) in the Capital Cost over the term of this Agreement, the increase/decrease in Non Escalable Capacity Charges shall be an amount equal to zero point two six seven percent (0.267%) of the Non Escalable Capacity Charges.	Approved
37	A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 15 for any indemnity claims made in a Contract Year only upto an amount of Rupees [Insert amount]. With respect to each Procurer, the above limit of Rupees [Insert amount] shall be divided in the ratio of their Allocated Contract Capacity existing on the date of the indemnity claim.	Clause 15.2	A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 15 for any indemnity claims made in a Contract Year only upto an amount of Rs. 6.70 Crores (Rupees Six Crores Seventy Lakhs Only).	Approved