



- (1) M/s Sterlite Energy Ltd.
- (2) M/s Lanco Power Ltd.
- (3) M/s Ganga Power & Natural Resources Ltd. (in consortium with M/s Adhunik Metalliks Ltd.)

The qualifying bids (Envelope-I) of the bidders were opened and minor clarifications were sought from the bidders. After the evaluation of the bids, bids of M/s Sterlite Energy Ltd. and M/s Lanco Power Ltd. were considered as qualified by the Bid Evaluation Committee for opening of the Envelope-II – Non-financial bids.

Subsequently evaluation of the Non-financial bids (Envelope-II) was carried out by the Bid Evaluation Committee. During the evaluation, it was observed that M/s Sterlite Energy Ltd. had submitted conditional bid. A letter was issued to M/s Sterlite Energy Ltd. to withdraw the condition of the bid. M/s Sterlite Energy Ltd. vide letter dated 23<sup>rd</sup> December, 2011 has informed that they are not withdrawing the condition mentioned in their bid. Minor clarifications with respect to the Non-financial bids (Envelope-II) were sought from M/s Lanco Power Ltd. which was duly complied by them.

As per the provisions of clause 3.2(vii) and 3.3.1.1 of RFP, conditional bids shall be non-responsive and the Envelope-III will be considered for opening only after responsive check of the Non-financial bids (Envelope-II). Therefore, the bid of M/s Sterlite Energy Ltd. was not to be considered for further evaluation. Thus there is only one responsive bid i.e. M/s Lanco Power Ltd.

BPICL has further submitted as per provision 5.7 of the Competitive Bidding Guidelines, in case bid of only one bidder remains for opening of financial bids then the matter shall be referred to the Appropriate Commission and the same may be opened after consent of the Appropriate Commission. Accordingly clause 3.3.1.1 of RFP states

that

BPICL has further stated that there are only two options for BPICL/BSEB – (1) either to go for re-bid or (2) after seeking consent of Bihar Electricity Regulatory Commission (BERC) open the single bid in view of time pressures for power starved state and also apprehensions expressed that even re-bid may not lead to enhanced competition in the present scenario. BPICL has further submitted that clause 5.7 of the Competitive Bidding Guidelines stipulates –

*“Provided however, in case Envelope III of only one Bidder remains after the responsiveness check (Step I) under Clause 3.2.1 the Envelope III of such Bidder shall not be opened and the matter shall be referred to Bihar Electricity Regulatory Commission (BERC) and the selection of the Bidder shall then be at the sole discretion of the BERC.”*

It is further mentioned in clause 3.4.1.3 of RFP that the Evaluation Committee has the right to reject any or all bids if the quoted tariffs are not aligned to the prevailing market prices.

BPICL has proposed that bid of the qualified bidder M/s Lanco Power Ltd. be considered for opening and the Commission is requested to pass appropriate order for giving consent for opening of the financial bid of single qualified bidder M/s Lanco Power Ltd.

Section 61 of the Act, provides that the Appropriate Commission shall specify the Terms and Conditions for determination of Tariff, and in doing so, shall be guided interalia, by the factors which would encourage competition, efficiency, economical use of resources, good performance of optimum investments and safeguarding of consumers’ interest.

Section 63 of the Electricity Act, 2003 (Act) provides that the Appropriate Commission shall adopt the tariff for procurement of power

by a Distribution Licensee if such tariff has been determined through transparent process of bidding in accordance with the Guidelines issued by the Central Government.

Accordingly, Ministry of Power, Government of India through Resolution No. 23/11/2004-R&R (Vol.-II) dated 19<sup>th</sup> January, 2005 (as amended from time to time) has issued the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees.

The specific objectives of these Guidelines inter-alia include promotion of competitive procurement of electricity by distribution licensees, facilitating transparency and fairness in procurement processes, protection of consumers' interest by facilitating competitive conditions in procurement of electricity. These Guidelines cover long term procurement of electricity for a period of seven years and above and medium term procurement for period of upto seven years but exceeding one year. Earlier the petitioner BPICL had indicated its intention to carry out bid process for selection of developer for 1,320 MW coal based thermal power project at Chausa, district Buxar under Case-II of Competitive Bidding Guidelines and sought deviations in the Guidelines. After seeking approval of the Commission to some deviations, BPICL invited proposal in response to the Request for Qualification (RFQ) and Request for Proposal (RFP) documents as amended with the approval of the Commission. The following three bids were received by 14<sup>th</sup> December, 2011, the last date for submission of bids.

- (1) M/s Ganga Power & Natural Resources Ltd. (in consortium with M/s Adhunik Metalliks Ltd.)
- (2) M/s Sterlite Energy Ltd.
- (3) M/s Lanco Power Ltd.

The Bid Evaluation Committee constituted for opening “(Envelope

-I) Response to RFQ” under the Chairmanship of Shri R.P. Chaudhary, Chief Engineer (Transmission), BSEB with Shri Hemant Kumar, Chief Manager, Rural Electrification Corporation (REC) Patna as outside Member opened “Envelope-I” of the three bids. The Bid Evaluation Committee recommended to seek certain clarifications from the bidders M/s Sterlite Energy Ltd. and M/s Lanco Power Ltd. and the bid of M/s Ganga Power & Natural Resources Ltd. was found non-responsive on the following grounds :-

- (i) The Power of Attorney (PoA) submitted by the bidder was incorrect, whereby the person giving authority signed in place of the person receiving the authority and vice versa.
- (ii) The Annexure 9 – 9(A): pertaining to financial requirements of the members in the consortium, 9(B): financial requirements of lead member, 9(C): Technical Requirements of bidder/Lead Member, 9(D): financial & technical requirements of parent/affiliate were not submitted by the bidder.
- (iii) The joint deed agreement signed between the members of the consortium partners do not have the common seal. Further, the board resolution for entering into the said agreement was also not submitted.
- (iv) The bid documents are not signed at all pages.

After seeking clarifications from the two bidders namely M/s Sterlite Energy Ltd. and M/s Lanco Power Ltd., the Bid Evaluation Committee constituted for opening of “(Envelope-II) – Non Financial Bid” which also included one outside Member Shri Hemant Kumar, Chief Manager, REC, Patna opened Envelope-II of the two qualified bidders. The Bid Evaluation Committee observed that in respect of Lanco Power Ltd. the blanks required to be filled in covering letter (Annexure-

9), Format-II Executive Summary and Format-III Schedule COD and Contracted Capacity (Annexure-6) were not filled.

The Bid Evaluation Committee found the non financial bid of Sterlite Energy Ltd. as non-responsive since it was a conditional bid. The following condition was inserted in the Format-1 : Bidders' Undertaking, Annexure-6 of RFP.

*“Notwithstanding anything contained herein or in our Bid or in any Bid Documents as defined in RfQ or in RfP Project Documents issued by Authorized Representative as a part of the RfP dated 16-08-2011, Bidder is submitting the Bid (the Financial Bid and Non financial Bid) subject to acceptance of the following by Authorized Representative and the Procurer prior to issuance of Letter of Intent to the Bidder (If required, post approval of relevant Government or any other relevant Authority):*

- a) Bidder will be required to comply with the obligations of Clause 2.1.3.2 and Clause 2.13 of the RfP or any other obligations of similar effect contained in any RfP Project Document, only after the date of letter of Assurance for the fuel linkage as specified in Clause 2.1.3 of the RfP.*
- b) For a period starting from the Bid Deadline and till the date of issuance of Letter of Assurance for the fuel linkage as specified in Clause 2.1.3 of the RfP, the Bid Bond, being submitted by the Bidder alongwith the Bid, will not be invoked by the Authorized representative or the Procurer, under any Clause 2.1.4 and Clause 2.12 of the RfP, for non compliance of the obligations of the Bidder as mentioned in Clause 2.1.3.2 and Clause 2.13 of the RfP or any other obligations of similar affect contained in any RfP Project Documents.*
- c) Subject to Clause 12(b) above, the Procurer and Authorized*

*Representative shall return the Bid Bond in case Letter of Assurance of the fuel linkage as specified in Clause 2.1.3 of the RfP, is not issued within one year from the Bid Deadline or any extended period as mutually agreed between the Bidder and Authorized Representative/ Procurer in writing.”*

The Bid Evaluation Committee decided that in case of M/s Sterlite Energy Ltd. a letter may be sent to withdraw the above deviation/condition from the letter of undertaking and also at all other places where it is referred. In response, M/s Sterlite Energy Ltd. submitted that Sterlite Energy Ltd. is not withdrawing the clause-12 as mentioned in para 12 of bidder's undertaking as per Format-I (Annexure-6) of RFP along with the reference of the same at other places in “Envelope-II – Non Financial Bid.”

M/s Sterlite Energy Ltd. further submitted that the authorised representative can proceed with the Bid Evaluation and open the Envelope-III – Financial Bids of parties. It was further submitted that the matter relating to withdrawal of the aforesaid clause can be discussed between authorised representative and the bidder once Envelope-III – Financial Bids are opened.

Since M/s Sterlite Energy Ltd. informed that it was not withdrawing the condition mentioned in their Non-financial (Envelope-II) therefore BPICL decided that the Sterlite Energy Ltd. was not qualified after responsiveness check. Therefore, only one bidder M/s Lanco Power Ltd. remained to be considered for opening of Envelope-III.

BPICL has requested for the consent of the Commission to the opening of the single responsive bid of Lanco Power Ltd. in view of the time-pressures for power starved State and also apprehensions expressed that even re-bid may not lead to enhanced competition at the present scenario.

The Commission appreciates that the State is in urgent need of power, however it observes that the fuel linkage for the Buxar Power Project is not available. BPICL and BSEB informed during the hearing that Ministry of Power has recommended the proposal for providing coal linkage for 1320 MW Buxar Power Project. However, considering the present scenario of availability of domestic coal, no time-frame can be anticipated for allocation of the linkage. Therefore, even if the single bid is opened and the project is allotted to the bidder, the bidder/vendor may not be able to tie-up finances and get financial closure for project unless a letter of assurance for coal linkage for the project is received from the Ministry of Coal. Recent experience of the coal based thermal power projects supplying electricity to BSEB shows that the projects are not getting supply of coal even as per the fuel supply agreement signed with Coal India. Therefore, allowing opening of single bid on the ground of urgency does not serve any purpose.

BPICL has also expressed apprehensions that even re-bid may not lead to enhanced competition in the present scenario. This apprehension is also unfounded. Presently they have only one responsive bid for consideration. If they invite fresh bid after getting some assurance of coal linkage from Coal Ministry then more responsive bids may be received.

Coming to condition mentioned by Sterlite Energy Ltd., the Commission observes that the bidder has put the condition in their Non-financial Bid (Envelope-II) on the apprehension that availability of coal linkage is uncertain and indefinite and in case coal linkage is not received for the project, the entire expenses on providing Bank Guarantee will go waste and the procurer is not going to reimburse the expenses incurred by the bidder on providing Bank Guarantee.

The Commission also observes that the single financial bid, after it is opened, may not give the competitive price on the one hand and on the other hand determination of reasonability of the price quoted by the

single bidder will be a difficult and time-taking exercise.

Since, it is an exercise for procurement of power on tariff based competitive bidding Case-2 on long term basis, it is always in the interest of the procurer as well as the consumers to whom the procurer will supply electricity that the price is decided on the basis of fair competition.

The Competitive Bidding Guidelines have been formulated under Section 63 of the Act with the specific objectives to promote competitive procurement of electricity by distribution licensees and protect consumers' interest by facilitating competitive conditions for procurement of electricity. The opening of single bid is to be considered only in case of urgency in exceptional cases.

Considering the milestones achieved for proposed Buxar power project, it does not indicate any urgency in opening of bids. The petitioner has not also been able to indicate any exceptional circumstances which demand opening of the single bid.

In view of the above, the Commission does not consider it appropriate to give consent for opening of the single bid at the cost of competitiveness.

**Sd/-**  
**(S. C. Jha)**  
**Member**

**Sd/-**  
**(R. N. Sharma)**  
**Member**

**Sd/-**  
**(U. N. Panjiar)**  
**Chairman**