CHAPTER - 3

Bid Process Management

3.1 Bidding Process

Promotion of competition is one of the key objectives of the Electricity Act, 2003. As such, identification of the Project Developers for UMPPs was to be done on tariff based bidding.

The bidding process for UMPPs involved two stages.

In the first stage called **'Request for Qualification(RFQ)',** the bidders were required to present their technical and financial capability in the prescribed formats. The bidders satisfying the minimum technical and financial criteria were eligible to participate in the second stage.

In the second stage called '**Request for proposal(RFP)',** the bidders were required to quote the tariff for 25 years from the Scheduled Commercial Operation Date and the bidder who quoted the lowest levelised tariff was declared as the successful bidder.

The bids were jointly evaluated by professional consultants (M/s. Ernst & Young) and an Evaluation Committee having PFC executives and representative of Central Electricity Authority (CEA) as members. The evaluation was overseen by an Apex Level Committee having members of the level of Chairman and Managing Director of PFC, Chairperson CEA, Principal Secretary (Energy) of power procuring States and other experts from the industry. The evaluation reports were accepted by the Board of Directors of the respective SPVs/the High Level Committee.

The SPVs invited competitive bids for six UMPPs during the period from March 2006 till March 2012 and bidding process has been completed and contracts awarded in respect of four UMPPs viz. Sasan, Mundra, Krishnapatnam and Tilaiya. Bid (RFQ) for Chhattisgarh Surguja UMPP was invited on 15 March 2010 but last date for submission of bids has been extended from time to time upto 04 June 2012. In respect of the UMPP at Sundergarh, RFQ bids were opened on 1 August 2011 and bid evaluation was in progress (March 2012).

The tariffs quoted by the bidders in the four awarded UMPPs are tabulated in ***Annexure 1***.

3.2 Appointment of bid process management Consultant

Competitive bids were invited for appointment of Consultants to assist PFC in conducting the bid process for five UMPPs. The scope of Consultants involved participation in preparation and issue of Bidding Documents (RFQ & RFP), participation in pre-bid and post-bid conferences, evaluation of Bid documents and assisting in finalizing the agreement with successful bidders. Audit found that the lowest bids of M/s. ICRA of ₹ 54.50 lakh and ₹ 44.50 lakh for Sasan and Mundra UMPPs respectively were not considered though the bidder was declared technically qualified. The work was awarded to M/s. Ernst & Young (M/s E & Y) at higher rates of ₹ 1.28 crore each on the ground that they were managing bid process of Anpara power project in Bangladesh.

Further, ICRA had quoted ₹ 54.50 lakh for Krishnapatnam UMPP. However, the consultancy job for this UMPP was awarded to M/s. E&Y at ₹ 60 lakh as against ₹ 1.28 crore first quoted by them. For Tilaiya UMPP the job was awarded to M/s. E&Y at ₹ 60 lakh without inviting any bid.

Thus, principle of equity in public procurement laid down in Rule 160 of General Financial Rules was not followed in the appointment which also resulted in extra expenditure of ₹1.68 crore.[5]

Ministry replied (December 2011 and March 2012) that there was large variation in the technical rating and prices quoted. UMPPs being a prestigious assignment, it was found prudent to have presentations from the top three bidders (ICRA, E&Y and CRISIL). Since M/s E & Y had advised on bid process management of power projects, the High Level Committee[6] found them most suitable for the assignment.

The reply is not acceptable since M/s. ICRA was technically qualified by bid evaluation committee but its offer was not considered even though their price was the lowest. Audit further noticed that PFC had to subsequently debar M/s. E & Y for a period of three years from future assignments from July 2011 due to deficiencies in

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[5] ***Difference between the offers of M/s. E & Y and ICRA. i.e. ₹ 1.28 crore x 2 – (₹ 54.50 lakh +₹ 44.50 lakh) plus 2 x (₹ 60 lakh – ₹ 54.50 lakh).***

[6] ***High Level Committee constituted by MOP had representation of State Bank of India, CEA, IDBI, IDFC and PFC.***

Bid evaluation. The Ministry has also issued a show cause notice to them for their omission and commission in the evaluation of bid documents of Sasan & Mundra UMPPs.

3.3 Bid Documentation

The bid documents for the UMPPs (RFQ and RFP) were prepared by the Consultant (M/s. E&Y) based on the 'Standard Bidding Documents' (SBDs) developed and notified (March 2006) by the MOP. It was noticed in Audit that EGOM in its meeting held on 06/07 September 2007 directed that the SBDs being utilized for UMPPs may be got vetted from a Solicitor/law consultancy firm having sufficient experience in dealing with international power sector contracts. Accordingly, two[7] legal firms were engaged for this work but on getting their divergent view on the SBDs, EGOM in its meeting held on 15 January 2010 directed that the comments of the Planning Commission, Department of Legal Affairs and Department of Economic Affairs should be obtained on SBDs. Bids for infrastructure projects of such huge magnitude had, thus, been called for on the basis of bid documents which were not vetted by the Department of Legal Affairs.

3.3.1 Softening of conditions in the Standard Bidding Documents (SBDs)

The following significant amendments were carried out in the SBDs by MOP from time to time based on feedback of the bidders and recommendations of PFC.

(i) Change in equity holding requirement of Parent/Affiliate

As per the bid criteria, a bidding company could take 100 per cent benefit of the technical and financial capability of a Parent or its Affiliates for the purpose of qualification. As per the initial bid document issued in March 2006, the equity holding requirement of such Parent/Affiliate in the bidding company was 51 per cent but after pre-bid conference with bidders, the equity holding requirement was scaled down from 51 per cent to 26 per cent in May 2006. This amended criteria was made effective in the bidding documents of all four UMPPs awarded so far. The change which was made on the request of bidders and advice of the Consultant M/s. E & Y violated the basic principles of 'ownership' and 'control' given in Accounting Standards Interpretation (ASI) 24 issued by the Institute of Chartered Accountants of India. ASI 24 defines 'control' as 'the ownership, directly or indirectly

[7] ***M/s. K.L. Gates (International Law Firm) and M/s. Fox and Mandal (Indian interface for legal vetting of the documents)***

through subsidiary(ies), of more than one-half of the voting power of an enterprise or control of the composition of the Board of Directors in the case of a company so as to obtain economic benefits from its activities'. Model RFQ document of Government of India for PPP Projects has also prescribed more than 50 percent share holding as the criteria.

The recommendation for making the amendments was sent by PFC (May 2006). Audit examined the files of MOP relating to approval of the above proposal and found that initially MOP had reservations[8] about the dilution and stated that management control should be included as a condition in addition to 26 per cent equity holding. This view was, however, changed later citing discussions held with the consultant M/s. E & Y who explained that it would be difficult to describe 'effective management control' and assured that 26 per cent shareholding meant control.

At the time of bid submission by RPL for Sasan, Mundra and Krishnapatnam UMPPs, **Reliance Energy Limited[9] (REL) had an equity holding of only 26 per cent in RPL. RPL did not have any technical or financial capability of its own and had used that of REL.**

Ministry stated (March 2012) that the bidders were required to submit an undertaking supported by Board Resolution for equity commitment in the project to enable the bidding company to draw upon the experience of the Parent/Affiliate. The Ministry further added that in all the UMPPs, the same criteria were followed for all the bidders without having any specific Developer in mind and that in no case, the bidder defaulted for want of financial and technical support of the parent/affiliate.

The reply does not take into account the fact that shareholding of 26 per cent would only enable an entity to block any special resolutions requiring three-fourth majority whereas the power to pass ordinary resolutions by way of 51 per cent shareholding is needed to draw upon the experience of the Parent/Affiliate to execute a large project.

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[8] ***File notings made by Director (Reforms & Restructuring) of MOP on the files relating to Standard Bidding Documents for UMPPs which were approved by higher officials and the Minister of Power.***

[9] ***Now called Reliance Infra Limited***

(ii) Reduction of normative availability and penalty

In the original version of SBDs (March 2006), the normative availability[10] for UMPPs was prescribed at 80 per cent. Based on the suggestions of CERC and the concern of the procuring States like Gujarat about the incentive above 80 per cent availability being too liberal, the normative availability was raised to 85 per cent in the revised Standard bidding documents issued in August 2006.

The normative availability was however, reduced from 85 per cent stipulated in the RFP issued in August 2006 to 80 per cent in September 2006 to bring down the risk of Developers. The penalty is used as a deterrent to avoid any slippages in envisaged terms and conditions by the Project Developers. However, the base for levy of penalty was also reduced from 80 per cent to 75 per cent before receiving financial bids. These two amendments were made effective in the bidding documents of all four UMPPs awarded so far. Audit observed that since the UMPPs were meant to have higher operational efficiency, reduction of both normative availability from 85 per cent to 80 per cent and penalty base from 80 per cent to 75 per cent were not in the interest of operational efficiency of UMPPs.

Ministry replied (March 2012) that as per the SBDs, the normative availability shall be aligned to the level specified in the tariff regulations of CERC prevailing at the time of bid process (which was 80 per cent). The Ministry also added that there is a need to instill confidence in the power Project Developers since they have a higher risk perception and that high performance parameters would generally lead to high cost and result in higher tariff.

The reply is not acceptable since as per amendment to the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees notified in August 2006, the normative availability shall be higher by a maximum of 5 per cent of the level specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) prevailing at the time of the bid process. In view of this, the reduction of normative availability in September 2006 was not in accordance with the Guidelines. Moreover, while revising the normative availability to 85 per cent in January 2009, CERC observed that the average availability of NTPC thermal power stations for the period 2004-05 to 2007-08 having 200 MW sets and

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[10] ***Availability means the quantum of time a power plant is able to produce electricity over a certain period divided by the amount of time in the period.***

above was in the range of around 86 to 97 per cent except Farakka thermal power station due to problem in coal supply. Therefore, reduction of normative availability from 85 per cent to 80 per cent and reduction of base for levy of penalty for UMPPs which are based on superior technology was not justified.

(iii) Dilution of equity lock-in requirements for the sponsoring entity

Equity lock-in requirement for the selected bidder in the SPV, was reduced (September 2007) from 12 years from COD to 5 years from COD for ***Krishnapatnam*** and ***Tilaiya*** UMPPs after the award of Sasan and Mundra UMPPs.

Further, the Developers were permitted to cede managerial control (i.e. equity holding can be reduced from 51 per cent to 26 per cent) in all the four UMPPs after two years of commercial operation, though the quoted tariff was valid for 25 years. A comparison of initial and revised equity lock in requirements for UMPPs is tabulated below:

UMPPs	
Initial equity lock in requirements	Revised equity lock-in requirements
(a) 51 percent up to a period of two years after COD of the power station (b) 26 percent for a period of ten years thereafter	(a) 51 per cent up to a period of two years after COD of the power station (b) 26 per cent for a period of three years thereafter

Ministry stated (January & March 2012) that equity lock-in has been ensured in the pre-COD phase of the project when the investment is to be made in the project in the form of equity and debt and that the project risk is comparatively less once the project is commissioned. Ministry further stated (March 2012) that equity lock-in provisions were changed after approval of Empowered Group of Ministers (EGOM).

UMPPs are mega projects using super critical technology and their economic, efficient and effective operations is very important throughout the 25 years of their operation by the Developers to ensure supply of energy to consumers at agreed rates. Thus, allowing the Developers to cede management control after 5 years of the COD may not be advisable since adequate backing of the sponsoring entity would be lacking for SPVs during the major part of the operational period which may adversely affect the operational performance of UMPPs resulting in non-availability of power to consumers at agreed rates. Moreover, this does not provide safeguard

against the Developer using substandard capital equipment which may breakdown frequently during the operational period after control is ceded.

In brief, some of the key conditions of the Standard Bidding Documents were diluted citing the need for increasing competition or providing comfort to the Developers. However, these measures have decreased the maintenance safeguards for the projects.

Ministry of Power informed in the Exit Conference held on 21 February 2012 that the Audit concerns would be considered in the revised Standard bidding documents which were under finalisation in the Ministry.

3.3.2 Lower networth requirement for bidders

As per Ministry of Finance guidelines, for PPP projects costing ₹ 1000 crore or more the requirement of net worth of the bidders should not be less than 15 per cent. However, in the case of UMPPs, the minimum net worth for bidders was ₹ 1000 crore or equivalent USD which was around 5 per cent of Project Cost of around ₹ 20000 crore.

Ministry stated (December 2011 and March 2012) that the qualification requirements enabled wide competition among the bidders and had a reflection in lower tariff.

Audit is of the opinion that fixing low net worth criteria involves unwarranted risk for the UMPPs.

To conclude, inappropriate dilution of SBD conditions of equity holding, normative availability/penalty, equity lock in period and low networth for bidders etc. warrant a stringent and close monitoring not only on the completion/ commissioning of the Projects but also on the efficient operation of UMPPs by the Project Developers.