



**VI. PRE CONTRACT ON IMPLEMENTATION OF THE
PROJECT PACKAGE KOSTOLAC – B POWER
PLANT PROJECT**

NOVEMBER 2010

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PRE-CONTRACT

ON IMPLEMENTATION OF THE PROJECT PACKAGE
KOSTOLAC-B POWER PLANT PROJECTS
(hereinafter referred to as the Pre-Contract)

Entered into in Beijing,

by and between:

EMPLOYER: JP ELEKTROPRIVREDA SRBIJE, Carice Milice 2, 11000 Belgrade, the Republic of Serbia, as the future Employer, represented by General Manager, Mr Dražomir Marković (hereinafter referred to as Employer),

END-USER: Thermal Power Plant and OCM Kostolac, Nikole Tesle 5-7, Kostolac, as the future End-User, represented by Mr Dragan Jovanović, Manager (hereinafter referred to as the End-User) on the one side, and

CONTRACTOR: CHINA NATIONAL MACHINERY & EQUIPMENT IMPORT&EXPORT CORPORATION (CMEC) No. 178 Guang An Men Wai Street, Beijing, 100055, China, as the future Contractor, represented by General Manager, Mr Jia Zhiqiang (hereinafter referred to as the Contractor) on the other side.

In this Pre-Contract they are jointly referred to as the Parties to the Contract.

PREAMBLE

Whereas:

1. The Government of the Republic of Serbia and the Government of the People's Republic of China signed the Agreement on Economic and Technical Cooperation in the field of infrastructure (hereinafter referred to as the Agreement) on August 20, 2009 in Beijing in order to improve their cooperation in the field of infrastructure in both countries;
2. The cooperation, as established by the Agreement, includes strengthening of cooperation in the realization of power projects;
3. Within the cooperation established in the energy sector, the Parties to the Contract have expressed their interest in implementing the Project package KOSTOLAC-B POWER PLANT PROJECTS (hereinafter referred to as the Project package).
4. According to this Pre-Contract, the Employer shall be JP Elektroprivreda Srbije, Carice Milice 2, 11000 Beograd.
5. According to this Pre-Contract, the End-User shall be the Thermal Power Plant and OCM Kostolac, founded by JP EPS.
6. According to this Pre-Contract, the Contractor shall be CHINA NATIONAL MACHINERY & EQUIPMENT IMPORT EXPORT CORPORATION (CMEC) that will carry out the construction of works and works under the Project package in the scope and in the manner defined by this Pre-Contract in line with Art 11 of the Agreement and the official recommendation of the Chinese competent authorities, with the involvement of sub-contractors from the Republic of Serbia.
7. Financing of the projects, which are the subject of this Pre-Contract, will be provided as follows:
 - a) 85% from the proceeds of the loan to be granted for the implementation of the Project package by the Chinese EXIM Bank (hereinafter referred to as EXIM Bank) under the terms and conditions of the Preferential Buyer Credit, and
 - b) 15% from own funds of JP EPS/the End-User.

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The Parties to the Contract agree to enter into this Pre-Contract in order to undertake binding obligations and to determine the terms and conditions under which they shall conclude the Contract for realization of the Project package (hereinafter referred to as the Contract) once all necessary approvals and documentation have been provided.

Article 1

The Parties to the Contract agree to stipulate, by this Pre-Contract, all essential elements of the Contract for realization of the Project package such as the subject, financing model, total value of the Project package, deadlines and other terms and conditions that have to be fulfilled in order for the Contract for realization of the Project package to be concluded, as follows:

SUBJECT Article 2

The Contractor undertakes to realize the Project package.

The Project package consists of the following individual projects

1. Rehabilitation of the two existing units, B1 and B2, 350 MW each;
2. Project of desulfurisation of the two existing units, B1 and B2, 350 MW each;
3. Project of upgrading capacity of the open cast mine DRMNO to 12 million tons a year by way of constructing a new block B3, the power of which will be defined by the Employer and the End-User in accordance with the Feasibility Study, on a turn-key basis.

The scope of works and services for the implementation of the Project package, total price of the Project package and unit prices of each individual project, deadlines, execution and other matters in connection with the realization will be defined in the Contract for realization of the Project package and individual commercial contracts.

FINANCING OF THE PROJECT Article 3

The Project package from article 2 hereof will be realized should the Eximbank within the implementation of the Agreement stipulated in item 1 of the Preamble grant the loan for Project package stipulated in article 2 hereof as follows:

- 1) 85% from the proceeds of a loan to be granted by the Chinese EXIM Bank for the realization of the Project packages under its loan policy, in line with item 7 of the Preamble of this Pre-Contract under the Framework Loan Agreement to be concluded between the Republic of Serbia and Exim Bank by April 31, 2010 based on the Contract for realization of the Project package, under the terms, that will not be less favourable than:
 - a) fixed interest rate will not exceed 3% p.a.
 - b) tenor of 15 years, and
 - c) grace period of 5 years subject to the period of realization of each individual project within the Project packages, and
- 2) 15% from own funds of JP EPS/End-User

The Parties to the Contract understand that above loan terms and conditions is subject to the approval of both Chinese Government and Eximbank.

The foreign component including supplies and services (i.e. local component and components from countries outside the Republic of Serbia and PR China) portion in the total contract price will not exceed 49% of the total value of each individual project from Art 2 hereof.

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The Parties to the Contract agree that the share of local component and components from countries outside the Republic of Serbia and PR China in the mentioned proportion of the foreign component will be proposed by the Contractor, in consultation by the End-User, subject to the approval from the Employer, for each individual project, depending on the specificities of each individual project, always provided that the total share of the local component for the entire Project package shall not exceed the amount defined in Art 6, Clause 6 hereof.

Based on the concluded individual commercial contracts for the realization of the Project package from Art 2 hereof and the Framework Loan Agreement, individual loan agreements will be entered into for each project defined in Art 2 hereof.

TOTAL VALUE OF THE PROJECT PACKAGE Article 4

This Pre-Contract specifies that the total price for the realization of the Project package from Art 2 hereof will not exceed USD 1.251.000.000,00 (say: one billion two hundred and fifty one million US dollars).

The Parties to the Contract agree that the value of services, that is, of the works from Art 2 hereof (hereinafter referred to as the Price) will be defined by the Contract for realization of Project packages and individual commercial contracts for each individual project.

IMPLEMENTATION PERIOD Article 5 (Left to Tech Engineers)

Unless the Parties to the Contract agree otherwise, the Contractor shall execute the Project package from Art 2 hereof, including trial run and commissioning, within the following periods or deadlines:

1. The time for completion of Rehabilitation of units B1 and B2 shall be 30 months calculated from effective date of its commercial contract.
2. The time for completion of Project of desulfurisation of B1 and B2 shall be 30 months calculated from effective date of its commercial contract.
3. The deadline of Project of upgrading capacity of the Drmno mine and construction of a new unit B3 shall be the end of 2015.

The exact dates of the commencement of works, completion of works and commissioning will be set forth for each project by the Contract for realization of the Project package and individual commercial contracts for each individual project from Art 2 hereof.

OBLIGATION OF THE CONTRACTOR Article 6

The Contractor shall:

1. submit its technical bid for all projects from Art 3 hereof by January 31, 2010. at the latest;
2. submit its commercial bid for all individual projects from Art 2 hereof, with detailed implementation plan for individual projects, by February 15, 2010. at the latest;
3. prepare all the documents necessary for the submission of the application for loan with EXIM Bank by February 1, 2010. at the latest and shall submit it to the Employer;
4. make „best efforts“ in terms of obtaining the loan from EXIM Bank under the terms and conditions defined in Art 3 hereof;
5. make every effort to have the Contract for realization of the Project packages concluded by the end of March 2010;
6. in the course of execution of individual commercial contracts from Art 2 hereof, apart from other obligations to be stipulated by these contracts, the Contractor shall subcontract only sub-suppliers that

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have their seat in the Republic of Serbia and that are recommended by the Ministry of Mining and Energy of the Republic of Serbia, Employer and End-User and that are qualified, as shall be determined by Contractor, and shall use material and other assets required for the implementation of projects from Art 2 hereof, in the amount not exceeding 40% of the total value of the Project package defined in Art 4 hereof, however, this percentage can be either higher or lower depending on the nature of each individual project;

7. The Project package from Article 2 hereof shall use Chinese and/or international codes and standards proposed by the Contractor.
The applied Chinese and/or international codes and standards will have to be adjusted in accordance with Serbian laws and regulations, by the Contractor.
The Parties to the contract will, before the signing of the each individual commercial contract, agree the mechanism which ensure the Contractor has provided evidence that the standards to be applied have been adjusted in accordance with Serbian laws and regulations.
8. not enter into subcontracts with subsuppliers from the Republic of Serbia that have not been recommended by the Ministry of Mining and Energy of the Republic of Serbia, Employer and End-User;
9. comply with the agreed schedule of its activities and shall make every effort to complete its activities within the set time period, and shall observe the applicable regulations of the Republic of Serbia, so that the realization of the Project package will be done in the fastest and the most effective way.

OBLIGATIONS OF THE EMPLOYER AND THE END-USER

Article 7

The Employer and the End-User shall:

1. apply for the loan with EXIM Bank by February 15, 2010;
2. coordinate the realization of the Project package from Art 2 hereof at all stages of the implementation;
3. consider any requests of the Contractor in connection with the realization of the Project package within a reasonable time and submit their answers in writing;
4. make „best efforts“ to have the Contract for realization of the Project package concluded by end of March 2010;
5. obtain all permits and approvals from competent bodies of the Republic of Serbia that are necessary for the implementation of projects from Art 2 hereof;
6. meet the agreed time schedule for their activities and make every effort to execute such activities within the set time period, complying with the applicable regulations of the Republic of Serbia so that the implementation of the Project package is done in the fastest and most effective way;
7. not enter into Pre-Contracts with other Chinese companies for the purpose of implementation of the Project package from Art 2 hereof, during its validity.

TERMINATION

Article 8

The Employer and the End-User have the right to terminate this Pre-Contract in the following cases:

1. if the technical bid from Art 6 hereof is not acceptable to the Employer and/or the End-User;
2. if the Contractor, on the one side, and the Employer and the End-User, on the other side, do not reach agreement on the terms and conditions of the commercial bid of the Contractor for any individual project from Art 2 hereof;
3. if the the Parties to the Contract do not reach agreement on the wording of the Contract for realization of the Project package;
4. if EXIM Bank does not grant the loan for financing the Project package in accordance with Art 3 hereof
5. if the Contractor fails to fulfil any obligations from Art 6 hereof,

by sending the Contractor notice in writing stating the reasons for termination of this Pre-Contract.

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EFFECTIVENESS

Article 9

This Pre-Contract shall enter into force when the following conditions have been cumulatively met:

1. when it is signed by the authorized representatives of the Parties to the Contract,
2. when it is approved by competent bodies of the Employer and End-User, and
3. when it is verified, that is, when approval is given by the Government of the Republic of Serbia.

The Effective date of this Pre-Contract shall be the date of the last issued approval.

MISCELLANEOUS

Article 10

This Pre-Contract can be amended and modified only if all the Parties to the Contract have expressed their consent in writing in the form of Annex hereto.

Article 11

During the performance of this Pre-Contract, any communication between the Parties to the Contract shall be made in English and in writing.

Article 12

This Pre-Contract shall cease to be valid on the date of effectiveness of the Framework Loan Agreement from Art 3 hereof or on the date of termination of this Pre-Contract in accordance with Art 8 hereof.

Article 13

This Pre-Contract shall not be binding on the Parties to the Contract if the circumstances prevailing at the time of its conclusion have changed to such an extent that it would not have been concluded if such circumstances had existed at that time.

Article 14

The Parties to the Contract waive any claim for material damage or any other type of compensation and shall not institute court proceedings in the event of expiry and/or termination of this Pre-Contract for reasons listed in Art 8 and Art 13 hereof.

Article 15

This Pre-Contract is made in English in 6 (six) identical copies; Parties to the Contract shall keep 2 (two) copies each.

EMPLOYER

CONTRACTOR

END-USER

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