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RESOLUTION

No. 23/11/2004-R&R (Vol.VI)

Amendment to the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees

The guidelines for determination of tariff by bidding process for procurement of power by Distribution Licensees have been notified under the provisions of section 63 of the Electricity Act, 2003 vide resolution No. 23/11/2004-R&R (Vol.II) published in the Gazette of India (Extraordinary) (Part I – section 1) on 19th January, 2005. These guidelines have been amended thrice vide gazette resolution No. 23/11/2004-R&R (Vol-IV) dated 30th March, 2006, resolution No. 23/11/2004-R&R (Vol-V) dated 18th August, 2006 and resolution No. 23/11/2004-R&R (Vol-VI) dated 27th September, 2007.

2. The following further amendments are hereby made in the said guidelines namely:-

2.1 **The following paragraph is added at the beginning of clause 2.1:**

Section 10 of the Electricity Act provides that a generating company may supply electricity to any licensee in accordance with the Act and rules and regulations made there under and may, subject to the regulations made under sub-section (2) of Section 42, supply electricity to any consumer. The National Electricity Policy stipulates that a part of new generating capacity, say fifteen percent (15%) may be sold outside long-term PPAs in order to promote market development. The Tariff Policy (as amended in March 2008) also provides for hydro electricity projects to have their tariffs determined by the Appropriate Commission provided inter-alia, it has long-term PPA for at least sixty percent (60%) of the total saleable design energy of the project. The sale of electricity outside long-term PPAs is usually for a period less than one (1) year.

2.2 **The following paragraph is added after the Explanation in clause 2.1:**

As and when considered appropriate, the Central Government would issue the guidelines for procurement of electricity for a period of less than one (1) year under the provisions of Section 63 of the Electricity Act. Those guidelines would be applicable to the electricity to be procured outside the long-term PPA as stipulated, from time to time, in the National Electricity Policy and Tariff Policy.

2.3 The following paragraph is added at the end of clause 2.2:

However separate RFP shall be used for procuring base load or peak load or seasonal load requirements as the case may be.

2.4 The sub-clause (iii)(b) of clause 3.1 is replaced by the following:

For the transfer price of fuel, in case of fuel specific procurement enquiry, if such price has not been determined by government, the concerned government-owned coal company, government approved mechanism or a fuel regulator (under Case 2).

2.5 The first paragraph of clause 3.2 is replaced by the following:

(I) In order to ensure timely commencement of supply of electricity being procured and to convince the bidders about the irrevocable intention of the procurer, it is necessary that various project preparatory activities are completed in time. For long-term procurement for projects for which pre-identified sites are to be utilized (Case 2), the following project preparatory activities should be completed by the procurer, or authorized representative of the procurer, simultaneously with bid process adhering to the milestones as indicated below:

2.6 The following paragraph is added at the end of clause 3.2:

(II) In Case-1 procurement, to ensure serious participation in the bid process and timely completion of commencement of supply of power, the bidder, in case the supply is proposed from a station to be set-up, should be required to submit along with its bid, documents in support of having initiated specific actions for project preparatory activities in respect of matters mentioned in (i) to (v) below.

- i) Site identification and land acquisition: Requirement of land would be considered as indicated in the proposal filed with the competent authority for seeking environmental clearance. The Bidder should have acquired and taken possession of at least 50% of the area of the land. In case of land to be acquired under the Land Acquisition Act 1894, the Bidder shall submit copy of notification issued for such land under Section 4 of the Land Acquisition Act 1894. In all other cases, the Bidder shall furnish documentary evidence in the form of certificate by concerned and competent revenue / registration authority for the acquisition / ownership / vesting of the land. These evidences shall be supported by a sworn affidavit from the developer listing the total land acquired for the power station.
- ii) Environmental clearance for the power station: The Bidder shall have submitted the requisite proposal, for the environmental clearance, to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.

- iii) Forest Clearance (if applicable) for the land for the power station: The Bidder shall have submitted the requisite proposal, for the forest clearance, to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.
- iv) Fuel Arrangements: Fuel arrangements shall have to be made for the quantity of fuel required to generate power from the power station for the total installed capacity of for the term of the PPA.
 - In case of domestic coal, the Bidder shall have made firm arrangements for fuel tie up either by way of mine allocation or fuel linkage
 - In case of imported coal, the Bidder shall have either acquired mines having proven reserves for at least 50% of the quantity of coal required OR shall have a fuel supply agreement for at least 50% of the quantity of coal required for a term of atleast five (5) years or the term of the PPA, which ever is less
 - In case of domestic gas, the Bidder shall have made firm arrangements for fuel tie up by way of long term fuel supply agreement
 - In case of RLNG, the Bidder shall have made firm arrangements for fuel tie up by way of fuel supply agreement for at least 50% of the quantity of fuel required for a term of atleast five (5) years or the term of the PPA, which ever is less.
- v) Water linkage: The Bidder shall have acquired approval from the concerned state irrigation department or any other relevant authority for the quantity of water required for the power station.

If the Bidder is a trading licensee, it shall have executed exclusive power purchase agreement(s) for the quantity of power offered in its Bid and shall provide a copy of the same as part of its Bid. In such a case, the Bidder shall ensure that the entity with whom it has executed the exclusive power purchase agreement for supply of power under the bid process has completed the project preparatory activities as mentioned in (i) to (v) above. Furthermore, the Bidder shall be responsible for procuring from the entity developing the power station and submitting in its Bid, all the documentary evidence to establish that the project preparatory activities as in (i) to (v) above have been completed. In case of supply being proposed from an existing generating station, the Bidder should submit evidence in the form of a declaration sent to RLDC/SLDC, as the case may be, in support of commercial operation of the generating station.

2.7 **The clause 4.1 is replaced by the following:**

For procurement of electricity under these guidelines, tariff shall be paid and settled for each payment period (not exceeding one month). A multi-part tariff structure featuring separate capacity and energy components of tariff shall ordinarily form the basis for bidding.

Procurement under case-2 where procurer offers a captive fuel source (such as captive coal mine) for concurrent development and use for power production covered under the procurement query would also have a multi-part tariff structure featuring separate capacity and energy components of tariff.

2.8 Second proviso to be added in clause 4.3:

Provided further that the foreign exchange rate variation would be permitted in the payment of energy charges [stipulated in para 4.11 (iii)] if the bidder chooses to supply power using imported coal or imported gas (RLNG) for long term procurement under Case-1.

2.9 The clause 4.4 is replaced by the following:

Capacity charge shall be paid based on actual availability, as per charges quoted in Rs/kwh and shall be limited to the normative availability. The normative availability for Case-1 and thermal stations shall be a maximum of 85%. For hydro electric stations under case-2, the normative availability shall be at the level of normative annual plant availability factor as specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) prevailing at the time of the bid process. The capacity component of tariffs may feature separate non-escalable (fixed) and escalable (indexed) components. The indices to be adopted for escalation of the escalable component shall only be Wholesale Price Index (WPI), Consumer Price Index (CPI) or a combination of both WPI and CPI and the Base year shall be specified in the bid document.

2.10 Clause 4.5 is replaced by the following:

Capacity charges for availability beyond the normative availability shall be a pre-specified percentage of the non-escalable component of the capacity charges. The percentage applicable shall be specified in the RFP, and shall be limited to a 40% of the non-escalable component of the capacity charges. The procurer shall have first right of refusal on energy generated beyond normative availability. In case actual availability is less than the normative availability, capacity charges shall not be payable for the shortfall compared to the normative availability. In case availability is lower than a predetermined level (which is identified in the RFP and may be about 5% below normative availability), penalty at the rate of 20% of the capacity charge shall also be applicable to the extent of the shortfall in availability below such predetermined level.

2.11 The sub-clause (iii) of clause 4.11 replaced by the following:

In cases where the procurer mandates use of imported fuel for use in a coastal power station in Case-2 procurement query or where the bidder chooses to supply from a

power station using imported fuel under Case-1, the bids may be invited for base energy charge for the first year to be escalated as per the indices identified in the RFP. Such energy charge would have following three components:

- (a) Imported fuel component in US Dollars/unit.
- (b) Transportation of fuel component in US Dollars/unit.
- (c) Inland fuel handling component in Indian Rupees/unit

2.12 The following sub-clause (iv) to be added after sub-clause (iii) of clause 4.11:

- (iv) In case of linkage-based domestic coal/gas/imported fuel based projects, involving substantial inland transportation, a separate escalation component for inland transportation in Rupees / unit would be applicable.

Each of these components in (iii) and (iv) above may have separate non-escalable (fixed) and escalable (indexed) sub-components. The escalation indices for escalable sub-components of these components would be as notified by the CERC under para 5.6(vi).

It is clarified that the bidders would have option to quote firm energy charge rates for each of the years of the contract.

2.13 Clause 4.13 is replaced by the following:

In case a procurer invites bids of hydro power under Case 2, the hydrological risk shall be borne by the Procurer, provided the hydrological data of such a project is based on authentic sources and is known to the parties in advance. Any hydrological advantages under Case 2, resulting in energy availability beyond the design energy shall be passed on to the Procurer without any charge. In case a bidder offers hydro power under Case 1, the hydrological risk shall be borne by the Bidder. The geological risk for the hydro project in both Case 1 and in Case 2 shall be borne by the developer.

2.14 Clause 4.15 is replaced by the following:

In cases where the procurement process permits bidders to submit combined capacity and energy charges, the charges proposed shall be firm for each of the years of the term of the Power Purchase Agreement (PPA), and no escalation of tariff shall be permitted over and above the rates quoted by the seller in the price bid.

2.15 In Clause 5 after heading “Bidding Process” the words “Two-stage process” stands deleted.

2.16 Clause 5.1 is replaced by the following:

For long-term procurement under Case 2, 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. The procurer may, at his option, adopt a single stage tender process for long term or medium term procurement under Case 1, combining the RFP and RFQ processes. However, as specified earlier in para 2.2, the Procurer shall adopt separate RFP processes for procuring base load or peak load or seasonal load requirements, as the case may be. Procurer or authorized representative shall prepare bid documents including the RFQ and RFP (only RFP in single stage process) in line with these guidelines and standard bid documents.

2.17 Clause 5.2 is replaced by the following:

The procurer shall publish a RFQ (RFP in single stage process) notice in at least two national newspapers, company website and preferably in trade magazines also to accord it wide publicity. The bidding shall necessarily be by way of International Competitive Bidding (ICB). For the purpose of issue of RFQ (RFP in single stage process) minimum conditions to be met by the bidder shall be specified by the procurer in the RFQ (RFP in single stage process) notice.

2.18 The first sentence of clause 5.4 and its sub-clause (i) is replaced by the following:

Standard documentation to be provided by the procurer in the RFQ (RFP in single stage process) shall include,

(i) Definition of Procurer's requirements, including:

- Quantum of electricity proposed to be bought in MW. To provide flexibility to the bidders, this may be specified as a range, within which bids would be accepted. Further, the procurer may also provide the bidders the flexibility to bid for a part of the tendered quantity, subject to a given minimum quantity;
- The procurer shall specify the nature of load requirement (either base load or seasonal load or diurnal load), the duration in months for which proposed power is being contracted for seasonal procurement, and duration in hours for which power is proposed to be contracted for diurnal requirement;
- Term of contract proposed: As far as possible in Case 2, it is advisable to go for contract coinciding with life of the project in case of long term procurement. The bidder shall be required to quote tariff structure for expected life of the project depending upon fuel proposed by him. The expected life project is estimated to be 15 years for gas/liquid fuel based projects, 25 years for coal based projects and 35 years for hydro projects. In Case 1, the procurer shall be free to specify the term of the contract for a specific bid process irrespective of the source of supply of power.
- Normative availability requirement to be met by seller (separately for peak and off-peak hours, if necessary);
- Definition of peak and off-peak hours, if relevant for the procurement query;

- Expected date of commencement of supply;
- Point(s) where electricity is to be delivered;
- Wherever applicable, the procurer may require construction milestones to be specified by the bidders;
- Financial requirements to be met by bidders including minimum net-worth etc with necessary proof of the same as required in the bid documents.

2.19 Clause 5.5 is replaced by the following:

RFP shall be issued to all bidders who have qualified at the RFQ stage in a two-stage bidding process. In case the bidders seek any deviations and the procurer finds that the deviations are reasonable, the procurer shall obtain approval of the Appropriate Commission before agreeing to the deviations. The clarification/revised-bidding document shall be distributed to all who had bought the RFP document informing about the deviations and clarifications and an intimation shall also be sent to the Appropriate Commission. Final PPA shall also be displayed on the website of the procurer. Wherever revised bidding documents/amendments are issued, the procurer shall provide bidders at least sixty (60) days in case of two stage bidding process and at least forty-five (45) days in case of a single stage bidding process after issue of such documents for submission of bids. However, a lesser time may be given for submission of RFP bids after any such revision/amendments in the RFP documents, with the written consent of all the pre-qualified bidders who have bought the RFP.

2.20 The sub-clause (ii) of clause 5.6 is replaced by the following:

PPA proposed to be entered with the selected bidder.

The model PPA proposed in the bidding documents may be amended based on the inputs received from the interested parties, and shall be provided to all parties responding to the RFP. No further amendments shall be carried out beyond the RFP stage;

2.21 The sub-clause (iii) of clause 5.6 is replaced by the following:

Payment security to be made available by the procurer.

The payment security indicated in the bidding documents could be modified based on feedback received during the bid process and as specified in the bid documents. However no further amendment to payment security would be permissible beyond the RFP stage.

2.22 The second paragraph of sub-clause (iv) of clause 5.6 is replaced by the following:

For the purpose of bid evaluation in cases other than where a captive fuel source is offered, escalation rate, as notified by the CERC from time to time on the basis of historical data, of the relevant fuel index (as identified in the RFP) in the international market or domestic market as the case may be, shall be used for escalating the energy charge (or the derived energy charge in cases referred to in

clause 4.2) quoted by the bidders. The provisions of clauses 4.11(iii) and (iv) would also apply to evaluation of bids in cases where the procurer mandates use of imported fuel for coastal power stations. However, in cases where the bidder quotes firm energy charges for each of the years of proposed supply, the energy charges proposed by the bidder shall be adopted for bid evaluation.

2.23 Sub-clause (vi) of clause 5.6 is replaced by the following:

Following shall be notified and updated by the CERC every six months:

1. Escalation rate for domestic coal. (Separately for evaluation and payment)
2. Escalation rate for domestic gas. (Separately for evaluation and payment)
3. Escalation rates for different escalable sub-components of energy charge for plants based on imported coal. (Separately for evaluation and payment)
4. Escalation rates for inland transportation charges for coal (Separately for evaluation and payment)
5. Escalation rates for inland transportation charges for gas (Separately for evaluation and payment)
6. Escalation rate for different escalable sub-components of energy charge for plants based on imported gas. (Separately for evaluation and payment)
7. Inflation rate to be applied to indexed capacity charge component.
8. Inflation rate to be applied to indexed energy charge component in cases of captive fuel source.
9. Discount rate to be used for bid evaluation.
10. Dollar-Rupee exchange variation rate. (For the purpose of evaluation)
11. Escalation for normative transmission charges (For the purpose of evaluation)

2.24 Clause 5.14 is replaced by the following:

In the case of procurement under Case-1,

(i) the bidder shall quote the price of electricity at the interconnection point, i.e., being the point where the electric lines of the generating station connect to inter/intra state transmission network. For the purposes of standardisation in the process of bid evaluation, the tariffs shall be compared at the delivery point, i.e., the interface with the STU network in the procurer's state where power is delivered to the procurers. For generation source in the state of the procurer, the delivery point shall be the generation switchyard. Bid evaluation shall duly consider normative transmission charges, if any, from the injection point, i.e., the CTU interface point, to the delivery point with respective escalations provided by the CERC. Transmission losses from the interconnection point to the delivery point, as specified by the Appropriate Commission shall also be considered for evaluation and reflected in the final levelised tariff;

ii) actual transmission charges, as specified by the Appropriate Commission, from the injection point to the delivery point shall be borne by the procurers. Charges up to the injection point shall be borne by the bidder.

2.25 Clause 5.16 is replaced by the following:

In case there is any deviation from these guidelines, the same shall only be with the prior approval of the Appropriate Commission. The Appropriate Commission shall decide on the modifications to the bid documents within a reasonable time not exceeding 90 days.

2.26 Clause 5.19 is replaced by the following:

In the single stage bid process, a minimum period of 75 days shall be allowed between the issuance of RFP documents and the last date of bid submission. The timetable for the bid process is indicated in Annexure-II. In normal circumstances, the bid process is likely to be completed in a period of 120 days.

The Procurer may give extended timeframe than indicated in the Annexure-II. However, if the bidding process is likely to take more than 195 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

2.27 Clause 6.1 is replaced by the following:

The PPA shall be signed with the selected bidder/SPV (after its acquisition by the selected bidder under Case-2) consequent to the selection process in accordance with the terms and conditions as finalized in the RFP bid documents.

For cases referred to in clause 3.4 of these Guidelines, the PPA and other project documents may be executed by the SPV and the concerned parties prior to the last date of submission of RFP bids.

2.28 Clause 6.2 is replaced by the following:

After the conclusion of bid process, the Evaluation Committee constituted for evaluation of RFP bids shall provide appropriate certification on conformity of the bid process evaluation according to the provisions of the RFP document. The procurer shall provide a certificate on the conformity of the bid process to these guidelines.

2.29 The annexure-II of the existing guidelines is being replaced by the following:

Annexure-II: Time Table for single stage bid process

Sl. No.	Event	Activities to be completed by the Bidder prior to submission of Bid	Elapsed Time from Zero date
1.	Date of issue of RFP		Zero date
2.	Bid clarification, conferences etc. & revision of RFP		**
3.	RFP Bid submission	<ul style="list-style-type: none"> - Land: Should have acquired and taken possession of at least 50% of area of land. Section 4 notification shall be submitted in case land is acquired under the Land Acquisition Act, 1894. - Environmental clearance: Requisite proposal for the environmental clearance to the concerned authority should have been submitted - Forest Clearance(if required): Requisite proposal for the environmental clearance to the concerned authority should have been submitted. - Fuel Arrangement: Fuel arrangements by way of mine allocation/fuel linkage/fuel supply agreements should be available - Water linkage: Approval from the concerned state irrigation department or any other relevant authority should be available. 	75 days
4.	Evaluation of bids and issue of LOI		100 days

Sl. No.	Event	Activities to be completed by the Bidder prior to submission of Bid	Elapsed Time from Zero date
5.	PPA becomes effective: Signing of Agreements: i) Power purchase agreement, escrow agreement, hypothecation agreement and any other agreement as applicable (if these have not been already signed under clause 3.4). ii) Signing of share purchase agreement and transfer of SPV, if applicable.		120 days

** In case of any change in RFP document, the procurer shall provide bidders additional time in accordance with clause 5.5.

Note: It is clarified that if the procurer gives extended time for any of the events in the bidding process, on account of delay in achieving the activities required to be completed before the event, such extension of time shall not in any way be deviation from these Guidelines. However, if the bidding process under Case-1 procurement is likely to take more than 195 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

(Malay Shrivastava)
Director

