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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

1. The guidelines for determination of tariff by bidding process for procurement of power by Distribution Licensees were 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 were amended vide gazette resolution No. 23/11/2004-R&R (Vol-IV) dated 30th March, 2006 and No. 23/11/2004-R&R (Vol-V) dated 18th August, 2006.
2. The following further amendments are hereby made in the said guidelines namely:-
 - 2.1 The following explanation is added after sub-clause (b) of clause 2.1:

Explanation: For the purpose of these Guidelines, the term ‘Procurer(s)’ shall mean, as the context may require, the distribution licensee(s), or the authorised representative of the licensee(s) or a Special Purpose Vehicle (SPV) constituted for the purpose of carrying out the bidding process. SPV shall be a company established under the Indian Companies Act 1956, authorized by the distribution licensee(s) to perform all tasks for carrying out the bidding process in accordance with these Guidelines. The distribution licensee(s) may also entrust initial project preparation activities (proposed to be undertaken before completion of the bid process) to the SPV. The SPV may be transferred to the successful bidder selected pursuant to the bid process.

- 2.2 The first para of clause 2.4 is replaced by the following:

Procurement by more than one distribution licensee through a combined bid process shall be permitted and in such a case the Procurers shall have the option to conduct the bid process through an authorized representative. The authorized

representative may be one of the procurers or for Case 2, a special purpose vehicle (SPV) may be incorporated for such purpose. For such combined procurement, each procurer shall provide the necessary information required as per these guidelines. To ensure standardization in evaluation of bids, the payment security and other commercial terms offered to the bidders by the various procurers shall not vary. The price offered by the bidders shall also be the same for the distribution licensees inviting the bid.

2.3 Sub-clause (a) of clause 3.1(iii) is replaced by the following:

(a) For the quantum of capacity / energy to be procured, in case the same is exceeding the projected additional demand forecast for next three years following the year of expected commencement of supply proposed to be procured. Such demand forecast shall be based on the latest available (at the time of issue of RFQ) Electric Power Survey published by Central Electricity Authority. (Both for **Case 1** and **Case 2**).

2.4 Clause 3.2 is replaced by the following:

3.2 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 from hydroelectric projects or 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:-

- (i) Site identification and land acquisition: If land is required to be acquired for the power station, the notification under section 4 of the Land Acquisition Act, 1894 should have been issued before the publication of RFQ. The notification under section 6 of the Land Acquisition Act, 1894 should have been issued before the issue of RFP. If the provisions of section 17 of the Land Acquisition Act, 1894 regarding emergency have not been applied, the Award under the Land Acquisition Act should have been declared before the PPA becomes effective.
- (ii) Environmental clearance for the power station: Rapid Environmental Impact Assessment (EIA) report should be available before the publication of RFQ. Requisite proposal for the environmental clearance should have been submitted before the concerned administrative authority responsible for according final approval in the Central/ State Govt., as the case may be, before the issue of RFP.

Environmental clearance should have been obtained before PPA becomes effective.

- (iii) Forest Clearance (if applicable) for the land for the power station: Requisite proposal for the forest clearance should have been submitted before the concerned administrative authority responsible for according final approval in the Central/ State Govt., as the case may be, before the issue of the RFP.
- (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 RFQ.
- (v) Water linkage : It should be available before the publication of RFQ.
- (vi) Requisite Hydrological, geological, meteorological and seismological data necessary for preparation of Detailed Project Report (DPR), where applicable: These should be available before the issue of RFP. The bidder shall be free to verify geological data through his own sources, as the geological risk would lie with the project developer.

The project site shall be transferred to the successful bidder at a price to be intimated at least 15 days before the due date for submission of RFP bids.

2.5 The following clause 3.4 is inserted below clause 3.3 :

3.4 In the case of projects under Case 2 from which more than one distribution licensees located in different States intend to procure power by carrying out bidding process through a SPV, the PPA and other required project agreements (such as escrow agreement, hypothecation agreement and other project specific agreements) may be entered into between the concerned parties prior to the last date of submission of the RFP bids with the proviso that these agreements shall be effective from the date of acquisition of the SPV by the successful bidder.

2.6 Clause 5.5 is replaced by the following:

5.5 RFP shall be issued to all bidders who have qualified at the RFQ stage. 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 two months after issue of such

documents/amendments 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.

2.7 The second para under 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 clause 4.11(iii) 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.

2.8 Sub-clause (v) of clause 5.6 becomes replaced by the following:

(v) The RFP shall provide the maximum period within which the selected bidder must commence supplies after the PPA becomes effective, subject to the obligations of the procurer being met. This shall ordinarily not be less than four years from the date of the PPA becoming effective in case supply is called for long term procurement. The model PPA which forms a part of the RFP documents shall also specify the liquidated damages that would apply in the event of delay in supplies.

2.9 Clause 5.18 is replaced by the following:

5.18 In the two stage bid process, (i) a minimum period of 45 days shall be allowed between the publication of RFQ and last date of submission of responses to RFQ and (ii) a minimum period of 150 days shall be allowed between the issuance of RFP and the last date of RFP bid submission.

Subject to the completion of necessary milestones in respect of project preparatory activities as given in clause 3.2 of these guidelines, the timetable for the bid process is indicated in Annexure-I. In normal circumstances, the bid process is likely to be completed in a period of 270 days.

The Procurer may give extended timeframe than indicated in the Annexure-I. However, if the bidding process is likely to take more than 730 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

2.10 Clause 5.19 is replaced by the following:

5.19 In the single stage bid process a minimum period of 150 days shall be allowed between the issuance of RFQ/ 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 195 days.

The Procurer may give extended timeframe than indicated in the Annexure-II. However, if the bidding process is likely to take more than 450 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

2.11 Clause 6.11 is replaced by the following:

6.1 The PPA shall be signed with the selected bidder/SPV (after its acquisition by the selected bidder) 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.

2.12 Clause 6.12 is replaced by the following:

6.2 After the conclusion of bid process, the Evaluation Committee constituted for evaluation of RFP bids shall provide appropriate certification on conformity of the bid 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.

2.13 Clause 6.13 is replaced by the following:

6.3 For the purpose of transparency, the procurer shall make the bids public by indicating all the components of tariff quoted by all the bidders, after signing of the PPA or PPA becoming effective, whichever is later. While doing so, only the name of the successful bidder shall be made public and details of tariffs quoted by other bidders shall be made public anonymously. The procurer shall also make public the PPA signed in accordance with clause 6.1.

For above purpose, a notice will be published in at least two national newspapers and full details shall be posted on the website of the procurer for at least thirty days.

2.14 Clause 6.14 is replaced by the following:

6.4 The signed PPA along with the certificates provided by the evaluation committee and by the procurer as provided in clause 6.2 shall be forwarded to the Appropriate Commission for adoption of tariffs in terms of Section 63 of the Act.

Annexure-I : Time Table for two stage bid process

Sl.No.	Activities to be completed before Event in next column takes place	Event	Elapsed Time from Zero date
1.	<ul style="list-style-type: none"> - Land: Section 4 notification under the Land Acquisition Act, 1894 should have been issued for land of power station. - Environmental clearance: Rapid EIA report for power station should be available. - Fuel arrangements: Fuel linkage or allocation of coal mine(s) should be available, if applicable. - Water linkage should be available. 	Publication of RFQ	Zero date
2.		Submission of Responses of RFQ	45 days
3.	<ul style="list-style-type: none"> - Land: Section.6 notification under the Land Acquisition Act, 1894 should have been issued for land of power station. - Environmental clearance: The proposal for environmental clearance for power station should have been submitted before the concerned authority responsible for according final approval. - Forest Clearance (if applicable):Requisite proposal for forest clearance for the land for the power station should have been submitted before the concerned authority responsible for according final approval. - Data: For preparation of DPR, following data should be available:- Hydrological, geological, meteorological, seismological data 	Issuance of RFP	75 days
4.		Bid clarification, conferences	-

Sl.No.	Activities to be completed before Event in next column takes place	Event	Elapsed Time from Zero date
		etc	
5.		Final clarification and revision of RFP	*
6.		RFP bid submission	225 days
7.		Evaluation of bids and issue of (Letter of Intent) LOI	240 days
8.	<p>-Environmental clearance for the power station should have been obtained.</p> <p>-If the provisions of section 17 of the Land Acquisition Act,1894 regarding emergency have not been applied, the Award for the power station land under Land Acquisition Act should have been declared.</p>	<p>PPA becomes effective:Signing of Agreements:</p> <p>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).</p> <p>ii) Signing of share purchase agreement and transfer of SPV, if applicable.</p>	270 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 the these Guidelines. However, if the bidding process is likely to take more than 730 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

Annexure-II : Time Table for single stage bid process

Sl.No.	Event	Elapsed Time from Zero date
1.	Publication of RFQ / RFP	Zero date
2.	Bid clarification, conferences etc. & revision of RFQ/RfP	**
3.	RFQ/RFP Bid submission	150 days
4.	Evaluation of bids and issue of LOI	165 days
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.	195 days

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

(Alok Kumar)
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