



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.

No. F.11(1997)/DERC/2022-23/7428

Petition No. 34/2022

In the matter of: Petition u/S 86(1)(b) and Section 63 of the EA, 2003 read with Clause 4 of the Guidelines dated 06.03.2019 issued by the Ministry of Power, Government of India seeking approval of deviation from the Model Bidding Documents filed by BRPL and BYPL

BSES Rajdhani Power Ltd.

BSES Yamuna Power Ltd.

....Petitioners

Coram:

Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson

Hon'ble Dr. A. K. Ambasht, Member

Appearance:

Mr. Amit Kapur, Advocate, BRPL & BYPL

ORDER

(Date of Order: 18.08.2022)

1. The Instant Petition has been filed by M/s BRPL and BYPL under Section 86(1)(b) and Section 63 of the Electricity Act, 2003 read with Clause 4 of the Guidelines dated 06.03.2019 issued by the Ministry of Power, Government of India seeking approval of deviations from the Model Bidding Documents. The Petitioners has made the following prayers in its Petition:
 - a) Allow long term procurement of 1200 MW thermal power in phased manner by a transparent bidding process under Section 63 of the Electricity Act as per MoP Guidelines dated 06.03.2019;
 - b) Approve deviations in the Model Bidding Documents issued by the MoP on 05.03.2019 for long-term procurement of electricity from thermal power stations set up on DBFOO basis under Clause 4 of the MoP Guidelines

Petitioners' Submissions

2. The Petitioner has submitted that they would require 1200 MW power on Round-the Clock (RTC) basis in a staggered manner starting from October'2022 from domestic coal based thermal power plants:
 - (a) To meet the projected growth in base load demand including on account of growth in E-mobility Charging Stations, in their licensed areas of supply for a period of 7, 15 and 20 years.

- (b) Since the Petitioners have suffered due to prolonged delay / cancelling in commissioning of Renewable Energy ("RE") projects, impacting past-year projections as well as Renewable Purchase Obligation ("RPO") targets. Owing to this, Petitioners have also filed Petition Nos. 23 and 58 of 2021 before the Commission for relaxation in RPO targets.

Commission Analysis

3. The Commission vide Interim Order dated 12/07/2022 directed appropriate Officers of the Petitioners as well as relevant Officers of DERC to tally the claims pertaining to Demand Supply scenario & selection of proposed plant capacity (MW) with each other and prepare a common chart which can be brought on record by the Petitioners.
4. In compliance to Interim Order dated 12/07/2022, the Petitioners were requested to attend meetings on 20/07/2022 & 29/07/2022. In the joint meetings of concerned officers of BRPL & BYPL and DERC Officials the Demand-Supply Scenario, selection of Total Contracted Capacity (MW), deviations from Model Bidding Document were discussed and following points emerged out of the discussion:
- a) Growth Rate of 3.63% & 1.92% has been considered against 5% & 4% growth rate upto FY 2030 considered in the Petition for BRPL & BYPL respectively.
 - b) The Petitioner submitted for tie-up for ~65- 70% of Peak Demand on Long Term basis through RTC Power (Ref. Para 8 @ P-7 of the Petition). Further, the Petitioner vide additional submission dated 1/7/2022, submitted to increase dependency on Long Term Sources to ~73-75% of their Peak Demand i.e., for FY 2023, 2648 MW & 1328 MW without any rationale/ scientific basis (ref. Para 7 @ P-3 of additional submission).
 - c) Since, the Tariff payable is Two-part Tariff therefore, Long Term tie-up should be appropriate so as not to result in major Loss on Sale of Surplus Power and burden the consumer with Fixed Cost especially during Winter Season / Off-Peak Period when there is less-demand and more availability.
 - d) Hence, the Average Demand of 2317 MW for BRPL & 1191 MW for BYPL is determined through Area under the curve calculation method & Trendline method, growth rate thereafter, which has been agreed by BSES DISCOMs during meeting dated 28/06/2022 and Long Term availability is matched with this Demand.
 - e) As per demand-supply analysis, the Capacity requirement determined for next 7 years (i.e till FY-29) is in the range of 450MW to 500 MW.
 - f) Availability from various sources have been rationalized to meet effectively Day-peak & Night-peak demand. For upcoming Stations,

factor of 24%, 34% & 65% have been considered for Solar, Wind and Hydro/ Pumped Hydro Stations.

5. In view of above, the Power Supply Deficit Scenario was computed as follows:

A. Submissions of BRPL & BYPL

Particulars	DISCOM	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32
Surplus/ Deficit (-)	BRPL	-1,923	-1,912	-1,732	-1,932	-2,133	-2,353	-2,585	-2,828	-2,931	-3,026
	BYPL	-643	-617	-567	-640	-722	-807	-895	-987	-1,035	-1,084

B. Meetings held on 20/07/2022 & 29/07/2022, as directed by the Commission in Interim Order dated 30/06/2022

Particulars	FY23	FY24	FY25	FY26	FY27	FY28	FY29
BRPL + BYPL Peak Demand	3508	3615	3725	3839	3957	4079	4205
Long Term Capacity Available	2964	3483	3539	3665	3665	3665	3665
Surplus/ Deficit (-)	-544	-132	-186	-174	-292	-414	-539
Capacity requirement till FY 2028-29 i.e., Validity of Existing Licence	500	MW					

6. Accordingly, Procurement of 500 MW for a period of 7 years i.e., till validity of the existing Licence period was considered appropriate for BRPL and BYPL together.

7. BRPL & BYPL are seeking approval on 21 nos. deviations from model RFQ, 10 nos. deviations from mode RFP & 123 nos. deviations from model PSA. Majority of the deviations are project specific deviations. For the sake of brevity, Major deviations which impacts the nature of procurement has been deliberated, as follows:

Sr. No.	Reference	Clause	Deviation	Remarks															
A RFQ																			
1	RFQ /Clause 1.1.1	“The [***Distribution Company] (the “Utility”) is/are engaged in the distribution of electricity and as part of this endeavour, the Utility has decided to procure electricity on a long term basis from Power Station (the “Project”) through Public-Private Partnership (the “PPP”) on Design, Build, Finance, Own and Operate (the "DBFOO") basis by sourcing fuel [from the options given in clause 1.2.8]2, and has, therefore decided to carry out the Bidding Process for selection of a corporate entity(ies) as the Bidder to whom the contract may be awarded for production of electricity and supply thereof as per the terms and conditions specified in the Bidding Documents.	the Utility has decided to procure electricity on a long term basis from Power Station (s) (the "Project") already set up on Design, Build, Finance, Own and Operate (the “DBFOO”) (or other development models) basis by sourcing fuel...	Since, the Petitioner is seeking procurement from already contracted thermal Power Plants. Hence, the deviation is accepted.															
2	RFQ /Clause 1.1.1	Brief particulars of the Project are as follows: <table border="1" data-bbox="321 2091 764 2279"> <thead> <tr> <th>Capacity Required (in MW)</th> <th>Minimum Capacity not less than 25% (twenty five per cent) of Capacity Required (in MW)</th> <th>Period when supply must commence</th> </tr> </thead> <tbody> <tr> <td>***</td> <td>***</td> <td>[36] months from Appointed Date</td> </tr> </tbody> </table>	Capacity Required (in MW)	Minimum Capacity not less than 25% (twenty five per cent) of Capacity Required (in MW)	Period when supply must commence	***	***	[36] months from Appointed Date	Brief particulars of the Project are as follows: <table border="1" data-bbox="789 2059 1170 2260"> <thead> <tr> <th>Capacity Required (in MW) #</th> <th>Minimum Capacity (in MW)</th> <th>Scheduled Commencement of Supply*</th> </tr> </thead> <tbody> <tr> <td>600 (Phase I)</td> <td>300</td> <td>1st Oct. 2022</td> </tr> <tr> <td>600 (Phase II)</td> <td>300</td> <td>1st Apr. 2023</td> </tr> </tbody> </table> Note: For the avoidance of doubt, it is clarified that separate PSAs will be entered into for each phase as above, each PSA (and the rights and	Capacity Required (in MW) #	Minimum Capacity (in MW)	Scheduled Commencement of Supply*	600 (Phase I)	300	1st Oct. 2022	600 (Phase II)	300	1st Apr. 2023	Plant Capacity (MW) may be considered based on Demand Supply analysis which is in the range of 450 MW to 500MW. Hence the deviation is amended.
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Sr. No.	Reference	Clause	Deviation	Remarks
			obligations thereunder) being independent of the other PSAs. #Capacity will be shared between the BRPL and BYPL as per their net requirement *An earlier date prior to proposed Scheduled Date of Commencement of Supply may be mutually agreed.	
3	RFQ /Clause 2.2.1 (e)	iii. The Applicant should have commenced construction of the Power Station; iv The Applicant has access to an assured supply of Fuel; v. Only Applicants who agree and undertake to procure the boilers, turbines, and generators of their Projects from manufacturing facilities situate in India and owned and operated in India by an Indian company, a foreign company or a joint venture between an Indian and foreign company shall be eligible hereunder.	iii. The Applicant should have constructed and commissioned the power station of requisite capacity on or prior to Bid Date; iv. The Applicant should have at least 50% of fuel tie-up against the offered contract capacity at the time of bid submission date and the balance	The criteria for at least 50% fuel tie-up for a Generating Station before the bidding and 100% fuel tie-up before entering into PPA ensures availability of Fuel Tie-up arrangement. Hence, the deviation is accepted.
B RFP				
1	RFP/Clause 1.2.7	“Bids are invited for the Project on the basis of a tariff to be offered by a Bidder for and in respect of the Project. For the purposes of evaluation hereunder, the Fixed Charge and Fuel Charge will constitute the tariff for the Power Station (the “Tariff”). The contract period shall be pre-determined and specified in the Bidding Documents...”	Bids are invited for the Project on the basis of a tariff to be offered by a Bidder for and in respect of the Project. For the purposes of evaluation hereunder, the Fixed Charge and Fuel Charge will constitute the tariff for the Power Station (the “Tariff”). The contract period for the supply with the option of 7 years OR 15 years OR 20 years.	The Contract period for the long term agreement i.e. any of 7 / 15 / 20 provides flexibility to the procurer in optimizing Power procurement cost and duration. Hence, the deviation is accepted.
C PSA				
1	5.1.4	The Supplier shall install, operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 90% (ninety per cent) thereof during each year of the Operation Period (the “Normative Availability”).	The Supplier shall install, operate and maintain the Power Station in accordance with the Specifications and Standards and the Maintenance Requirements such that the Availability of the Contracted Capacity of the Power Station is at least 90% (ninety per cent) 85% (eighty five per cent) thereof during each year of the Operation Period (the “Normative Availability”).	BSES have reduced Availability from 90% mentioned in MBD to 85%, which is retained.

8. In view of the above, the Commission accords approval of the following:
- Optimal requirement of 500 MW based upon the Demand-Supply Analysis and with the reasons stipulated related to Fixed Cost and Sale of Surplus Power, also;
 - all Deviations sought in the said Petition, except deviation in 5.1.4 of MBD, is accepted. In clause 5.1.4 of MBD, BSES DISCOMs have reduced Availability from 90% mentioned in MBD to 85%, which is retained to 90%.

9. Ordered Accordingly.

Sd/-
(Dr. A.K. Ambasth)
Member

Sd/-
(Justice Shabihul Hasnain ‘Shastri’)
Chairperson