



Delhi Electricity Regulatory Commission

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

F.11(2158)/DERC/2023-24/7934

Petition No. 46/2023

In the matter of: **Petition under Section 63, Section 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 seeking approval of the Bidding documents for procurement of 300MW of power from all sources including renewable sources under Lump Sum Tariff category (except coal based power) for 300 MW (additional 300 MW under Greenshoe Option) in terms of DERC (RPO and Renewable Energy Certificate Framework Implementation) Regulations, 2021 and Regulation 27 of DERC (Business Plan) Regulations, 2023 read with MoP Guidelines for procurement of electricity for Medium Term from Power Stations set up Finance, Own and Operate (FOO) basis.**

BSES Rajdhani Power Ltd.

...Petitioner

Coram:

Hon'ble Justice (Retd.) Jayant Nath, Chairperson

Appearance:

Mr. Dushyant Manocha, Advocate, BRPL

Order

(Date of Order: 19.01.2024)

1. The instant Petition has been filed by BSES Rajdhani Power Ltd. (BRPL) seeking approval of Bidding documents for procurement of 300MW of power from all sources including renewable sources under Lump Sum Tariff category (except coal based power) for 300 MW (additional 300 MW under Greenshoe Option) in terms of DERC (RPO and Renewable Energy Certificate Framework Implementation) Regulations, 2021 and Regulation 27 of DERC (Business Plan) Regulations, 2023 read with MoP Guidelines for procurement of electricity for Medium Term from Power Stations set up on Finance, Own and Operate (FOO) basis. The Petitioner has made the following prayer;
 - i. Grant approval for the Agreement for Procurement of Power issued along with the bid documents i.e., Request for Qualification, Request for Proposal and for procurement of 300MW from all sources including renewable except coal based power under Lumpsum Tariff Category along with additional capacity of 300MW through the Greenshoe Option through competitive

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bidding process for meeting the energy requirements and pass a suitable order in this regard;

- ii. To approve the certain deviations from the Model Bidding Documents issued by MoP being prayed for sought by the Petitioner.

2. The Petitioner has submitted the following;

- i. On 16.01.2017, MOP issued Guidelines for Procurement of Electricity for Medium Term from Power Stations set up on Finance, Own and Operate Basis ("FOO") and amended on 30.01.2019 ("MOP Guidelines"). On 19.12.2022, the MOP also revised the Model Agreement for Procurement of Power. The MOP Guidelines were formulated for medium term procurement of electricity by the Distribution Licensees from power producers who agree to operate power generating stations set up on FOO basis or from Traders/ Distribution Licensees having back-to-back arrangements with the power producers. Further, the MOP Guidelines stipulate that any deviation from the Model Bidding Documents shall be made with the approval of the Appropriate Commission.
- ii. Meanwhile, the Petitioner, due to its requirement of 1200 MW on Round the Clock basis in a staggered manner starting from October 2022, approached the Commission by way of Petition No. 34 of 2022 under Section 86(1)(b) and Section 63 of the Electricity Act, 2003 seeking approval to allow long-term procurement of the said 1200 MW thermal power. The Commission vide Order dated 18.08.2022 approved the Optimal Requirement of 500 MW Power for a period of 7 years and also approved all deviations sought in the said Petition, except deviation in Clause 5.1.4 of the PSA, which was retained in its original form.
- iii. While the Commission had approved procurement of 500 MW, there was inadequate participation in the Petitioner's bid for procurement of the said 500 MW. This constrained the Petitioner to submit a representation dated 11.09.2023 to the Commission intimating annulment of the bidding process for long term procurement of power, with the contingency to re-issue the tender, if required, subject to the approval of the Commission.
- iv. Since, the 500 MW procurement of power did not yield the desired results, the Petitioner explored options to procure 550 MW RE-RTC power from a tendering process initiated by SECI. To that end, the Petitioner is currently engaging with SECI and a separate Petition is being preferred by the

Petitioner seeking in-principle approval of the Commission for that particular procurement process. That since the procurement process for 550 MW of RE-RTC with 1450 MW Peak through SECI will take some time to come to fruition, the Petitioner, in order to bridge the gap in its power requirement till such time, is filing the present Petition for Medium Term Power.

- v. Accordingly, on 12.09.2023, the Petitioner vide its letter submitted that it was in process of floating a Tender for sourcing additional medium term power. For better participation it was also decided to include all sources including renewable sources under Lump sum tariff category (except coal based power) for 300 MW (additional 300 MW under Greenshoe option) in terms of the MOP Guidelines. Accordingly, the Petitioner sought the Commission's in-principle approval for the same. In response to the Petitioner's correspondence dated 12.09.2023, the Commission issued its response vide letter dated 27.09.2023 directing the Petitioner to inter-alia file an appropriate Petition seeking 'in-principle' approval. Hence, the instant Petition has been filed.

- vi. The fact that the Petitioner has followed the MOP Guidelines is evident from the tabular representation referred in the Petition w.r.t guidelines, RfQ 1.1.1, 2.1.6, 2.5.1, 2.6.1, 2.9, 3.2, 4.4, 5.5, 5.8.2. The Petitioner respectfully submits that the illustrative comparison as mentioned in the Petition, clearly and unequivocally demonstrates that it proposing to follow the MOP Guidelines and the Model Bidding Documents in letter and spirit, thereby fulfilling the criteria laid down under Section 63 of the EA, 2003. The Petitioner craves leave of the Commission to refer to and rely upon the MOP Guidelines and the Bidding Documents issued by the Petitioner to further substantiate the submission.

- vii. The Petitioner further respectfully submits that the APP, which forms part of the Bidding Documents, is result of following the Competitive Bidding Process and is, therefore, aligned with the Model APP issued by MOP on 30.01.2019 and consequently, revised the Model APP on 19.12.2022. This is evident from the following:

PARTICULARS	MODEL APP	DRAFT APP PROPOSED ALONG WITH BIDDING DOCUMENTS
Recital	(C) The Utility had prescribed the technical and commercial terms and conditions, and invited bids in accordance with the Guidelines issued by the Central Government under Section 63 of	(C) The Utility had prescribed the technical and commercial terms and conditions, and invited bids in accordance with the Guidelines issued by the Central

	the Act vide Notification No.dated(the "Request for Proposals" or "RFP") from the Bidders shortlisted pursuant to the RFQ for undertaking the Project.	Government under Section 63 of the Act vide Notification No. 23/17/2013-R&R-Vol-VI (Part-2) dated 29.01.2019 (the "Request for Proposals" or "RFP") from the Bidders shortlisted pursuant to the RFQ for undertaking the Project.
Definitions	"Contract Period" means the period starting on and from date of commencement of supply as per clause 4.6 of this agreement and ending on the earlier of the [***] anniversary of the date of commencement of supply and the date of termination of the Agreement;	"Contract Period" means the period starting on and from the Appointed Date and ending on the earlier of the 5th (Fifth) anniversary of the Appointed Date and the date of termination of the Agreement;
Scope of the Project	<p>2.1 Scope of the Project</p> <p>The scope of the Agreement (the "Scope of the Agreement") shall mean and include, during the Contract Period:</p> <p>(a) ensure the operation and maintenance of the Power Station, situated at the Site described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement [utilizing the Coal Linkage/ Allocated Coal Linkage in accordance with the terms contained herein read with the terms and conditions of the Fuel Supply Agreement and the Letter of Assurance]6;</p> <p>(b) supply of electricity to the Utility in accordance with the provisions of this Agreement; and</p> <p>(c) performance and fulfilment of all other obligations of the Supplier and the Utility, as the case may be, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Supplier under this Agreement.</p>	<p>2.1 Scope of the Project</p> <p>The scope of the Agreement (the "Scope of the Agreement") shall mean and include, during the Contract Period:</p> <p>(a) ensure the operation and maintenance of the Power Station, situated at the Site described in Schedule-A and having the principal features stated therein, in accordance with the provisions of this Agreement;</p> <p>(b) supply of electricity to the Utility in accordance with the provisions of this Agreement; and</p> <p>(c) performance and fulfillment of all other obligations of the Supplier and the Utility, as the case may be, in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Supplier under this Agreement.</p>

viii The Petitioner has submitted that certain deviations have been introduced in the bidding documents to ensure the competitive bidding through maximum participation. Accordingly, such necessary deviations have been introduced in the Bidding Documents by the Petitioner subject to the approval of the Commission. Clause 4 of the MOP Guidelines stipulate that any deviation from the Model Bidding Documents shall be made with the approval of the Appropriate Commission. Therefore, the Petitioner vide the instant Petition

seeks approval of the deviations proposed by it from the Model Bidding Documents.

- ix The Commission in a similar case of another DISCOM in Petition No. 06/2023 vide its Order dated 10.03.2023 has already approved similar deviations in the Bidding Documents of Tata Power Delhi Distribution Ltd. ("TPDDL"). In the said Petition also, TPDDL had sought approval of the Bidding documents and adoption of tariff discovered under Competitive Bidding Process for procurement of 100 MW Hydro Power with Greenshoe Option of additional 100 MW. Hence, the Commission may be pleased to similarly allow the present Petition in the terms prayed.

Commission Analysis

3. The instant Petition has been filed by BRPL, seeking approval of the Agreement for procurement of power issued along with bid documents i.e., RfQ, RfP and for procurement of 300 MW from all sources with additional capacity of 300 MW through Greenshoe Option through competitive bidding process. The Petitioner has further sought approval of certain deviations from the Model Bidding Documents as enumerated in Annexure-H of the Petition.
4. The Commission, vide Order dated 05/12/2023, had directed that the Officers of the Petitioner to cooperate with the Officers of the DERC to finalize the details regarding the Demand-Supply analysis.
5. In compliance of the said order, a meeting was held on 11.12.2023 to deliberate upon the Demand-Supply analysis and justification for said procurement. The Petitioner was directed to deliberate discount in Tariff on account of Green-shoe option & incorporate suitable changes in Bidding documents. Further, they were asked to clarify whether Minimum bid capacity of 25 MW will factor multiple parties or multiple sources or not.
6. The Petitioner, vide email dated 15.12.2023, submitted that Greenshoe is an option for DISCOMs for arranging additional Power in case discovered rates are highly competitive. Further, Minimum bid capacity of 25 MW is from a single source.
7. In view of above submissions, the observations of the Commission are as follows:
 - a) The Commission had approved procurement of 500 MW Power from Long Term Sources vide its Order dated 18.08.2022 in Petition No. 34 of 2022. Since 500 MW procurement Tender did not yield desirable results, BRPL

annulled the said procurement process and explored option to procure 550 MW RE-RTC Power from SECI. Since, power from SECI will take some time, hence for the intervening period BRPL is seeking approval for 300 MW Medium Term Power with 300 MW Green-shoe Option in line with directions of the Commission issued vide letter dated 27/09/2023.

b) Gap in Supply for 500 MW Power from Long Term sources has already been established vide Order dated 18.08.2022 in Petition No. 34/2022.

c) With regard to the deviations sought by the Petitioner, it is noted that the deviations are in-line with the approval accorded by the Commission vide order dated 10.03.2023 in Petition No. 06 of 2023 for TPDDL.

8. In view of above observations, the Commission accords approval to the following:

a) Since the Gap in Supply for 500 MW Power from Long Term sources has already been established vide Order dated 18.08.2022 in Petition No. 34/2022, therefore, the Petitioner is allowed to procure 300 MW Medium-Term Power along with upto 200 MW Greenshoe option for the intervening period till SECI's RE-RTC Tender is materialized;

b) Further, BRPL is to negotiate Tariff with the successful bidder(s) and seek discount on the base Tariff over and above the competitively discovered Tariff for additional MW of power upto 200 MW Green-shoe option;

c) With regard to Deviation as sought in Sr. No. 6 of the list of Deviations at Annexure-H of the Petition for Clause No. 1.1.5 of RFQ, it is directed that minimum quantum of 25 MW shall be open to multiple sources and other deviations as enumerated in Annexure-H of the Petition are hereby approved.

9. Ordered accordingly.

Sd/-
(Justice (Retd.) Jayant Nath)
Chairperson