

No. 23/08/2019-R&R  
Government of India  
Ministry of Power  
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Shram Shakti Bhawan, Rafi Marg,  
New Delhi, the 06<sup>th</sup> March, 2019

To

1. The Chairperson, Central Electricity Authority, R. K. Puram, New Delhi.
2. The Secretary, CERC, Chanderlok Building, Janpath, New Delhi.
3. Principal Secretaries/Secretaries (Power/Energy) of all State Governments/UTs.
4. Secretaries of all State Electricity Regulatory Commissions/JERCs
5. Chairman/CMDs of all PSUs under administrative control of Ministry of Power.
6. CMDs/MDs of Discoms/Gencos of all State Governments.
7. DG, Association of Power Producers (APP), New Delhi

**Subject: Draft Guidelines for short-term (i.e. for a period of more than one day to one year) Sale of Power by Power Generating Company and Distribution Licensees (the 'Seller') through Tariff based bidding process- Reg**

Sir/Madam,

I am directed to say that under the provisions of section 63 of the Electricity Act, 2003, the Central Government notifies competitive bidding Guidelines for procurement of power by distribution licensees. In this regard, MOP notified guidelines for procurement of power by Distribution Licensees through competitive bidding for long term and Medium Term in 2005 and amended from time to time.

2. The Central Government has also issued Guidelines for **short-term procurement of electricity** i.e. for a period of less than or equal to one year under section 63 of the Electricity Act, 2003 on 16th May, 2012. The revised guidelines for short-term procurement of electricity was also issued on 30<sup>th</sup> March, 2016 for introduction of e-bidding and e-reverse auction.

3. In this connection, as a step towards better availability of power to the consumers, Ministry of Power has formulated a **draft Guidelines for short-term (i.e. for a period of more than one day to one year) Sale of Power by Power Generating Company and Distribution Licensees (the 'Seller') through Tariff based bidding process** and attached herewith. It is requested to furnish

comments/suggestions on the draft guidelines, if any, to this Ministry latest by 21/03/2019.

4. The draft Guidelines is also uploaded on the website of the Ministry i.e. www.powermin.nic.in under "Current Notices". The comments may be mailed at debranjan.chattopadhyay@nic.in and sandeep.naik68@gov.in.

Yours faithfully,

Encl: As above



(Debranjan Chattopadhyay)  
Under Secretary to Govt. of India  
Tele No. 2373 0265

Copy to:

All JSs of Ministry of Power/JS&FA & Economic Adviser, Ministry of Power

Copy for information to: PS to MoSP(I/C) for Power, & NRE, PPS to Secy.(P), PPS to AS(SNS), PS to CE(RR &OM), PS to Dir(R&R)

Copy to: In-charge, NIC Cell for uploading on MOP's website under "Current Notices".

[TO BE PUBLISHED IN PART ..., SECTION .... OF THE GAZETTE OF  
INDIA, EXTRAORDINARY]

Government of India  
Ministry of Power

New Delhi,  
Dated the 6<sup>th</sup> March 2019

**No. 23/08/2019-R&R**

**Draft Guidelines for short-term (i.e. for a period of more than one day to one year) Sale of Power by Power Generating Company and Distribution Licensees (the 'Seller') through Tariff based bidding process**

#### **1. Preamble**

- 1.1. Promotion of competition in the electricity industry in India is one of the key objectives of the Electricity Act, 2003 as amended from time to time (the Act). Power purchase cost constitutes the largest cost element for Distribution Licensees, Open Access consumers/persons. Moreover, Power purchase cost for short-term procurement of Power is a significant part of overall Power purchase cost for Distribution Licensees, Open Access consumers/persons. Competitive sale of short-term power to the Distribution Licensees, Open Access consumers/persons is expected to reduce the overall cost of procurement of power and will result in significant benefits for consumers.
- 1.2. Sections 61 & 62 of the Act provide for tariff regulation and determination of tariff of generation, transmission, wheeling and retail sale of electricity by the Appropriate Commission. Section 63 of the Act states that –

“Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the Guidelines issued by the Central Government.”

- 1.3. The specific objectives of these Guidelines are as follows:
- i) Promote competitive sale of electricity by Seller on short term basis (for a period of more than one day to one year);
  - ii) Provide an opportunity for the Seller to sell its power;
  - iii) Provide better power availability to consumers;
  - iv) Facilitate transparency and fairness in sale of power and
  - v) Selling of power through transparent and efficient e-tendering process;
- 1.4. These Guidelines shall be read along with the relevant provisions of the Act, Policies made thereunder and other applicable regulations issued by the Appropriate Authority like Appropriate Commission, State Government etc. In case of any conflict, clarifications shall be issued by the Central Government.

## **2. Scope of the Guidelines**

- 2.1. These Guidelines are being issued under the provisions of Section 63 of the Act for sell of power by Seller and procurement of power by Distribution Licensees, Open Access consumers/persons (Procurer/Bidder) for short-term i.e. for a period of more than one day to one year.

**Explanation:** For the purpose of these Guidelines, the term ‘Procurer/Bidder(s)’ shall mean, the Distribution Licensees, Open Access consumers/persons or the authorized representative (AR) of the Distribution Licensees, Open Access consumers/persons including PFC Consulting Ltd. (PFCCL) to perform all tasks for carrying out the bidding process in accordance with these Guidelines.

Sellers shall have the option to conduct the bid process through an

AR including PFC Consulting Ltd. (PFCCL).

- 2.2. The Guidelines shall apply for selling of short term power through competitive bidding through e-tendering process.
- 2.3. Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer(s) & Seller.
- 2.4. Selling by more than one Seller through a combined bid process shall be permitted and in such a case the Sellers shall have the option to conduct the bid process through PFC Consulting Ltd. (PFCCL) as an Authorised Representative. For such combined procurement, each Seller 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 Sellers shall not vary. The price offered by the Bidders shall be same for Sellers inviting the bid.
- 2.5. Under these Guidelines only Distribution Licensees, Open Access consumers/persons are authorised to participate for procurement of power in the e-Tendering process.

### **3. e-Tendering Process**

- 3.1. The Seller(s) shall sell power using the e-Bidding portal (DEEP Portal or any authorised portal by Ministry of Power) by themselves or through an AR. The link for the e-Bidding portal is available on the website of Ministry of Power ([www.powermin.nic.in](http://www.powermin.nic.in)) and PFC Consulting Limited ([www.pfcclindia.com](http://www.pfcclindia.com)).
- 3.2. The Seller(s) and Bidders or AR shall have to be registered with the e-Bidding portal to create their own user id and password. For registration, only Seller(s) or AR (Except PFCCL) shall have to pay one time non-refundable registration fee of Rs. 20,000/- plus applicable taxes.
- 3.3. All the Bidders would be able to participate in the e-Bidding events on making payment of the requisite fees of ₹ 500 per MW per

requisition for which the bidder is willing to bid, to PFCCL. The requisite fee plus applicable taxes shall be deposited through the portal by e-Payment Gateway or through RTGS/NEFT/IMPS in account of PFCCL. After the completion of the bidding process, only successful Bidder(s) will have to pay these charges for the quantum allocated to each bidder. The balance amount will be refunded by PFCCL within seven (7) working days after the issuance of LoA without any interest. The fee deposited by non Selected Bidder(s) will also be refunded by PFCCL within seven (7) working days after the issuance of LoA without any interest.

- 3.4. All the users of the e-Bidding portal shall require valid digital signatures to have access to the portal.
- 3.5. An event involves one or more bids depending upon single or multiple requisition of power on round the clock (RTC) basis or for different time slots and respective source of supply during e-Tender process.

#### **4. Preparation for inviting bids**

- 4.1 The Seller(s) shall indicate any one option from following before inviting bid for selection of Bidder i.e.:
  - (i) Quantum of power (In MW) available at Reserve Price (In Rs./kWh)  
OR
  - (ii) Quantum of power (In MW) available along with the options for the Bidders to quote less, equal or more than the Reserve price  
OR
  - (iii) Quantum of power (In MW) available along with the tariff which should be equal or more than the Reserve price
- 4.2 The Delivery Point of the Seller shall be Bus-bar of the Seller and the Reserve Price shall represent to be the tariff at Delivery Point.

#### **5. Tariff Structure**

- 5.1 The Seller based on availability of power may invite the bids on round

- the clock (RTC) basis or for different time slots. Seller may also provide flexibility to the Bidder(s) to bid for a part of the tendered quantity, subject to a given minimum quantity. Bidder's allocated capacity shall have to be constant for the entire contract period.
- 5.2 The Bidder shall quote the single tariff at the Delivery Point upto two (2) decimals. Tariffs shall be designated in Indian Rupees only.
- 5.3 For avoidance of doubt, Intra-state open access charges, and losses along with POC injection charges, POC drawl charges, losses along with intra-state /inter-state open access, transmission charges and losses and all taxes, duties, cess etc. imposed by Central Govt. / State Govt. / Local bodies are on Bidder's account.
- 5.4 The tariff should be constant and there shall be no escalation during the contractual period. If Bids are invited for different time slots then tariff may be different for each time slot.
- 5.5 If the power is being supplied through alternate source, additional charges and losses if any, due to cancellation of existing corridor and booking of new corridor etc., shall be to the account of Seller. In such situation, the same shall be adjusted for the monthly billing.

## **6. Bidding Process**

- 6.1 For sale of power under these Guidelines, a Request for Proposal (RfP) shall be invited by the Seller or its AR, which shall be prepared in line with these Guidelines.
- 6.2 The Seller shall publish a RfP notice in at least two national newspapers and upload the same on its website to accord it wide publicity. The bidding shall necessarily be by way of competitive bidding by providing equal opportunity to all Bidders.
- 6.3 Seller or AR shall provide only written interpretation of the tender document to any Bidder and the same shall be made available to all

other Bidders. All parties shall rely solely on the written communication which shall be uploaded in the e-Bidding portal.

**6.4 Standard documentation to be provided by the Seller in the RfP shall include,**

- i) Description of Seller (s), availability including Quantum with respective source of supply, minimum quantity, time slot, duration for supply of power and delivery point, Financial Bid i.e. Initial Price Offer (IPO) to include required quantity, minimum quantity, bid quantity, source of supply, Tariff and Bidder's acceptable quantity.
- ii) the procedures and criteria to be used to evaluate bids and select the Bidder for allotment of power and issue of Letter of Award.
- iii) Earnest Money Deposit (EMD)/ Bank Guarantee (BG)
  - a. The Bidders are required to submit EMD for the maximum capacity which they wish to offer (in single bid or sum total of multiple bids) @ Rs. 30,000/- per MW per month on RTC (30 days, 24 hours) basis and same shall be reduced on pro-rata basis in case bids are invited on hourly basis, in the form of Bank Guarantee / e-Bank Guarantee issued by any Nationalized/Scheduled Bank or Electronically Transfer through payment gateway in the portal.  
  
For Example: For a requirement of 1 MW for 15 days for 4 hours, the EMD shall be  $Rs. 30,000 \times (15 \text{ days} / 30 \text{ days}) \times (4 \text{ hrs} / 24 \text{ hrs}) = Rs. 2,500/-$
  - b. The EMD shall be forfeited:
    - If Bidder withdraws bid during Bid Validity Period except as provided in these guidelines.
    - For non-submission of Contract Performance Guarantee or non-acceptance of LoA by Successful Bidder(s).
  - c. The EMD shall be refunded to the unsuccessful Bidders within 10 working days of expiry of Bid validity period.



- d. The EMD of the Successful Bidder(s) shall be refunded after furnishing Contract Performance Guarantee.

iv) Contract Performance Guarantee (CPG)

- a. The Successful Bidder(s) may be required to furnish CPG within 7 days from the date of selection of Successful Bidder(s) for an amount calculated at **Rs. 2 lac** per MW per month (30 days, 24 hours) of contract period or part thereof. The CPG for the procurement of power on hourly basis shall be calculated on pro-rata basis as per the example given above for calculating EMD.
- b. The CPG shall be in the form of Bank Guarantee (BG) issued by any Nationalized/Scheduled Bank and valid for the period of Contract with a claim period of 1 month after the expiry of contract period.
- c. In the event, the CPG is not furnished within the stipulated date, the EMD submitted against the Notification shall be forfeited.
- d. The CPG provided by the Successful Bidder(s) shall be forfeited for non-performing the contractual obligations. The CPG should be released within 30 days after completion of Contract Period.

v) Validity period of offer of Bidder shall be till the time of signing of Short Term Power Supply Agreement (SPSA).

vi) SPSA proposed to be entered with the Selected Bidder(s) shall include necessary details on:

- a. Risk allocation between parties;
- b. Force Majeure Events shall mean the occurrence of any of the following events:-
  - Any restriction imposed by RLDC/SLDC in scheduling of power due to breakdown of Transmission/Grid constraint shall be treated as Force Majeure without any liability on either side.
  - Any of the events or circumstances, or combination of events and circumstances such as act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake,

volcanic eruption, fire or landslide or acts of terrorism causing disruption of the system.

- The contracted power will be treated as deemed reduced for the period of transmission constraint. The non/part availability of transmission corridor should be certified by the concerned RLDC/SLDC.
- The Seller would return the CPG in case of non availability of transmission corridor during the contract period.

c. Change in Law – Change in Law shall include

- Any change in transmission charges and open access charges
- Any change in taxes (excluding income tax), duties, cess or introduction of any tax, duty, cess made applicable for supply of power by the Seller

d. Billing cycle – Seller may raise bills on weekly basis or at the end of the contract period for the energy scheduled

e. Payment of Liquidated Damages for failure to supply the Instructed Capacity:

- Both the parties would ensure that actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access on monthly basis.
- In case deviation from Seller side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Seller shall pay compensation at 20% of Tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract.
- In case deviation from Procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, Procurer shall pay compensation to Seller at 20% of Tariff per kWh for the quantum of shortfall in excess of

permitted deviation of 15% in the energy supplied and pay for the open access charges to the extent not availed by the Procurer.

f. Payment term/Payment security to be made available by the Procurer

- The Procurer(s) may be required to provide revolving Letter of Credit (LC) equivalent to 100% of the weekly energy corresponding to Contracted Capacity at the tariff indicated in SPSA. LC shall be opened prior to commencement of supply of power.

6.5 The RfP shall provide the maximum period within which the Selected Bidder(s) must commence procurement after the SPSA becomes effective, subject to the obligations of the Seller being met.

## **7. Bid submission and evaluation**

7.1 To ensure competitiveness, the minimum number of Bidders should be at least two for each requisition. If the number of Bidders responding to the RfP is less than two, and Seller in its own discretion shall continue with the selection process or annul the same.

7.2 The process of e-Bidding shall be conducted online, in accordance with the provisions laid herein. An event may have multiple requisitions (i.e. independent requirements of power at different time or places). Each bid will have only one price per requisition accompanied by total quantum of power, the Bidder intends to procure and minimum threshold quantum acceptable to the Seller. However, the Bidder shall have the option to choose the requisition of an event in which it intends to participate. Each of the bid will have to be signed by the Digital Signature of the Bidder.

7.3 The Bidder shall use Digital Signature to submit bid through login and the Bidder may submit only one price bid for each requisition.

For example:

An event may have one or more requisitions:

S.no	Quantum (MW)	Source of Supply	Time Period	Minimum Quantum (MW)	Reserve Price (In Rs./kWh)
1.	[100]	[Name of Power Plant/Pooled Power & Address]	[RTC basis 18/02/2019 to 18/03/2019]	[10]	[2.50]
2.	[250]	[Name of Power Plant /Pooled Power & Address]	[0600 hrs to 1800 hrs 18/03/2019 to 18/04/2019]	[14]	[2.60]

Now the Bidder may bid as follows:

S.no	Quantum (MW)	Source/ Name of the Project, Address	Time Period	Price Bid (Rs./kWh)	Total Quantum to be supplied (MW)
1.	[100]	[Name of Power Plant/Pooled Power & Address]	[RTC basis 18/02/20196 to 18/03/20196]	P1	Q1
2.	[250]	[Name of Power Plant /Pooled Power & Address]	[0600 hrs to 1800 hrs 18/03/20196 to 18/04/20196]	P1	Q1

- 7.4 The process of bidding shall be conducted electronically. For this purpose, provisions like registration, log in, downloading and uploading etc. in the e-Bidding portal shall be specified in the Bid document. Each event of the auction would require independent Digital Signature of the Bidder. An event may have requirement of power at different time and period.
- 7.5 Bidders shall be required to submit separate technical Bid and financial Bids through e-Bidding portal after opening of the technical Bid. The Bidder will be given 120 minutes from opening of the technical bid to submit their financial bid. The technical Bids shall contain the acceptance of general terms and conditions without any deviation. Bidders shall also be required to furnish necessary EMD/Bank Guarantee along with the Bids. The Seller or its AR can seek clarifications/documents required in connection with technical bid. After acceptance of the technical Bids, the Bidder shall be allowed to submit their financial Bids and shall be opened as per the procedures specified in the Bid document
- 7.6 The Bidder(s) shall be ranked as per the option adopted by the Seller for this Bidding Process. The ranking will be done on the basis of [time of submission of Bid will be the deciding factor in case of option under Clause 4.1(i)] or [Highest to Lowest in the descending order i.e from the highest quoted Tariff H1,H2,H3....., in case the of same Tariff quoted by the two or more Bidder time of submission of Bid will be the deciding factor in case of option under Clause 4.1(ii)] or [Highest to lowest in the descending order i.e. from the highest quoted Tariff H1,H2,H3... up to Reserve Price. In case, the of same Tariff quoted by the two or more Bidders time of submission of Bid will be the deciding factor, in case of option under Clause 4.1 (iii)]. After ranking, the system will allocate the power to the Bidder(s) upto the fulfilment of the requisitioned capacity.
- 7.7 The Seller shall have the right to issue Letter of Award (LoA) to the Successful Bidder(s) [Selected Bidder(s)] in the same order of ranking/allotment as per clause 7.6 of these Guidelines for sale of power. In the event Seller rejects or annuls all the Bids, it may go for fresh Bids hereunder. In case the Seller fails to issue the LoA within

a period of 15 days from the close of event, the Successful Bidder(s) shall have the option to exit without forfeiting the EMD.

- 7.8 In case the LOA is issued to Selected Bidder(s) but is not in a position to offtake the allocated power, being selected in another bidding process the EMD/CPG shall be forfeited as the case may be.
- 7.9 After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Seller to the Selected Bidder(s) and the Selected Bidder(s) shall, sign and return the duplicate copy of the LOA in acknowledgement thereof before signing of Short Term Power Supply Agreement (SPSA). In the event the duplicate copy of the LOA duly signed by the Selected Bidder(s) is not received by the stipulated date, the Seller may, unless it consents for extension of time for submission thereof, forfeit the EMD of such Bidder as Damages on account of failure of the Selected Bidder(s) to acknowledge the LOA.
- 7.10 After acknowledgement of the LOA by the Selected Bidder(s), the Seller shall cause the Selected Bidder(s) to execute the SPSA within the prescribed period in the Bid document i.e. within 15 days from the close of the event. The Selected Bidder(s) shall not be entitled to seek any deviation, modification or amendment in the SPSA. The Seller would appropriate the EMD of such Bidder as Damages on account of failure of the Selected Bidder(s) to execute the SPSA. In case the Seller fails to sign the SPSA within the period prescribed above, the Selected Bidder(s) shall have the option to exit without forfeiting the EMD/CPG as the case may be.

## **8. Arbitration**

- 8.1 Where any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the Appropriate Commission.

8.2 All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996.

**9. Time Table for Bid Process**

The minimum period for completion of bid process, shall be as per Annexure-I.

**10. Contract award and conclusion**

10.1 The SPSA shall be signed with the Selected Bidder(s) consequent to the selection process.

10.2 For the purpose of transparency, the Seller shall make the bids public by indicating the tariff quoted by all the Bidders, after signing of the SPSA or SPSA becoming effective, whichever is later. While doing so, only the name of the Successful Bidder(s) shall be made public and tariffs quoted by other Bidders shall be made public anonymously on Seller's website.

(.....)

**Time table for short term sale of power**  
**(Bid process and activities afterwards)**

S. No.	Event	Minimum Elapsed time from Zero date
1.	Publication of RfP/Activation of Event	Zero Date
2.	Submission of RfP (on line digitally signed technical Bid )	4 days
3.	Opening of technical Bids	5 days
4.	[Clarification, if any, sought from Bidder(s)]	6 days
5.	In case of no clarification, evaluation of technical Bids (if e-BG is generally available to the Bidders, then the time may be taken as 5 days and subsequent adjustment be made in the remaining events). (In case of clarification sought, the Seller may allow upto 7 days to the Bidder(s) and subsequent adjustment be made in the remaining events).	7 days
6.	Submission of financial bid	8 days
7.	Issuance of LOA and submission of signed LOA.	9 days
8.	Signing of SPSA	10 days
9.	Submission of Application for Open Access approval and Obtaining SLDC consent by the seller / purchaser	To be inserted by Procurer depending on schedule delivery date and in line with the Open Access Regulations
10.	Opening of the LC	Prior to supply of Power

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