

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 33 of 2009

In the matter of
Brihan Mumbai Electric Supply and Transport (BEST) Undertaking's Petition
seeking approval of quantum of power purchase and deviations/references taken
in Standard Bidding Documents for procurement of power on Long Term Basis
(Case-I).

Shri. V.P Raja, Chairman
Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: August 4, 2009

The Brihan Mumbai Electric Supply and Transport (BEST) Undertaking filed a Petition under affidavit before the Commission on June 25, 2009, under Section 63 of the Electricity Act, 2003, seeking approval of the quantum of power purchase and deviations/references taken in Bidding Documents vis-à-vis the Standard Bidding Documents for procurement of power on Long Term Basis under the Case-I route.

2. The prayers made by BEST Undertaking in the Petition are:
 1. *“Approve the Standard Bidding Documents for procurement of power on Long Term Basis (Case 1) along with Deviations / References.*
 2. *Approve methodology of demand estimation.”*
3. BEST made the following submissions in its Petition:
 - a. During the course of processing BEST's Petition for approval of Power Purchase Agreement (PPA) with The Tata Power Company Limited-Generation Business (TPC -G) in Case No. 87 of 2006, Case No.88 of 2006 and Case No. 30 of 2007, the Commission had directed BEST to prepare a Long Term Power Procurement Plan (LTPPP). As per the direction, BEST undertook Demand Forecast for Long Term Power



Procurement for which it appointed M/s. CRISIL Risk and Infrastructure Solutions Limited as the consultant for this exercise.

- b. During the regulatory process for approval of BEST's PPA with TPC-G in Case No.87 of 2006, a presentation on the proposed methodology to be adopted by BEST for demand forecast was made before the Commission. The Commission accorded 'in-principle' approval to the above mentioned method during the hearing and BEST went ahead with the modalities regarding surveys as enumerated in its presentation on the methodology. Further, the copy of above mentioned methodology was forwarded to the Commission vide letters dated June 5, 2007 and March 10, 2008. Meanwhile, the demand forecast based on the above-mentioned methodology was prepared.
- c. BEST submitted a Petition under affidavit, before the Commission, on December 24, 2008, seeking approval for quantum of power to be purchased under long-term and medium-term power procurement.
- d. The hearing on the above-mentioned Petition was held on February 10, 2009 at 15:00 hrs. During the hearing, the Commission directed BEST to submit the Bidding Documents and approach the Commission for prior approval of deviations from the Competitive Bidding Guidelines (CBG) and draft Bidding Documents for Case-I type Competitive Bidding, after incorporating the requirement of 500 MW on Long Term Basis, and the methodology for demand projection approved by the Commission as a part of the main Petition.
- e. The Ministry of Power (MoP), Government of India, published the "Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees" on January 19, 2005, in accordance with Section 63 of the Electricity Act, 2003.
- f. The Guidelines apply for procurement of power through competitive bidding, through the following mechanisms:
 - i. Where the location, technology, or fuel is not specified by the procurer (Case 1);
 - ii. For hydro-power projects, load centre projects or other location specific projects with specific fuel allocation such as captive mines available, which the procurer intends to set up under tariff based bidding process (Case 2).
- g. Section 3.1 (i) of the aforementioned Guidelines states:



“The bid documentation shall be prepared in accordance with these guidelines and the approval of the appropriate Regulatory Commission shall be obtained unless the bid documents are as per the standard bid documents issued by the Central Government.”

- h. Earlier, the Standard Bid Documents were available only for procurement under Case-2 route and the Petitioner generally had to customise the SBD under Case-2, as required for the specifications related to Case-1. However, the Ministry of Power has notified the “Amendment to the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” Ref No. 23/11/2004-R&R (Vol.VI) dated March 27, 2009. It has also notified the SBD for procurement under Case-1 route in March 2009.
 - i. BEST has prepared the Bid Documents in line with the aforesaid Guidelines and has adopted the approved Standard Bidding Documents for Case-1. Since the Case-1 SBD documents are new and there is no precedent available, hence, at places where the Bid Documents gives the distribution licensee an option to decide on certain parameters such as amount of penalty in case of termination of agreement, minimum percentage of fuel off take, etc., to the extent possible, BEST has taken the reference from the Standard Bidding Documents of Case-2.
4. The summary of deviations/references assumed by BEST in the Bidding Documents are as under:

Summary of the Deviations/references proposed in the RFP Document

- a. BEST has considered “Requisitioned Capacity” as 400 MW, enabling BEST to specify the Scheduled Delivery Date of less than four years.
- b. BEST has assumed the Requisitioned Capacity of 400 MW, while retaining the option of increasing or reducing the Capacity by 20%. BEST has reduced its Requisitioned Capacity from 500 MW to 400 MW, though the Commission directed BEST to submit the Bidding Documents for Case-I, after incorporating the requirement of 500 MW on Long-Term Basis during the hearing held on February 10, 2009, in view of the recession/slow down. Further, the incremental demand was assumed to come from projects like Mill Land area development, Dharavi makeover plans, etc., which have slowed down. Moreover, the expected demand can also be catered by TPC-D under parallel license provisions. Hence, BEST has decided to procure only 400 MW



to avoid being saddled by additional capacity charges for the additional 100 MW of generation capacity.

- c. BEST has considered 'Minimum Bid Capacity' as 50 MW.

Summary of the Deviations/references proposed in the PPA Document

- d. BEST has kept the 'minimum off take Guarantee' at 65% as specified in Case-2 SBD.
- e. BEST has assumed the 'Normative Availability' of 85% as per "Amendment to the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees", dated March 27, 2009.
- f. BEST has considered Monetary Limitation of Liability: Up to 0.5% of the average annual Tariff Payment based on values assumed by MSEDCL in its Case-1 bid, which has been approved by the Commission. The adopted clause is reproduced below:

"A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 12 for any indemnity claims made in a Contract Year only up to an amount equivalent to half a percent (0.5%) of the average annual Tariff Payment for all the Contract Years up to the Contract Year in which the indemnity claim is made"

5. The Commission, vide its Notice dated July 13, 2009, scheduled a hearing in the matter on July 20, 2009, and directed BEST to serve a copy of its Petition along with its accompaniments to the four authorised Consumer Representatives.

6. At the hearing held in the matter on July 20, 2009, Shri. R.J. Singh, Dy. Chief Engineer, BEST, Shri. A.G. Patil, Chief Engineer, BEST and Shri. Amit Ramani, from CRISIL, appeared on behalf of BEST.

7. The Commission enquired whether BEST has adopted the Standard Bid Documents as approved by the Ministry of Power, and whether the proposed changes are deviations or customisation, permitted under the CBG. The Commission also enquired of BEST regarding the reasons for reducing the quantum of procurement from 500 MW (proposed in February 2009) to 400 MW. BEST clarified that the reduction from 500 MW to 400 MW was due to the slow down in the economy, and due to the presence of TPC-D as a parallel distribution licensee in BEST's licence



area. BEST added that the Bid Documents provide an option to BEST to procure $\pm 20\%$ of the quantum considering the market situation and the commercial prices.

8. The Commission observed that the demand recession was a short-term phenomenon, while the Power Purchase Agreement (PPA) is for a period of 25 years and the power procurement is expected to commence from FY 2011-12. As regards the impact of TPC-D as the parallel licensee, Shri. A.G. Patil submitted that some of the areas are covered by TPC and in other areas of re-development, BEST has approached the builders.

9. The Commission enquired of BEST regarding whether BEST will be able to get delivery of power from the projects which are not tied up, and whether BEST has done any market survey to satisfy itself that the required quantum of power is available in the market.

10. BEST submitted that several players in the market have spare capacity and few more power generation capacities are being set up. BEST added that though no technical or specific studies have been carried out, BEST is certain that it would be in a position to get the quantum of 400 MW, as the bidders have an option to bid for 50 MW block.

11. The Commission enquired of BEST regarding the phasing of the power procurement given that the overall requirement has been indicated as 400 MW, to be submitted in blocks of 50 MW.

12. BEST submitted that earlier, BEST has approached the Commission for a quantum of 300 MW for short-term and 500 MW for the long-term, which has now been modified to 400 MW. The power is required in FY 2011-12. Further, the option of procuring $\pm 20\%$ will depend on the commercial requirement.

13. BEST submitted that the reason for specifying minimum bid capacity of 50 MW is due to the minimum off-take guarantee of fuel applicable in the case of coal based plant, in the PPA. Further, the minimum capacity of 65% has been taken from Case-2 Standard Bid Documents, whereas the normative availability has been fixed at 85%, as per the recent Amendment in the Guidelines by the Ministry of Power.



Commission's Analysis and Ruling

14. Having heard the Parties, and after considering the material placed on record, the Commission is of the view as under:

A. Approval of Quantum to be procured

15. As regards the approval for the quantum of power to be procured, the Commission observes that Clause 3.1 (iii) (b) of the CBG stipulates as follows:

“Approval of the Appropriate Commission shall be sought prior to initiating the bidding process in respect of the following aspects:

...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)...”

16. The Commission observes that the EPS Report published by CEA provides the demand forecasts for the entire State and not for each Distribution Licensee separately. BEST has a PPA with TPC-G for 833 MW, and because of the timing of its peak power requirement, it also procures certain quantum of power during the peak hours, and increments into the Balancing pool in the State during other hours. The actual peak of BEST during FY 2007-08 was 865 MW. BEST has projected the peak demand of 1022 MW excluding mill land area and 1230 MW including mill land area during FY 2011-12. Given that BEST is witnessing around 4 to 5% annual growth in demand, BEST's proposal to procure additional 400 MW with an option to procure +20% of 400 MW appears reasonable. **Accordingly, the Commission approves the quantum as proposed by BEST for procurement through the competitive bidding process.**

B. Minimum Bid Quantity

17. As regards the customisation proposed by BEST, by specifying the minimum bid quantity of 50 MW, the Commission is of the view that this will facilitate greater participation, since smaller projects can also offer their power, and hence, greater competition, and may lead to discovery of a more competitive rate. Also, this may



give more flexibility to BEST in meeting its short-term and long-term requirement. Hence, **the Commission approves this customisation.**

C. Normative Availability of 85%

18. As regards the specification of normative Availability as 85% for payment of capacity charges, the same is in accordance with the “Amendment to the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees”, dated March 27, 2009, issued by the Ministry of Power, and hence, **the Commission approves the same.**

D. Minimum Off-take Guarantee of 65%

19. As regards the Minimum Off take Guarantee of 65% specified by BEST, the same is in accordance with that provided under Case-2 bidding process, and hence, **the Commission approves the same.**

E. Indemnification - Limitation of Liability up to 0.5%

20. As regards the monetary limitation of liability for indemnification to 0.5% of the average annual Tariff Payment for all the Contract Years up to the Contract Year in which the indemnity claim is made, the same is in accordance with the customisation approved by the Commission in case of MSEDCL, and hence, **the Commission approves the same.**

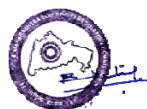
21. The Commission directs BEST to amend the Bidding Documents by complying with the directions given in this Order and issue the Bidding Documents to Bidders and submit the same to the Commission for record purposes.

With this Order, the Commission disposes off BEST’s Petition in Case No. 33 of 2009.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V. P. Raja)
Chairman



(P B Patil)
Secretary, MERC