

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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Case No. 35 of 2012

In the matter of

**Petition filed by Ixora Constructions (P) Ltd., Mumbai for approval of deviations taken
in the Request for Proposal (RFP) and Power Purchase Agreement (PPA) from
Standard Bidding Document issued by Ministry of Power (MoP), for medium term
procurement of power through tariff based Competitive Bidding Process (Case 1)**

Shri V.P. Raja, Chairman

Shri Vijay L. Sonavane, Member

Ixora Constructions (P) Ltd., Mumbai

..... Petitioner

Represented by:

Shri Prashant Anvekar
Shri Supriyo Saha

ORDER

Dated: 26 August, 2012

Ixora Constructions (P) Ltd., Mumbai (hereinafter referred to as “ICPL”) submitted a Petition under affidavit before the Commission on 19 April 2012 under the provisions of Clause 3.1 read with Clause 5.16 of the Guidelines for determination of Tariff by bidding process for procurement of power by distribution licensee (“CBG”) issued by the Ministry of Power (MoP) on 19 January 2005 and as amended thereafter and Regulations 23 and 24 of MERC (Multi Year Tariff) Regulations, 2011, seeking approval of deviations taken in the Request for Proposal (RFP) and Power Purchase Agreement (PPA) documents from the

Standard Bidding Document (“SBD”) issued by MoP, for medium term procurement of power through tariff based Competitive Bidding under Case 1.

2. The prayers of ICPL in the petition are as follows:-

“

- a) *Examine and approve the proposed RfP & PPA documents for Medium Term Power Procurement along with the Deviations proposed therein from Standard Bidding Document as issued by Ministry of Power.*
- b) *Examine the concerns expressed by the petitioner for a favourable dispensation as detailed in the petition.*
- c) *Grant expeditious approval on the Bidding Documents submitted for Bid Process along with the deviations submitted thereof.”*

3. ICPL in its Petition submitted as under:

Background of the Petition

- a. ICPL as a ‘Co-developer’ is developing the Special Economic Zone (“SEZ”) at Village Talegaon and Panshil, Taluka-Khalapur and Village Bhokarpada, Taluka Panvel in District Raigarh in the State of Maharashtra. The SEZ is being developed as a Multi services SEZ inter-alia including Information Technology (IT)/ Information Technology Enabled Services (ITeS) companies and a residential township along with associated infrastructure.
- b. As per the notification of the Ministry of Commerce, Government of India, dated 3 March 2010, read with section 14 (b) of Electricity Act (“EA”), 2003, ICPL is a deemed distribution licensee. The Commission vide Record of Proceedings dated 15 April 2011 in Case No. 33 of 2011 observed that ICPL, a co-developer of the Panvel SEZ is a deemed distribution licensee. Thus, as per the amendment made to section 14 (b) EA 2003 by the aforesaid notification of the Ministry of Commerce, Government of India, dated 3 March 2010, ICPL is a deemed distribution licensee in the SEZ with all concomitant rights and obligations of a distribution licensee within the State of Maharashtra.
- c. ICPL submitted a quantitative forecast of unrestricted demand in the form of a Demand Forecasting Report under Regulation 24.2 (b) of MERC (Multi Year Tariff) Regulations, 2011. Regulation 23.1 of MERC (Multi Year Tariff) Regulations, 2011 allows a distribution licensee to undertake its power procurement as approved by the Commission. The Commission vide Order dated 16 January 2012 in Case No. 149 of 2011 approved the quantum of power to be purchased by ICPL for the period as under:

Period	Demand (MW)
FY 2013-14	3
FY 2014-15	11
FY 2015-16	17
FY 2016-17	25
FY 2017-18	35

Further in the same Order, the Commission observed as under;

“10. Hence, in view of the above provisions, the Commission approves the request of the Petitioner to adopt a single stage bidding process for medium term power procurement in accordance with all applicable stipulations under the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees”.

11. In case of any deviation from the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees”, ICPL has to approach the Commission for the approval of the same and to further submit the Power Purchase Agreement (PPA) for approval”

- d. MoP has issued and amended SBD for determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees under Case 1 from time to time. In such case, if any deviations are undertaken from SBD, the approval, for such deviation/s, needs to be taken from State Electricity Regulatory Commission. The relevant clauses from CBG issued by MoP is given as below:-

“2.3. Unless explicitly specified in these guidelines, the provisions of these guidelines shall be binding on the procurer. The process to be adopted in event of any deviation proposed from these guidelines is specified later in these guidelines under para 5.16.

*... ..
... ..*

Deviation from process defined in the guidelines

5.16 *In case there is any deviation from these guidelines, the same shall be with the prior approval of the Appropriate Commission. The Appropriate Commission shall decide on the modifications to the bid documents within a reasonable time not exceeding 90 days.”*

- e. Hence, ICPL proposed to adopt Single stage (Case 1) Tariff based Competitive Bidding process for medium term procurement of power. The present Petition has been filed for approval of deviations in the RFP and PPA documents as compared to the SBD.
- f. ICPL forecasted power demand based on commercial shift operations as per US, UK timings, expected occupancy levels in SEZ. ICPL proposed to procure the power for base load and night load as follows:-

Period	Base Load (MW)	Night Load (MW)
FY 2014-15	5	4
FY 2015-16	7	6
FY 2016-17	7	7
FY 2017-18	7	7

The accurate power demand estimates for commercial buildings will be only possible after leasing agreements (June 13) are in place. Thereafter, ICPL will approach the Commission for additional power requirement at an appropriate time.

Deviations in Request for Proposal (RFP) and Power Purchase Agreement (PPA)

a. Supply Period and bid for power

ICPL proposed to procure RTC and Night power over four (4) supply periods from schedule delivery date with four (4) Power Purchase Agreements (PPAs) for each supply period of 1 year duration as given below:-

Supply Period	Scheduled Delivery Date	Scheduled Expiry Date	Time of Day	
			RTC Power (MW)	Night Power 1800-0200 hrs (MW)
Supply Period 1	01-04-2014	31-03-2015	5	4
Supply Period 2	01-04-2015	31-03-2016	7	6
Supply Period 3	01-04-2016	31-03-2017	7	7
Supply Period 4	01-04-2017	31-03-2018	7	7

ICPL proposed that Bidder may choose to quote for any of the 4 supply periods and must quote for both RTC and Night power in any supply period (s). As procurement quantum is small, there is a possibility of both RTC and Night power quantum in same supply period will not meet.

b. Capacity and Tariff

ICPL proposed to sign PPA at the delivery point i.e. Contracted Capacity and Quoted tariff is at delivery point. Such quoted tariff will include the applicable Transmission charges and losses up to the delivery point. Seller will be responsible for arranging transmission access up to delivery point.

c. Quoted Tariff

ICPL proposed that bidder shall submit Quoted tariff separately for RTC and Night power at the delivery point. As proposed, duration of contract is for 1 year, no escalation is being provided and no check for excessive front loading or back loading. Bidder shall quote non-escalable two (2) part tariffs.

d. Bid Evaluation

Instead of Levelized tariff, weighted average tariff for each Bidder shall be computed as weighted average of Quoted tariffs for RTC and Night power for each supply period as per following formula;

$$\text{Weighted Average Tariff} = (\text{Quantum}_{RTC} \times 24 \times T_{RTC} + \text{Quantum}_{Night} \times 8 \times T_{Night}) / (\text{Quantum}_{RTC} \times 24 + \text{Quantum}_{Night} \times 8)$$

Bidder with lowest Weighted Average Tariff shall be declared as Successful bidder for a Supply period.

e. Payment Security

The escrow cover is not envisaged by the Procurer, ICPL. The payment security will be constituted of Letter of Credit only.

f. As the supply period is one year, the equity lock in clause referred in Format 4.3, Consortium Agreement of RFP will not be applicable.

g. ICPL added the definition of the RTC power as *the required quantum of power as specified by the Procurer at Sr. No. 4 of Clause 1.3.1 of this RFP* and Night power as *the required quantum of power as specified by the Procurer at Sr. No. 2 & 4 of Clause 1.3.1 of this RFP*. The Night power described as power procured between 1800 – 0200 hrs.

4. The Commission vide its Notice dated 7 May 2012, scheduled a hearing in the matter on 21 May, 2012 in the presence of authorized Consumer Representatives under Section 94(3) of the Electricity Act, 2003.

5. During the hearing on 21 May 2012, Shri. Prashant Anvekar and Shri. Supriyo Saha appeared on behalf of ICPL. ICPL made a detailed presentation explaining the deviations proposed in RFP and PPA from SBD. The Commission opined that being a deemed distribution licensee, ICPL is mandated to abide by the responsibility cast on a distribution licensee under the EA 2003 and the rules, regulations and notifications thereunder. The Commission, regarding the deviation for Supply period, observed that ICPL should modify the PPA term in order to incorporate the said PPA into medium term procurement of power. Further, in order to increase competition, the Commission observed that ICPL should keep the option open for the Bidders to bid for either RTC/Night power or both. The Commission directed ICPL to have a meeting with the Officers of the Commission and with the Officers of the State Load Despatch Centre (SLDC) to sort out the key issues regarding deviations on delivery point.

6. Accordingly, meetings were held on 28 and 30 May 2012 at the Commission's Office with the representatives of State Load Despatch Centre and ICPL. During the meeting following aspects were discussed:

- a. ICPL stated that it will procure power from schedule delivery date over four (4) supply period each of one year. As per the Commission's observation during the hearing held on 21 May 2012, ICPL confirmed that it shall modify the four supply period into two supply period of (i) 1 April, 2014 to 1 April, 2015 (one year and one day) & (ii) 2 April, 2015 to 31 March, 2018 and to sign four PPAs consisting of two for RTC Power and two for Night Power;
- b. On the issue of the deviation in Interconnection point and delivery point, ICPL agreed to sign the PPA at interconnection point i.e. Contracted Capacity & Quoted Tariff is at Interconnection point. The representative of SLDC clarified that being a distribution licensee; ICPL should be connected to the Intra State Transmission System (InSTS) with the metering arrangement at InSTS periphery. As an InSTS user, ICPL should bear the transmission charges and the delivery point will be the InSTS bus to which the seller is connected. ICPL proposed to connect to 110/33 kV Tata Power Switchyard.
- c. Regarding the payment security mechanism, ICPL has not submitted any escrow agreement and hence was directed to submit the rationale for the same.

7. The Commission received a revised submission in the form of written submission from ICPL on 15 June 2012. The Commission vide its Notice dated 18 June 2012, scheduled a second hearing in the matter on 27 June 2012 in the presence of the authorized Consumer Representatives under Section 94 (3) of the Electricity Act , 2003.

8. During the hearing held on 27 June 2012, Shri Prashant Anvekar and Shri Supriyo Saha appeared on behalf of ICPL and made a presentation on the revised deviations proposed in RFP and PPA from SBD issued by MoP, Government of India.

9. The Commission's Ruling

a. Bid Documents

ICPL has forecasted the base load/ RTC power and peak load/ Night power (1800-0200 Hrs) based on commercial shift operations in US & UK and expected occupancy levels. ICPL has proposed to invite the bids for meeting its RTC and Night load for two (2) supply periods and proposed to proceed with single RFP for RTC power and Night power for each supply period ostensibly to reduce multiple RFPs so that comfort is available to the bidders. ICPL has proposed to invite separate bids for RTC and Night power for each supply period and to evaluate the bids independently.

Clause 2.2 of Competitive Bidding Guidelines read as under:

"2.2. The guidelines shall apply for procurement of base-load, peak-load and seasonal power requirements through competitive bidding, through the following mechanisms:

(i) Where the location, technology, or fuel is not specified by the procurer (Case 1);

... ..

However separate RFP shall be used for procuring base load or peak load or seasonal load requirements as the case may be."(emphasis added)

According to the above clause 2.2 of Competitive Bidding Guidelines, the Procurer shall issue separate RFP for base load or peak load or seasonal load. Bids will be invited and evaluated separately for RTC and Night Power for both supply period. Hence, the Commission accords its approval to the proposal that there would be single RFP for each supply period for procurement of RTC and Night power but separate bids will be invited for

RTC and Night power for each supply period and the evaluation of the bids will also be done separately for RTC and Night power procurement. Accordingly, there shall be two (2) separate power purchase agreements for RTC and Night power each for supply period.

b. Supply period and bid for power

ICPL has proposed to procure RTC and Night Power over two (2) supply periods as shown below:

Supply Period	Scheduled Delivery Date	Scheduled Expiry Date	Time of Day	
			RTC Power (MW)	Night Power 1800-0200 hrs (MW)
Supply Period 1	01-04-2014	01-04-2015	5	4
Supply Period 2	02-04-2015	01-04-2018	7	7

The Commission had issued an Order dated 16 January 2012 in Case 149 of 2011, according approval to the quantum of power to be procured by ICPL. The relevant extract is reproduced as;

“ *The Commission analysed the demand projected by ICPL for the period from FY 2013-14 to FY 2017-18 and the validation of the submitted data. The Commission is of the view that demand projected appears to be reasonable considering the various assumptions and methodology adopted for forecasting and validating the demand. Hence, the Commission approves the quantum of power to be procured by ICPL for the period as under:*

<i>Period</i>	<i>Demand (in MW)</i>
<i>FY 2014</i>	<i>3</i>
<i>FY 2015</i>	<i>11</i>
<i>FY 2016</i>	<i>17</i>
<i>FY 2017</i>	<i>25</i>
<i>FY 2018</i>	<i>35</i>

”

The Commission is of the view that ICPL is going to start its operations. ICPL has proposed RTC power and Night power on expected occupancy level. In earlier submission ICPL had proposed four supply periods. As observed by the Commission, ICPL has reduced the complexity by proposing two (2) supply periods as compared to the four (4) in earlier submissions. The Commission approves ICPL’s request to procure following quantum of power

on medium term basis through Competitive Bidding Process under Case I Bidding The Commission directs that the bidder should be free to bid either for RTC or Night power procurement or both.

Supply Period	Scheduled Delivery Date	Scheduled Expiry Date	Time of Day	
			RTC Power (MW)	Night Power 1800-0200 hrs (MW)
Supply Period 1	01-04-2014	01-04-2015	5	4
Supply Period 2	02-04-2015	01-04-2018	7	7

c. Responsibility for arranging Transmission Access

ICPL has proposed to sign the PPA at interconnection point i.e. Contracted Capacity and Quoted Tariff is at interconnection point. The only deviation proposed is that, in case the Power project located in the Procurer State i.e. in Maharashtra, Seller will be responsible for arranging evacuation of power from station switchyard of Generating Source to STU interface.

Accordingly, ICPL has submitted the following clause to seek approval of the Commission as the same is proposed in the deviation of the SBD documents;

“ STU Interface(s) shall mean the point at which the CTU network is connected to the intrastate transmission system of the Procurer State, and at which the Procurer agree to receive power up to the Requisitioned Capacity;

For generation source in the same state as that of the Procurer, the STU Interface shall be the Inter-connection Point.

For abundant clarity, for generation source in the same state as that of Procurer, the responsibility of arranging evacuation of power from Power Station bus bar to the STU Interface shall be of Seller.

ICPL further clarified that it has proposed this clause to simplify the situation to start the operation. If in case, the generator having STU connectivity at lower voltages wins the bid; ICPL may end up in a situation to arrange transmission access to the generator which may add further delay in starting the operation of the licensee.

The Commission is of the view that ICPL has proposed to procure small quantum of power so as to start its operation. For this small quantum of

power, the small sellers which are connected to lower voltage are likely to bid. The delay in arranging the transmission access may further hold up operation of ICPL. Hence, the Commission approves the above proposed clause and directed that, in case of the generating source being in the same state, the responsibility for arranging the transmission access from station switchyard of the generation source shall lie with seller.

The Commission further clarified that, if the generation source is located within the State, the generator which is directly connected to STU is allowed to bid.

However, the responsibility of arranging the transmission access from the Interconnection point to the injection point lies with the Seller.

d. Quoted Tariff

Clause 4.4 of CBG reads as follows;

*“4.4 The capacity component of tariffs may feature separate non-escalable (fixed) and escalable (indexed) components.
... ..”*

ICPL proposed that Bidder has to quote firm, non-escalable tariff for Supply period 1 as the period duration is one (1) year one (1) day and escalable & non-escalable tariff for Supply period 2 as the period duration is three (3) years. ICPL has proposed the following deviations in Clause 2.4.1.1 (B) of the SBD;

Proposed clause	Clause as per SBD
<p>i. The Bidder shall submit their Quoted Tariff separately for RTC Power and/or Night Power at the Interconnection Point and shall specify the same in its Financial Bid as prescribed in Format 4.10 (Format 4.10.1 and/ or Format 4.10.2 for RTC Power and/ or Night Power respectively) of this RFP;</p>	<p>i. The Bidder shall submit their Quoted Tariff at the Interconnection Point and shall specify the same in its Financial Bid as prescribed in Format 4.10 of this RFP;</p>
<p>vi. The Bidder shall quote the Quoted Non-Escalable Capacity Charges.</p>	<p>vi. The Bidder shall quote the Quoted Escalable Capacity Charges and Quoted Non Escalable Capacity Charges. In case of Quoted Escalable Capacity Charges, the Bidder shall quote charges only for the first Contract Year after commencement of supply of power as</p>

<p>ii. The Quoted Non Escalable Capacity Charges for each Contract Year shall be based on the Normative Availability and shall include the cost of secondary fuel.</p>	<p>per the terms of the PPA.</p> <p>vii. The Quoted Escalable Capacity Charges and Quoted Non Escalable Capacity Charges for each Contract Year shall be based on the Normative Availability and shall include the cost of secondary fuel.</p>
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The Commission observes that ICPL has proposed to procure the power for two supply periods. The duration of supply period 1 is one year one day only. Hence, no escalation is required to be provided in the tariff. Accordingly, the Commission approves that for Supply Period 1, Bidder has to quote firm, non-escalable tariff separately for RTC and Night Power. Further, the Commission approves that for Supply Period 2, Bidder has to quote escalable & non-escalable Tariff separately for RTC and Night Power.

e. Bid evaluation

As regards Bid evaluation, Clause 5.15 of CBG reads as below:-

*“5.15 The bidder who has quoted lowest levelised tariff as per evaluation procedure, shall be considered for the award.
... ..”*

ICPL has proposed that separate bids will be evaluated for RTC power and Night power. ICPL further proposed that, for supply period 1, the Bidder with the lowest tariff shall be considered for award.

The Commission observes that as per the above Clause 5.15 of CBG, bid evaluation shall be made on levelised tariff. In case of Supply period 1, the levelised tariff is not applicable as the duration of supply period is one year and one day. Hence, the lowest tariff quoted by the Bidder shall be considered for evaluation.

The Commission approves the deviation and after incorporating the deviation the Clause 3.5.3 of RFP reads as follows:-

“The Bidder with the lowest Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.”

After incorporating the deviation the Clause 3.4.5 of RFP read as follows;

“ Applicable transmission charges shall be added to such Quoted Tariff as described below.”

For supply period 2, the Commission has not considered any deviations regarding the Clause 5.15 of CBG.

f. Payment Security

Clause 4.10 of CBG is reproduced as under:-

“4.10 Adequate payment security shall be made available to the bidders. The payment security may constitute:

(i) Letter of Credit (LC)

(ii) Letter of Credit (LC) backed by credible escrow mechanism.

In the case the seller does not realize full payment from the procurer by the due date as per payment cycle, the seller may after 7 days, take recourse to payment security mechanism by encashing the LC to the extent of short fall or take recourse to escrow mechanism. The procurer shall restore the payment security mechanism prior to the next date of payment. Failure to realize payment even through payment security mechanism shall constitute an event of payment default. In the event of payment default the seller, after giving 7 days notice, can sell up to 25% of the contracted power to other parties without losing claim on the capacity charges due from the procurer. If the payment security mechanism is not fully restored within 30 days of the event of the payment default, the seller can sell full contracted power to other parties without losing claim on the capacity charges due from the procurer. The surplus over energy charges recovered from sale to such other parties shall be adjusted against the capacity charge liability of the procurer. In case the surplus over energy charges is higher than the capacity charge liability of the procurer, such excess over the capacity charge liability shall be retained by the seller.

According to the above clause, the payment security shall be available by either Letter of Credit or Letter of Credit backed by credible escrow agreement. ICPL has opted to provide payment security by Letter of Credit only; it has not envisaged any escrow agreement as the power quantum is

small. As Clause 4.10 indicates an option of Letter of credit or Letter of Credit (LC) backed by credible escrow mechanism, there is no deviation as such. In any case, LC by itself provides adequate payment security to the bidder. Hence, the Commission opines accordingly.

10. Considering the importance of load in SEZ area, the sufficient availability of power to meet demand would certainly enhance reliability in SEZ area. The Commission observes that ICPL has proposed the deviations by considering expected load growth and operational requirements for Panvel SEZ area. Hence, the Commission, in terms of this Order and subject to the directions hereinbefore, approves the proposed deviations taken in Request for Proposal (RFP) and Power Purchase Agreement (PPA) from SBD issued by MoP for Medium Term Power Procurement under CBG (Case 1).

The Commission directs ICPL to amend the Bidding Documents by complying with the directions given in this Order and to issue the Bidding Documents to Bidders and submit the same to the Commission for record purposes. Further, after the completion of the process envisaged in CBG, ICPL should approach the Commission under Section 63 for adoption of tariff. ICPL shall in accordance with Section 86(1) (b) submit a copy of the PPA for the Commission's examination.

With the above, the Petition filed by ICPL in Case No. 35 of 2012 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V.P. Raja)
Chairman