

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 28 of 2009**

**In the matter of**  
**Maharashtra State Electricity Distribution Company Ltd.'s (MSEDCL) Petition for**  
**Approval of Deviations taken in the Bid Documents from the Standard Bidding**  
**Document issued by Ministry of Power for Competitive Bidding Process under Case-I**  
**Bidding for procurement of 2000 MW base load power on Long-Term Basis.**

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

**ORDER**

**Dated: July 23, 2009**

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) filed a Petition under affidavit before the Commission on May 18, 2009, seeking approval of deviations taken in the Bid Documents from the Standard Bidding Documents (SBD) issued by Ministry of Power (MoP) for Competitive Bidding Process under Case-I bidding process for procurement of 2000 MW base load power on Long-Term Basis under International Competitive Bidding Process.

2. The prayers made by MSEDCL in the Petition are:

- a) *“Examine the proposed Request for Proposal document for long term Power Procurement along with the Deviations proposed therein from Standard Bidding Document 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;*
- d) *Condone any inadvertent omissions/errors/shortcomings and permit MSEDCL to add/change/modify/alter this filing and make further submissions as may be required at a future date;*
- e) *Pass such further and other orders, as the Honourable Commission may deem fit and proper keeping in view the facts and circumstances of the case.”*

3. MSEDCL submitted that the Commission vide its letter MERC/Case No. 3 of 2009/868 dated May 7, 2009 stipulated as under:



- ✓ ... MSEDCL should start competitive bidding process under case 1 bidding route ab-initio ( i.e. in accordance with amended Competitive Bidding Guidelines (CBG) and Standard Bid Documents (SBD) for Case 1 bidding notified by Ministry of Power, Government of India
- ✓ To the extent possible, MSEDCL should adopt the SBD with appropriate customisation and propose deviations only if absolutely necessary. In case of no deviations from CBG and SBD, MSEDCL can expedite bidding process rather than awaiting completion of regulatory process for approval of deviations.

4. MSEDCL submitted that in accordance with the above observations of the Commission, it has prepared the fresh Bid Documents consisting of Request for Proposal (RFP) and the Power Purchase Agreement (PPA) based on amended Competitive Bidding Guidelines (CBG) and final SBD for Case-I. MSEDCL submitted that considering the acute shortage of power in the State of Maharashtra, it has initiated the bid process for procurement of 2000 MW.

5. MSEDCL made the following submissions in the Petition:

- a) MSEDCL has taken the initiative to procure power on long-term basis for 2000 MW under Case-I route of competitive bidding, wherein the selected bidder is responsible for ensuring the supply of power to MSEDCL in accordance with the terms of the Bid Documents;
- b) MSEDCL submitted that the objective of this bidding process is to procure 2000 MW base-load power on long-term basis;
- c) MSEDCL submitted that MoP has issued the SBD for procurement of power by Distribution Licensees through competitive bidding process under the Case-I route. In such cases, tariff is not required to be approved by the Commission, and the Commission has to adopt the tariff discovered through the competitive bidding process, however, if any deviations are taken in bidding documents from SBD, the approval for such deviations needs to be taken from the appropriate Regulatory Commission. The relevant Clauses of CBG are given 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 subject to approval by the Appropriate Commission. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 90 days.”*

- d) MSEDCL submitted that it has made certain modifications to the SBD issued by MoP, primarily to meet its specific requirements.



6. MSEDCL proposed the following deviations in the Bid Document:

- a) MSEDCL proposed to increase amount of the Bid Bond from Rs. 3 Lakh per MW of maximum capacity proposed to be offered by the Bidder as specified in the SBD issued by the MoP for Case-I to Rs. 30 Lakh per MW of maximum capacity.

MSEDCL submitted that it has proposed this change in order to protect the interest of MSEDCL by discouraging non-serious players from bidding and submitted that the present amount (Rs. 3 Lakh/MW) is not a sufficient deterrent. MSEDCL further added that there have been some instances in other States wherein the successful bidder has walked out of his commitment to supply the contracted power to the State by forfeiting the Bid Bond amount and not entering into the PPA. Such instances have taken place in Haryana and Madhya Pradesh wherein M/s Lanco Kondapalli Power Ltd., has backed out from the Case-I projects, after being shortlisted as the preferred Bidder. MSEDCL submitted that such a situation has a huge implication on the State as significant time is spent by the State in conducting the bidding process and after conclusion of the same, if the selected bidder walks out of the project, it is a great loss of time for the States, which are already reeling under huge supply deficit.

- b) MSEDCL submitted that it intends to procure 2000 MW power (-20%/+30%) at the Delivery Point for a period of 25 years from the Scheduled Delivery Date in accordance with the terms of the PPA under Case-I bidding procedure as against the SBD provision of providing option to the Procurer to procure power in the range of  $\pm 20\%$  of stated capacity. MSEDCL submitted that it has proposed the flexibility for the quantum of power proposed to be procured by +30%, in view of the fact that 680 MW contemplated under Case-I bidding process concluded in a separate case with M/s Lanco Kondapalli Power Ltd., may not materialise considering the development activities on the project by M/s Lanco Kondapalli Power Ltd.
- c) MSEDCL proposed following annual escalation rates:
- Annual escalation rate of 0.5% per annum during the Contract Period on the quoted escalable Inland Transportation Charges for domestic coal, imported coal, R-LNG as well as gas (piped) for the domestic;
  - Annual escalation rate of 5% per annum during the Contract Period on the normative Transmission Charges;
  - Annual escalation rate applicable to quoted escalable fuel handling charges tariff shall be the rate specified by the Central Electricity Regulatory Commission (CERC) and in absence of the same, the annual escalation rate shall be as per the escalation rate specified by the CERC for Inland Handling Charge in the sub-component of imported coal per annum during the Contract Period. This will also be applicable for R-LNG.
  - Annual escalation rate applicable to quoted escalable energy charges for imported gas (R-LNG) shall be the rate specified by the CERC and in the absence of the same the annual escalation rate shall be as per the



escalation rate specified by the CERC for imported coal in the sub-component of imported coal per annum during the Contract Period.

MSEDCL submitted that the above mentioned changes in the escalation rate have been provided, as the CERC has not yet notified the escalation rates and in such case it is important to specify the escalation rates.

- d) MSEDCL proposed to include the details of hydel plants in the RFP and PPA, which has not provided in the SBD issued by MoP.
- e) MSEDCL further submitted that the Commission may approve the deviations as proposed in the RFP and permit MSEDCL to file Petition seeking approval from the Commission in respect of further deviations, if any, based on the inputs during the Bid process at later stage.

7. The Commission issued a notice scheduling the hearing in the matter on July 9, 2009 and directed MSEDCL to serve copies of its Petition to the four Consumer Representatives authorised on a standing basis under Section 94(3) of the Electricity Act, 2003 (“EA 2003”).

8. The hearing in the matter was held at the Commission’s office on July 9, 2009. During the Hearing, MSEDCL made a presentation on the Demand/Supply position of MSEDCL till FY 2012-13 and salient features of the Petition.

9. During the presentation, MSEDCL submitted that considering the peak demand as projected by the Central Electricity Authority and peak demand for the Mumbai licence area, it has estimated a total gap of 2466 MW during FY 2012-13. MSEDCL also elaborated various other deviations sought from the SBD issued by the Ministry of Power, GoI.

10. As regards the proposed deviations related to the various escalation rates, the Managing Director of MSEDCL, Shri Ajoy Mehta submitted that MSEDCL proposed to withdraw the deviations considering the fact that CERC has now notified the escalation factors and other parameters as per the Amended CBG dated March 27, 2009.

11. During the hearing, MSEDCL submitted the additional modifications in the RFP and PPA based on the discussions held with the bidders during the pre-Bid Conference held on June 10, 2009. MSEDCL submitted that the additional modifications have been proposed primarily to bring more clarity in the Bid Documents. The Commission directed MSEDCL to submit these additional modifications at the earliest.

12. Subsequently, MSEDCL submitted the following additional information on July 13, 2009:

- a) MSEDCL proposed that separate bid bond shall be submitted by the Bidders submitting more than one financial bid for each financial bid corresponding to the offered contracted capacity under each financial bid. MSEDCL further submitted that the Bidder shall have to specify in the Covering Letter (Format 4.1) Point 2, the number of bid bonds submitted for each financial bid corresponding to quantum of capacity offered under each such financial bid.



MSEDCL proposed this change after discussions with prospective Bidders in the pre-bid meeting.

- b) MSEDCL proposed to add the provisions of fuel source specified under Clause 4.13 (B) as follows:

*“Coal (Fuel) Supply Agreement with Central/State Government Company (Undertaking) (linkage)”*

MSEDCL has proposed this change after discussions with prospective Bidders in the Pre-Bid meeting for better clarity.

- c) MSEDCL proposed to modify the existing Clause No. 2.2.9 Para 2 of RFP in Stage 1 document by deleting *“the generation source of the Successful Bidder is in the same state as that of the Procurer or”* from the Clause which states that if the generation source of the successful bidder is in the same State as that of the procurer or the successful bidder, and the Bidder intends to connect its generation source to the STU Interface through a dedicated transmission line, then within thirty days of the issue of the Letter of Intent (LoI), the procurer and the successful bidder/Project Company shall be jointly responsible for agreement on the Delivery Point for supplying power to the Procurer and for incorporating the same in the PPA. MSEDCL proposed this change in view of the fact that in case the generation source is within the State of Maharashtra, the interconnection point is as defined in RFP/PPA. Hence, no further decision with regard to deciding the Delivery Point is required to be taken.
- d) MSEDCL proposed modification in the Format (Annexure-II of the RFP) for submission of Board Resolution based on the clarifications/suggestions sought by Bidders to provide more clarity on the applicability of the submission of Board Resolution in different scenarios based on the identity of bidders.
- e) MSEDCL modified the definition of ‘Contract Year’ as *‘Contract Year shall mean the period commencing on the Effective Date ... shall end on the last day of the term of this agreement and further, provided that for the purpose of payment, the tariff shall be the Quoted Tariff for the applicable Contract Year as per Schedule 8 of this Agreement, **duly escalated as provided in Schedule 6 of this Agreement**’.*

MSEDCL submitted that it has proposed this change for better clarity in accordance with the clarifications/suggestions sought by the Bidders.

- f) MSEDCL proposed that under Schedule 12 Substitution Rights of the Lenders 12.8.3, the words ‘Shall Procure’ should be replaced with ‘Shall Carry’ as stipulated below:

*“... the Seller **shall carry** out an Amendment in the concluded agreement to incorporate such clause”.* MSEDCL submitted that it has proposed the change so that the bidder has to carry out the necessary modifications to re-align the other



Agreements, if any, in accordance with the PPA to be executed through this Bidding process.

### **Commission's Analysis and Ruling**

13. Having heard MSEDCL and the other stakeholders, and after considering the material placed on record, the Commission is of the view as under:

#### **A. Approval of Quantum to be procured**

14. 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)...”*

15. 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. During the hearing, MSEDCL provided the comparison of peak load as per EPS Report and subtracted the peak load of Mumbai region and compared with the capacity available and expected to be commissioned in next five years. The actual peak shortfall during FY 2008-09 amounted to 4053 MW. Considering the expected capacity addition during next four years, MSEDCL has projected a shortfall of around 2500 MW during FY 2012-13. Accordingly, **the Commission approves the quantum as proposed by MSEDCL for procurement through the competitive bidding process.**

#### **B. Increase in the Bid Bond Value**

16. As regards the proposed deviation to increase amount of the Bid Bond from Rs. 3 Lakh per MW of maximum capacity proposed to be offered by the Bidder as specified in the SBD issued by the MoP for Case-I to Rs. 30 Lakh per MW of maximum capacity, the Commission agrees with MSEDCL's views, and has hence, **approved this deviation.**

#### **C. Separate Bid Bonds for different Financial Bids**

17. As regards the proposed deviation that separate Bid Bonds should be submitted by the Bidders in case of more than one Financial Bid, the Commission agrees with the views of MSEDCL that such change would provide Bidders least inconvenience for release of the Bid Bond corresponding to the non-selected Financial Bid in case the Bidder submits more than one Financial Bid and accordingly, **the Commission approves such deviation.**



#### **D. Modification to the Fuel Source**

18. As regards the proposed inclusion of words 'Coal (Fuel) Supply Agreement with Central/State Government Company' under the Fuel Source specified under the format for 'Details of Primary Fuel', the Commission **has noted the same**.

#### **E. Format for Submission of Board Resolution**

19. The Commission has **noted the changes proposed to the Format** for submission of Board Resolution.

#### **F. Amendments in the Other Agreements based on the Concluded PPA**

20. As regards MSEDCL's proposal that under Schedule 12 Substitution Rights of the Lenders 12.8.3, the words 'shall procure' should be replaced with 'shall carry out' as under:

*"... the Seller **shall carry out an Amendment in the concluded agreement to incorporate such clause**".*

**The Commission approves such deviation** since this is intended to impart greater clarity that the Bidder has to carry out the necessary modifications to re-align the other Agreements in accordance with the PPA to be signed with MSEDCL.

21. All other changes in the RFP and PPA made by MSEDCL are either customisation in accordance with the SBD or are included for having more clarity with respect to interpretation of the Bid Documents, and the **same have been noted**.

22. The Commission directs MSEDCL 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 MSEDCL's Petition in Case No. 28 of 2009.

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(P B Patil)  
Secretary, MERC