

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 104 of 2009

**In the matter of
Maharashtra State Electricity Distribution Company Ltd.'s (MSEDCL) Petition
For Approval of Deviations taken in the Request for Proposal (RFP) from the
Standard Bidding Document issued by Ministry of Power for Competitive Bidding
Process under Case-I, to be issued to Bidders for procurement of 1000 (+/- 20%)
MW base Load Power on Medium Term Basis under International Competitive
Bidding Process (Case 1)**

**Shri V.P. Raja, Chairman
Shri S.B. Kulkarni, Member
Shri V.L.Sonavane, Member**

ORDER

Dated: April 13, 2010

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) filed a Petition under affidavit before the Commission on January 20, 2010, seeking approval of deviations taken in the Request for Proposal (RFP) from the Standard Bidding Documents (SBD) issued by Ministry of Power (MoP) for Competitive Bidding Process under Case-I, to be issued to Bidders for procurement of 1000 (+/- 20%) MW base Load Power on Medium Term Basis under International Competitive Bidding Process (Case 1).

2. Prayers of the petitioner :

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. Submission made by the petitioner:

- a) MSEDCL submitted that it intends to undertake bidding process to procure 1000(+/- 20%) MW base load power under Case 1 bid process for Medium Term, from generation projects based on Gas/RLNG, Coal/lignite and hydro etc. The successful bidder shall enter into a Power Purchase Agreement (PPA) with MSEDCL, the procurer.

The petitioner further submitted that the Ministry of Power (MoP) has issued and amended from time to time , SBD for Procurement of Power by Distribution licensees. In such case, tariff is not required to be approved by the Commission, however, if any deviations are undertaken from Standard Bidding Documents, the approval for such deviations needs to be taken from the Commission. The petitioner, proceeded to state the relevant clauses from the guidelines issued by MoP as given below :

“3.1

The bid document 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 . In such cases, an intimation shall be sent by the procurer to the appropriate Regulatory Commission about initiation of the bidding process

Approval of the appropriate Commission shall be sought in event of deviations from the bidding conditions contained in these guidelines following the process described in para 5.16 of these guidelines.

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

- a) *For the quantum of Capacity/energy to be procured, in case the same is exceeding the projected additional demand forecast for the 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 RFP) Electric Power Survey published by Central Electricity Authority (Both for Case 1 and Case 2)*

“Deviation from process defined in the guidelines

5.16 *In case there is any deviations from these guidelines, the same shall be subject to approval by the Appropriate Commission. The Appropriate Commission shall approve the required modification to the bid document within a reasonable time not exceeding 90 days”*

b) The petitioner further submitted as follows :

MSEDCL has executed a PPA for 2000 MW under Case 1 , Stage 1 with M/s Adani Power Maharashtra Ltd (APML), and M/s Lanco Mahanadi Power Project Ltd.(LMPPL) for 1320 MW, 680 MW respectively. Further the Commission has also accorded approval to PPA for additional 300 MW under Case 1 Stage 1 from M/s JSW Energy Ltd.

MSEDCL had finalized 2600 MW bidding process under Case 1 , Stage 2 to meet the Demand-Supply gap, which is based on the forecast made by MSEDCL up to year 2012-2013. The said forecast showed a shortfall of about 2855 MW in year 2011-12. It was further observed that the projects of MSPGCL and those of Central sector may not come as scheduled and the same may get delayed by a year or two. The delay may increase the Demand-Supply gap. In order to bridge the gap, it is proposed to procure 1000 MW on Medium Term basis (January 2011to December 2012).

c) The petitioner has made certain modifications in the Standard Bidding Documents issued by the MoP for Case 1 bidding, primarily to meet the specific requirements of the procurer. The petitioner further stated that there may also be some amount of re-arrangements and numbering sequence of the relevant paragraphs in the course of the said modifications.

The petitioner proposed the following deviation in the RFP

Scope : Sr No. 6 : Scheduled delivery date: Modification proposed :

“ For Requisitioned capacity upto 1000 (+/- 20%) MW, the scheduled delivery date shall be decided by the procurer/(authorized representative). However, the Scheduled Delivery Date can be preponed on mutual consent of the seller and the procurer(s), subject to availability of transmission capacity as per the provisions of the PPA.”

The petitioner stated that the reason for the change was that the modification shall allow for requisitioned capacity up to 1000MW with the petitioner having option to decide the scheduled delivery date so as to meet the petitioner’s requirement.

4. Submission during the Hearing :

The hearing in the matter was held at the Commission's office on March 5, 2010 and the Consumer representatives authorized vide section 94(3) of the Electricity Act 2003 were also invited to attend the same. MSEDCL was represented in the said hearing by MD Shri Ajoy Mehta, Shri G.S. Trimukhe and Shri S G Metre. During the hearing, MSEDCL made a presentation to detail out the submission as follows :

It was submitted that in the Petition MSEDCL has proposed deviations from the guidelines issued by MoP for Standard Bidding Procedure for which approval of Commission is required. Detailed background pertaining to the petition made by MSEDCL was explained as given below.

5. Presentation by MSEDCL during the hearing :

5.1 Demand Forecast:

- a) MSEDCL referred to the Competitive Bidding Guidelines document issued on March 27, 2009 by the Ministry of Power (MoP) for procurement of Power under Case 1. MSEDCL submitted that they had proposed to undertake medium term power procurement (January 2011 to December 2012) through competitive bidding as per above MoP guidelines.

MSEDCL explained that they had formed an internal team, which had used the data available from EPS-17 survey and had also used their own database to arrive at the projection of Power availability and Power deficit in the State. The team has prepared forecast regarding average peak load requirement for MSEDCL area based on the data available in EPS 17 and the average peak load data of Mumbai area. Based on then above the average peak load in MSEDCL area is projected as follows :

Year	2009-10	2010-11	2011-12	2012-13
Average peak load projection in MSEDCL area [MW]	15912	17431	19105	20933
Less Projection of load relief through load management [MW]	1200	1700	2000	2400



b) MSEDCL further submitted that based on the projection of capacity addition and the load relief available through effective load management, the projections of Peak shortfall are as follows :

c)

Year	2009-10	2010-11	2011-12	2012-13
Projection of year wise availability of peak capacity (Existing + proposed addition [MW])	11668	13208	14029	16462

d) MSEDCL stated that based on the data in the tables above, it is seen that there will be shortfall of peak capacity in years as given below

Year	2009-10	2010-11	2011-12	2012-13
Net peaking deficit [MW]	3044	2523	3076	2071

MSEDCL further stated that, as the projections as above were quite authentic, MSEDCL was quite concerned on account of the deficit situation projected upto year 2012. Mr Mehta explained that MSEDCL had already initiated a number of schemes for Load Management, one of such schemes being the Feeder separation scheme which is approximately 70 % complete and already giving benefit in the form of reduction in demand.

5.2 Delays in Generation projects :

MSEDCL further stated that based on the information available with them, the following Generation projects of Maharashtra State Power Generation Company Limited (MSPGCL) and the private sector projects in the State, may get delayed by about year or two.

- MSPGCL Uran Gas Expansion 1220 MW Project
- M/s Adani Power Maharashtra Limited project of (capacity of 1320 MW) which was expected in the 2011-12 may be delayed due to cancellation of coal linkages.
- M/s Lanco Mahanadi Power Private Limited two projects, one of 680 MW is likely to get delayed due to change in project site from Chhattisgarh to Mandva, Distt Wardha

MSEDCL stated that the delay may increase the demand supply gap and in order to bridge the gap it proposes to procure 1000 MW($\pm 20\%$) on Medium Term basis for the period Jan, 2011 to Dec, 2012.

MSEDCL requested the Commission to grant all the prayers.

6. Comments made by Prayas (Consumer Representative)

M/S Prayas sent their views and comments regarding the petition made by the petitioner by E-Mail and requested the Commission to take on record these comments and submissions. A copy of the E-Mail communication sent by Prayas was handed over to the petitioner before start of the hearing.

In their communication, Prayas has stated that, in its petition MSEDCL has presented demand shortfall projections till 2012-13 along with expected capacity addition. Prayas further observed that, the exact current status of many of the projects slated for completion in FY 2010-11 or 2011-12 is not known and hence it becomes difficult to comment on the petitioner's assumptions of possible capacity addition. Prayas further stated that, as per MSEDCL's own projections, even if this capacity becomes available as per the expected schedule, there would be still peak shortfall of around 2466 MW and hence it is not clear on what basis MSEDCL is proposing for this limited quantum for procurement of only 2 years. Prayas further stated that this issue brings to fore the criticality of the decisions regarding power purchase planning as it not only bears significant long term impact on consumer tariff but also affects supply availability and hence load shedding. Prayas further stated that, as such, any adhoc decisions in this regard can lead to, on one hand subjecting consumers to increased tariffs on account of (avoidable) high cost power purchases while also making them suffer from the menace of load shedding because of inadequacy of supply so procured. Prayas further made observation that ensuring adequate amount of power procurement at economical costs and bringing in transparency and accountability in the critical area of power purchase planning is one of the primary reasons for bringing in independent regulation in power sector. Prayas further went on to request the Commission to ensure that all decisions regarding power purchase and planning are in line with this broad regulatory objective and further requested the Commission to direct MSEDCL to clearly and transparently provide the following information:

- a) MSEDCL's demand supply forecast for next 5-10 years,
- b) MSEDCL's immediate, medium and long term power purchase plans and the efforts it is undertaking in the same regard
- c) Current status of all the projects expected to be commissioned in next 1-2 years
- d) Rationale for procuring the quantum proposed in the current petition in the context of the above mentioned points

Prayas stated that without having such complete information and understanding on the broad issue of power purchase planning, it would not be prudent to consider the need and/or appropriateness of the quantum and duration of the power purchase proposed under the



current petition. Prayas further requested the Commission to consider the current petition only if it falls in line with the broader aspects of comprehensive power purchase planning, as highlighted above.

7. MSEDCL's reply

MSEDCL replied to the queries raised by Prayas during the hearing and also subsequently submitted a written reply with detailed tabulations, vide their letter CE/PP/MTPP/No. 8261 dated 19th March 2010. In their reply to the above, MSEDCL referred to the presentation made by them earlier explaining the statistical details about the delayed projects and the explanation regarding efforts taken by Load Management team. MSEDCL reiterated that as shown in the presentation, on account of delayed projects in the Public as well as the Private Sector and on account of increasing trend of demand in Maharashtra based on the EPS 17, there would be a shortfall of about 3076 MW in Year 2011-12 and 2071 MW in upto December 2012 considering the load relief of 2000 MW in year 2011-12 and 2400 in 2012-2013 through load management scheme. MSEDCL further explained that since most of the projects are getting delayed and the scheduled CoD of these projects would be after year 2012, there may be shortfall. Hence Medium Term power procurement of 1000 (+/- 20%) MW has been proposed to minimize the gap or load shedding during period January 2011 to December 2012. MSEDCL hoped that the explanation above would squarely address the issues raised by Prayas .

8. Commission's analysis and Ruling

8.1 Observations of the Commission

After having heard the petitioner, the Commission referred to the earlier request for approval of customisation in the of Case-1, Stage-2 Bidding process documents made by MSEDCL and observed that while the Commission vide order dated 23rd July, 2009, Case No. 28 of 2009 had noted these customisation it has not received submission from MSEDCL regarding compliance with the same.

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

The Commission had approved all such deviations leading to customisation of the RFP and PPA since the same were intended to impart greater clarity with respect to interpretation of the Bid Documents and the same had been noted by the Commission. The Commission had directed 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.

In view of the above, the Commission directed MSEDCL to furnish submission on affidavit that the said customization has been carried out as approved.

Compliance by MSEDCL

In compliance of the directive of the Commission as above, MSEDCL, submitted an affidavit on 18.03.2010, confirming that the said customization has been incorporated in RFP/PPA documents and prayed for approval for the same.

8.2 Commission's ruling regarding the Present petition :

The Commission observed that the deviation proposed by the petitioner would result in giving more flexibility to the petitioner to address the problems arising out of the demand-supply gap.

Hence the Commission approves the proposed deviations taken in the Request for Proposal (RFP) from Standard Bidding Document (SBD) issued by Ministry of Power (MoP) for competitive bidding process under Case-1 to be issued to bidders for procurement of 1000 (+/- 20%) MW base load power on Medium Term basis under International Competitive Bidding Process (Case-1).

With this, the present Case No. 104 of 2009 stands disposed of.

Sd/-
V L Sonavane
(Member)

Sd/-
S B Kulkarni
(Member)

Sd/-
V P Raja
(Chairman)



K N Khawarey
(Secretary, MERC)