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RESOLUTION

No. 23/54/2017- R&R

Guidelines for Tariff Based Competitive Bidding Process for
Procurement of Power from Grid Connected Wind Power Projects

1. BACKGROUND

- 1.1. The wind power deployment in the country started in early 90s and with the conducive policy environment provided at Central and State level this segment has achieved the highest growth amongst the other renewable energy technologies. The present wind power installed capacity in the country is over 32.7 GW, providing around 9% of the total installed capacity. Globally India is at the 4th position in terms of wind power installed capacity after China, USA and Germany.
- 1.2. The Government of India has set an ambitious target of achieving 175 GW power capacity from renewable energy resources by 2022 and out of this 60 GW is to come from wind power.
- 1.3. The National Institute of Wind Energy (NIWE) assessed the wind power potential in the country to be over 302 GW at 100 meter above ground level. Most of this potential exists in seven windy States namely Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan and Tamil Nadu.
- 1.4. Earlier, the wind power was being procured by the Distribution Utilities at Feed-in-Tariff (FiT) determined by the respective State Electricity Regulatory Commission (SERC). FiT coupled with various incentives provided by the Central and State Government enabled the growth of the wind sector many folds since 2002. The country also has strong manufacturing base with annual capacity of around 10 GW.
- 1.5. One of the key objectives of the Electricity Act, 2003 is promotion of competition in the electricity sector. Section 63 of the Act provides for adoption of the tariff by the Appropriate Commission if the same has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. The National Electricity Policy, 2005 also provides for competition in



the renewable energy sector to reduce the cost. The National Tariff Policy notified on 28 January 2016 also provides for encouraging procurement of renewable power through competitive bidding to reduce the tariff.

1.6. These Guidelines have been formulated for procurement of wind power through transparent process of bidding under Section 63 of the Act.

2. OBJECTIVES OF GUIDELINES

2.1. The objective of these Guidelines is to provide a framework for procurement of wind power through a transparent process of bidding including standardisation of the process and defining of roles and responsibilities of various stakeholders. These Guidelines aim to enable the Distribution Licensees to procure wind power at competitive rates in a cost effective manner.

3. APPLICABILITY OF GUIDELINES

3.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long-term procurement of electricity through competitive bidding process, by the 'Procurer(s)', from grid-connected Wind Power Projects ('WPP') having, (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-state projects; and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-state projects.

Explanation:

- a) **Procurer(s):** The term 'Procurer(s)', as the context may require, shall mean the distribution licensee(s), or their Authorized Representative, or an Intermediary Procurer.
- b) **Authorised Representative of the Procurer(s):** In cases, where the distribution licensee(s), authorize any agency to carry out the tendering / bidding process on its behalf then the agency will be responsible for fulfilling all the obligations imposed on the 'Procurer(s)' during the bidding phase, in accordance with these Guidelines.
- c) **Intermediary Procurer**
 - (i) In some cases, an intermediary, between the distribution licensee(s) and the Wind Power Generator(s) (WPG) may be required either to aggregate the wind power to be purchased from different generators and sell it to the distribution licensee(s) or to enhance the credit profile. In such cases, the 'Intermediary Procurer' is essentially a trader, buying power from the WPG(s) and selling the same to one or more distribution licensees and shall carry out the bidding as per provisions of these Guidelines.
 - (ii) The Intermediary Procurer shall enter into a Power Purchase Agreement (PPA) with the WPG(s) and also enter into a Power Sale Agreement (PSA) with the

distribution licensee(s). The PSA shall contain the relevant provisions of the PPA on a back to back basis. The Intermediary Procurer may charge trading margin as notified by the Appropriate Commission or in the absence of such notification as mutually agreed with distribution licensee(s).

- (iii) As long as the Intermediary Procurer has followed these Guidelines for procurement of wind power, the distribution licensee(s) shall be deemed to have followed these Guidelines for procurement of wind power.

3.2. Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer, Authorised Representative and Intermediary Procurer. The process to be adopted in event of any deviation proposed from these Guidelines is specified in Clause 22 of these Guidelines.

4. APPROPRIATE COMMISSION

4.1. Subject to the provisions of the Electricity Act, 2003, Appropriate Commission would be as under:

- a) In case the wind power projects supplying power to Distribution licensee(s) of one State, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the State Electricity Regulatory Commission of the concerned State where the distribution licensee(s) is located.
- b) In case the wind power projects supplying power to Distribution licensee(s) of more than one State, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the Central Electricity Regulatory Commission.
- c) For cases involving sale of wind power from generating companies owned or controlled by Central Government, the Appropriate Commission shall be the Central Electricity Regulatory Commission.

5. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

The Procurer shall meet the following conditions:

5.1. Bid Documentation:

- a) Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model PPA and Model PSA], notified by the Central Government, except as provided in sub clause (c) below.



- b) Inform the Appropriate Commission about the initiation of the bidding process.
- c) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 22 of these Guidelines.
 - i. However, till the time the SBDs are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.
 - ii. Further, in case of an ongoing bidding process, if the bids have already been submitted by bidders prior to the notification of these Guidelines and/or SBDs, then if there are any deviations between these Guidelines and/or the SBDs and the proposed RfS, PPA, PSA (if applicable), the RfS, PPA and the PSA shall prevail.

5.2. Site-related project preparatory activities including clearances:

In order to ensure timely commencement of supply of electricity, the bidder would be required to submit documents in respect of matters as mentioned below, as per the time schedule specified in the bidding documents:

- a) Land acquisition: Identification of the 100% (hundred per cent) land at the time of bid submission and within 7 (seven) months of the execution of the PPA, submission of documents/ Lease Agreement to establish possession/ right to use 100 % (hundred per cent) of the required land in the name of the WPG or its Affiliate for a period not less than the complete term of PPA. In case the land is in the name of Affiliate¹, the land should be transferred in the name of WPG prior to Scheduled Commissioning Date (SCD). Wherever leasing of private land is involved, the lease should allow transfer of land to the lenders or Procurer, in case of default of the WPG.
- b) No Objection Certificate (NOC)/ Environmental clearance (if applicable) for the Project.

¹ **Affiliate** in relation to a Company shall mean a person who controls, is controlled by, or is under the common control with such Company. The expression 'control' shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors.



- c) Forest Clearance (if applicable) for the land for the Project.
- d) A letter from State Transmission Utility (STU)/ Central Transmission Utility (CTU), as applicable, confirming technical feasibility of connectivity of the plant to STU/ CTU substation.
- e) Any other clearances (if any), as may be legally required.

6. BID STRUCTURE

6.1. Bid Size: The bids shall be designed in terms of total wind power capacity to be procured in MW. For intra-state projects a bidder shall be allowed to bid for a minimum 25 MW wind power projects with at least 5 MW project at one site and for inter-state projects a bidder shall be allowed to bid for a minimum 50 MW wind power project at one site. The Procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its Affiliates. The maximum capacity for single bidder or company or group of companies may be fixed by the Procurer keeping in mind factors such as economies of scale, land availability, expected competition and need for development of the market.

6.2. Bidding Parameters: For procurement of wind power, the tariff quoted by the bidder shall be the bidding parameter. The Procurer may specify a benchmark tariff and in that case bidder has to quote tariff not more than the benchmark tariff. The Procurer may select either of the following kinds of tariff based bidding: (a) fixed tariff in Rs./kWh for 25 years or more or (b) escalating tariff in Rs./kWh with pre-defined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided. The Procurer may also opt for e-reverse auction for final selection of bidders, in such a case, this will be specifically mentioned in the notice inviting bids and bid document. The Procurer may disclose in the RfS, the prevailing incentives available to the WPGs.

7. POWER PURCHASE AGREEMENT

The draft PPA proposed to be entered into with the successful bidder and draft PSA (if applicable) shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include *inter alia* the following, which, unless otherwise specified herein, shall be provided for on a back to back basis in the PSA:

7.1. PPA Period: As the PPA period influences the tariff by determining the period over which the investment is returned to the investor, longer PPA is favoured for lower tariffs. The PPA period should thus be not less than 25 years from the date of the SCD or from the date of full commissioning of the projects, whichever is earlier. The



PPA may be further extended on such term and conditions as mutually agreed between the parties signing the PPA and approved by Appropriate Commission, provided the arrangements with the land and infrastructure owning agencies, the relevant transmission utilities and system operators permits operation of the Wind Power Project beyond the initial PPA period of 25 years.

7.2. Capacity Utilisation Factor (CUF):

7.2.1. The WPG will declare the annual CUF of its Project at the time of signing of PPA and will be allowed to revise the same once within first year of COD. Calculation of CUF will be on yearly basis from 1st April of the year to 31st March of next year. The declared annual CUF shall in no case be less than 22 percent. The variation permitted in wind power generation from the declared CUF value will be indicated in the RfS. The lower limit will, however, be relaxable to the extent of non-availability of grid for evacuation of wind power, which is beyond the control of the WPG. For the first year of operation of the project, the annual CUF shall be calculated for the complete year after COD of the Project. Subsequently, the annual CUF will be calculated every year from 1st April of the year to 31st March next year.

7.2.2. In case the project supplies energy less than the energy corresponding to the minimum CUF, the WPG will be liable to pay to the Procurer, penalty for the shortfall in availability of energy. This will, however be relaxable to the extent of grid non-availability for evacuation, which is beyond the control of the WPG. The amount of such penalty will be in accordance with the terms of the PPA, which shall ensure that the Procurer is offset for all potential costs associated with low generation and supply of power under the PPA, subject to a minimum of 75% (seventy-five percent) of the cost of this shortfall in energy terms, calculated at PPA tariff. Penalties may be prescribed on the amount of shortfall, higher shortfall may attract higher penalties and vice-versa.

7.2.3. In case of availability of power more than the maximum CUF specified, WPG will be free to sell it to any other entity provided first right of refusal will vest with the Procurer(s). In case the Procurer purchases the excess generation, the same may be done at 75% of the PPA tariff, and provision to this effect shall be clearly indicated in the RfS document.

7.3. Repowering: The WPG will be free to re-power their plants during the PPA duration. However, the Procurer will be obliged to buy power only as per terms of PPA and any excess generation will be dealt as specified in clause 7.2 of these Guidelines.

7.4. Payment Security: The Procurer shall provide adequate payment security measures, as specified below:

7.4.1. Scenario 1: Direct procurement by Distribution licensee from WPG:

The Distribution licensee shall provide payment security to the WPG through:

- a) **Revolving Letter of Credit (LC)** of an amount not less than 1 (one) months' average billing from the Project under consideration;

AND

- b) **Payment Security Fund**, which shall be suitable to support payment for at least 3 (three) months' billing of all the Projects tied up with such fund;
- c) In addition to a) & b) above, the Procurer may also choose to provide **State Government Guarantee**, in a legally enforceable form, ensuring that there is adequate security to the WPG, both in terms of payment of energy charges and termination compensation, if any.

7.4.2. Scenario 2: Intermediary-Procurer procures from the WPG and sells to the Distribution licensee:

- a) **Payment Security by Intermediary Procurer to the WPG:** The Intermediary Procurer shall provide payment security to the WPG through:

- i. **Revolving Letter of Credit (LC)** of an amount not less than 1 (one) months' average billing from the Project under consideration;

AND

- ii. **Payment Security Fund**, which shall be suitable to support payment of at least 3 (three) months' billing of all the Projects tied up with such fund.

- b) **Payment Security by Distribution licensee to Intermediary Procurer:** The Distribution licensee shall provide payment security to the Intermediary Procurer through:

- i. **Revolving Letter of Credit (LC)** of an amount not less than 1 (one) months' average billing from the Project(s) under consideration;

AND

- ii. **State Government Guarantee**, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation, if any. *[for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges].* The Intermediary Procurer shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the WPG, to the extent the payments to the WPG in terms of the PPA are due.

- iii. In addition to i) & ii) above, the Distribution licensee may also choose to

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provide **Payment Security Fund**, which shall be suitable to support payment of at least 3 (three) months' billing of all the Projects tied up with such fund.

It is hereby clarified that the State Government guarantee shall be invoked only after the Intermediary Procurer has been unable to recover its dues under the PPA by means of the Letter of Credit and the Payment Security Fund, if any.

7.5. Force Majeure: The PPA shall contain provisions with regard to *force majeure* definitions, exclusions, applicability and available relief on account of *force majeure*, as per the industry standards. The WPG shall intimate the Procurer about the occurrence of *force majeure* within 15 (fifteen) days of the start of the *force majeure* and the Procurer shall take a decision on his claim within 15 days of the receipt of the intimation.

Government of India from time to time issues order for waiver of inter-state transmission system (ISTS) charges and losses on transmission of wind power till a certain date. In case the SCD of wind project is before the date till above ISTS waiver is applicable, and if the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to force majeure event, the liability of transmission charges and losses would be shared between the WPG and procurer(s) in ratio of 50:50. However, in case the commissioning of the wind project gets delayed beyond the applicable date of ISTS waiver due to reasons attributable to the WPG the liability of transmission charges and losses would be of WPG.

7.6. Generation Compensation for Off-take Constraints: The Procurer may be constrained not to off-take the power scheduled by WPG on account of Grid unavailability or in the eventuality of a Back-down.

7.6.1. Generation Compensation in offtake constraints due to Grid Unavailability:

During the operation of the plant, there can be some periods where the plant can generate power but due to temporary transmission unavailability the power is not evacuated, for reasons not attributable to the WPG. In such cases the generation compensation shall be addressed by the Procurer in following manner:

| Duration of Grid unavailability | Provision for Generation Compensation |
|---|---|
| Grid unavailability in a contract year as beyond 50 hours in a Contract | <i>Generation Loss = [(Average Generation per hour during the contract year) x (number of hours of grid unavailability during the</i> |



| | |
|-----------------------------|--|
| Year as defined in the PPA: | <i>contract year)]</i> <i>Where, Average Generation per hour during the contract year (kWh) = Total generation in the contract year (kWh) ÷ 8766 hours less total hours of grid unavailability in a Contract year</i> |
|-----------------------------|--|

The excess generation by the WPG equal to this generation loss shall be procured by the Procurer at the PPA tariff so as to offset this loss in the succeeding 3 (three) Contract Years. (*Contract Year, shall be as defined in PPA.*)

As an alternative to the mechanism provided above in Clause 7.6.1, the Procurer may choose to provide Generation Compensation, in terms of PPA tariff, for the Generation loss as defined in Clause 7.6.1, and for Grid unavailability beyond 50 hours in a Contract Year as defined in the PPA.

7.6.2. **Offtake constraints due to Backdown:** The WPG and the Procurer shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), encourages a status of ‘must-run’ to wind power projects. Accordingly, no wind power plant, duly commissioned, should be directed to back down by a Discom/ Load Dispatch Centre (LDC). In case such eventuality of Backdown arises, except for the cases where the Backdown is on account of events like consideration of grid security or safety of any equipment or personnel or other such conditions, the WPG shall be eligible for a Generation Compensation, from the Procurer, in the manner detailed below.

| Duration of Backdown | Provision for Generation Compensation |
|---|---|
| Hours of Backdown during a monthly billing cycle. | <i>Generation Compensation =</i> <i>50% x (Average Generation during the month corresponding to the capacity backed down) x PPA Tariff</i> <i>Where, Average Generation during the month corresponding to the capacity backed down (kWh) =</i> <i>(CUF during the month) x Σ (Backed down capacity in MW x corresponding time of backdown in hours x 1000)</i> |

The Generation Compensation as calculated above will be limited to the extent of shortfall in annual generation corresponding to the maximum CUF



permitted as per clause 7.2.1 and the same will be settled on annual basis. No trading margin shall be applicable on this Generation Compensation.

Possible conditions for exclusion of Generation Compensation, on account of Backdown purposes, shall be clearly specified in the RfS and the PPA.

7.7. Event of Default and the Consequences thereof: While detailed provisions with regard to the event of default of the concerned parties and its resulting consequences shall be detailed in the SBDs, this clause lays down the broad principles of contractually dealing with the default of the WPG and the Procurers (excluding the Intermediary Procurer).

7.7.1. Generator Event of Default and the consequences thereof:

- a) In the event the generator is unable to commission the plant within the stipulated time period, or fails to supply power in terms of the PPA, or assigns or novates any of its rights or obligations contrary to the terms of the PPA, or repudiates the PPA, or effectuates a change in control or shareholding of its promoters in breach of the provisions of the PPA, or commits any other acts or omissions as laid down in the PPA and is also unable to cure any of the aforesaid within the cure period, as may be provided in the PPA, the generator shall be construed to be in default.
- b) Upon being in default, the WPG shall be liable to pay to the Procurer, damages, as detailed in the PPA. The Procurer shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy.
- c) In addition to the levy of damages as aforesaid, in the event of a default by the WPG, the lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution agreement provided in the PPA and in concurrence with the Procurer. However, in the event the lenders are unable to substitute the defaulting generator within the stipulated period, the Procurer may terminate the PPA and acquire the project assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the project assets.

7.7.2. Procurer Event of Default and the consequences thereof:

- a) If the Procurer is in default on account of reasons including *inter alia* failure to pay the monthly and/or supplementary bills within the stipulated time period or repudiation of the PPA, the defaulting Procurer shall, subject to the prior

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consent of the WPG, novate its part of the PPA to any third party, including its Affiliates within the stipulated period.

- b) In the event the aforesaid novation is not acceptable to the WPG, or if no offer of novation is made by the defaulting Procurer within the stipulated period, then the WPG may terminate the PPA and at its discretion require the defaulting Procurer to either (i) takeover the project assets by making a payment of the termination compensation equivalent to the amount of the debt due and the 150% (one hundred and fifty per cent) of the adjusted equity as detailed in the PPA or, (ii) pay to the WPG, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the project assets being retained by the WPG.
- c) In the event of termination of PPA, any damages or charges payable to the STU/CTU, for the connectivity of the plant, shall be borne by the Procurer.

7.8. Change in Law

7.8.1. In the event a change in Law results in any adverse financial loss/ gain to the WPG then, in order to ensure that the WPG is placed in the same financial position as it would have been had it not been for the occurrence of the change in Law, the WPG/ Procurer shall be entitled to compensation by the other party, as the case may be, subject to the condition that the quantum and mechanism of compensation payment shall be determined and shall be effective from such date as may be decided by the Appropriate Commission.

7.8.2. In these Guidelines, the term 'Change in Law' shall refer to the occurrence of the following events, after the last date of the bid submission, including (i) the enactment of any new law; or (ii) an amendment, modification or repeal of an existing law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the WPG; or (v) any change in the rates of any taxes which have a direct effect on the Project. However, Change in Law shall not include any change in (a) taxes on corporate income or any change in any withholding tax on income or dividends; and (b) Custom duty on imported equipment.

8. BIDDING PROCESS

8.1. The Procurer shall call for the bids adopting a single stage two envelop bidding process to be conducted through Electronic mode (e-bidding). The procurer may also opt for e-reverse auction for final selection of bidders, in such a case, this will be

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specifically mentioned in the notice inviting bids and bid document. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

- 8.2. The Procurer shall invite the bidders to participate in the RfS for installation of WPP(s) in terms of these Guidelines.
- 8.3. The bidding documents including the RfS, draft PPA and draft PSA (if applicable) shall be prepared by the Procurer in consonance with these Guidelines and the SBDs.
- 8.4. The Procurer shall publish the RfS notice in at least two national newspapers and its own website to accord wide publicity.
- 8.5. The Procurer shall provide opportunity for pre-bid conference to the prospective bidders, and shall provide written interpretation of the bid documents to any bidder which shall also be made available to all other bidders. All the concerned parties shall rely solely on the written communication. Any clarification or revision to the bidding documents shall be uploaded on the website of the Procurer for adequate information. In the event of the issuance of any revision or amendment of the bidding documents, the bidders shall be provided a period of at least 7 (seven) days therefrom, for submission of bids.

9. RFS DOCUMENT

The standard provisions to be provided by the Procurer in the RfS shall include the following:

9.1. Bid Responsiveness: The bid shall be evaluated only if it is responsive and satisfies conditions including *inter-alia* ~

- bidder or any of its Affiliates is not a willful defaulter to any lender
- there is no major litigation pending or threatened against the bidder or any of its Affiliates which are of a nature that could cast a doubt on the ability or the suitability of the bidder to undertake the project

9.2. Qualification requirements to be met by the bidders:

9.2.1. Technical Criteria: The Government would like to encourage competition by way of increased participation. However, in order to ensure proper implementation of the projects, the Procurer may choose to specify technical criteria such as past experience of the bidders, timely execution of projects, etc. Such criteria should be set after an assessment of the number of project developers that are expected to meet the criteria so that an adequate level of competition is achieved. Cut-off date for meeting



the technical criteria should generally be kept as the end date of the financial year that is previous to the financial year in which the bid is being floated.

9.2.2. Financial Criteria:

a) Net-worth:

- (i) The Procurer shall specify financial criteria in the form of net-worth as a part of the qualification requirement. The net-worth requirement should be at least 20% of the Estimated Capital Cost for WPP for the year in which bids are invited.
- (ii) The net worth to be considered for the above purpose will be the cumulative net-worth of the bidding company or consortium together with the net-worth of those Affiliates of the bidder(s) that undertake to contribute the required equity funding and performance bank guarantees in case the bidder(s) fail to do so in accordance with the RfS.
- (iii) It is clarified that the net-worth to be considered for this clause will be the total net-worth as calculated in accordance with the Companies Act, 2013.

b) Liquidity: It is necessary that the bidder has sufficient cash flow/ internal accruals/ any bank reference to manage the fund requirements for the project. Accordingly, the Procurer may also stipulate suitable parameters such as annual turnover, internal resource generation, bank references/ line of credit, bidding capacity etc.

9.3. Quantum of the Earnest Money Deposit (EMD): Procurer will specify the quantum of the Earnest Money Deposit (EMD) in the form of a bank guarantee, to be furnished by the bidders. The EMD shall stand forfeited in the event of failure of the successful bidder to execute the PPA within the stipulated time period.

9.4. Compliance of FDI Laws by foreign bidders: In case a Foreign Company is selected as the successful bidder, it shall comply with all the laws and provisions related to Foreign Direct Investment in India.

10. BID SUBMISSION AND EVALUATION

10.1. Formation of consortium by bidders shall be permitted, in which case the consortium shall identify a lead member which shall be the contact point for all correspondences during the bidding process. The Procurer may specify technical and financial criteria, and lock in requirements for the lead member of the consortium.

- 10.2. The Procurer shall constitute committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters/ bid evaluation.
- 10.3. The bidders may be required to submit non-refundable processing fee as specified in the RfS.
- 10.4. The bidders shall be required to submit separate technical and price bids. Bidders shall also be required to furnish necessary bid-guarantee in the form of an EMD along with the bids.
- 10.5. The technical bids shall be evaluated to ensure that the bids submitted meet the eligibility criteria set out in the RfS document on all evaluation parameters. Only the bids that meet the evaluation criteria set out in the RfS shall be considered for further evaluation on the price bids.
- 10.6. The Procurer may hold a pre bid meeting to take feedback and to clarify important aspects of the bidding process.
- 10.7. To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after three attempts of bidding, and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.
- 10.8. The price bid shall be rejected, if it contains any deviation from the bid conditions. No clarifications shall normally be requested from bidders at this stage.
- 10.9. **Bid evaluation methodology:** the comparison of bids shall be on the basis of the bidding criteria as specified in the RfS, i.e. the fixed tariff in Rs./kWh for 25 years or more, as the case may be; or the first year tariff in Rs./kWh in case of escalating tariff in Rs./kWh with pre-defined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided. Ranking of the bidders will start from the bidder quoting the 'lowest tariff (L1)'.
- 10.10. The detailed procedure for evaluation of the bid and selection of the bidder shall be provided for in the RfS.

11. INDICATIVE TIME TABLE FOR BID PROCESS

- 11.1. In the bidding process, a minimum period of 30 (thirty) days shall be allowed between the issuance of RfS documents and the last date of bid submission. The



indicative timetable for the bidding process is as below.

Time Table for Bid Process

| Event | Time from Zero date |
|--|---------------------|
| Date of issue of RfS and draft PPA and PSA (if applicable) | Zero date |
| Bid clarification, conferences, revision of RfS, etc. | ** |
| RfS bid submission | 30 - 45 days |
| Evaluation of bids and issue of Letter of Award | 75 days |
| Signing of PPA | 105 days |

** In case of any change in RfS document, the Procurer shall provide Bidders additional time in accordance with clause 8.5 of these Guidelines.

Note: It is clarified that if the Procurer gives extended time for any of the events in the bidding process, on account of delay in achieving the activities required to be completed before the event, such extension of time shall not in any way be deviation from these Guidelines.

11.2. In normal circumstances, the bidding process is likely to be completed in a period of 120 (one hundred and twenty) days.

12. CONTRACT AWARD AND CONCLUSION

12.1. The PPA shall be signed with the successful Bidder/ Project Company or an SPV formed by the successful Bidder.

12.2. After the conclusion of bidding process, the Evaluation Committee constituted for evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the RfS.

12.3. For the purpose of transparency, the Procurer shall, after the execution of the PPA publicly disclose the name(s) of the successful Bidder(s) and the tariff quoted by them together with breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of the Procurer for at least 30 (thirty) days.

12.4. Subject to provisions of the Act, the distribution licensee or the intermediary procurer, as the case may be, shall approach the Appropriate Commission for adoption of tariffs by the Appropriate Commission in terms of Section 63 of the Act.

13. BANK GUARANTEES

The WPG shall provide the following bank guarantees to the Procurer in terms of the RfS

and the PPA:

- 13.1. **Earnest Money Deposit (EMD)** to be fixed by the Procurer [but not to be more than 2% (two percent) of the Estimated Capital Cost for wind power project for the financial year in which the bids are invited], to be submitted in the form of a bank guarantee along with response to RfS.
- 13.2. **Performance Bank Guarantee (PBG)** to be fixed by the Procurer [but not to be more than 5% (five percent) of the Estimated Capital Cost for wind power project for the financial year in which the bids are invited] to be submitted at the time of signing of the PPA. In addition to the other remedies, this PBG can be encashed to recover any damages/dues of the WPG in terms of the PPA. It is hereby clarified that the damages/dues recovered by the Intermediary Procurer by encashing the PBG, upon the default of the WPG under the PPA, shall be passed on by the Intermediary Procurer to the distribution licensee(s) in terms of the PSA.

14. FINANCIAL CLOSURE

- 14.1. The WPG shall attain the financial closure in terms of the PPA, within 7 (seven) months from the date of execution of the Power Purchase Agreement.
- 14.2. Failing the aforesaid, the Procurer shall encash the PBG unless the delay is on account of *force majeure*. An extension for the attainment of the financial closure can however be considered by the Procurer, on the sole request of the WPG, on payment of a penalty as specified in the PPA. This extension will not have any impact on the SCD. Any penalty paid so, shall be returned to the WPG without any interest on achievement of successful commissioning within the SCD.

15. MINIMUM PAID UP SHARE CAPITAL TO BE HELD BY THE PROMOTER

- 15.1. The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% at any time prior to 1 (one) year from the COD (as defined in Clause 17), except with the prior approval of the Procurer. In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year from the COD, except with the prior approval of the Procurer. However, in case the successful bidder shall be itself executing the PPA, then it shall ensure that its promoters shall not cede control² till 1 (one) year from the COD, except with the prior approval of the Procurer. In this case it shall also be

² The expression 'control' shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors.

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essential that the successful bidder shall provide the information about its promoters and their shareholding to the Procurer before signing of the PPA with Procurer.

- 15.2. Any change in the shareholding after the expiry of 1 (one) year from the COD can be undertaken under intimation to Procurer.
- 15.3. In the event the WPG is in default to the lender(s), lenders shall be entitled to undertake '**Substitution of Promoter**' in concurrence with the Procurers.

16. COMMISSIONING

- 16.1. **Part Commissioning:** Part commissioning of the Project shall be accepted by Procurer subject to the condition that the minimum capacity for acceptance of first part commissioning shall be 50% of Project Capacity or 50 MW, whichever is lower, without prejudice to the imposition of penalty, in terms of the PPA on the part which is not commissioned. However, in case of inter-state project, minimum capacity for acceptance of first part commissioning shall be at least 50 MW. A project of capacity 100 MW or less can be commissioned in maximum two parts. The projects with capacity more than 100 MW can be commissioned in parts of at least 50 MW each, with last part could be the balance capacity. However, the SCD will not get altered due to part-commissioning. Irrespective of dates of part commissioning, the PPA will remain in force for a period of 25 years from the SCD or from the date of full commissioning of the projects, whichever is earlier.
- 16.2. **Early Commissioning:** The WPG shall be permitted for full commissioning as well as part commissioning of the Project even prior to the SCD subject to availability of transmission connectivity and Long-Term Access (LTA). In cases of early part commissioning, till the achievement of full commissioning or SCD, whichever is earlier, the Procurer may purchase the generation, at 75% (seventy-five per cent) of the PPA tariff.
- 16.3. **Commissioning Schedule:** The Projects shall be commissioned within a period of 18 (eighteen) months from the date of execution of the PPA. However, if for some reasons, the scheduled commissioning period needs to be kept higher than that provided in these Guidelines, the Procurer can do the same at his end. Delay in commissioning, beyond the SCD shall involve penalties on the WPG, as detailed out in PPA.

17. COMMERCIAL OPERATION DATE (COD):

The Commercial Operation Date (COD) shall be considered as the actual date of



commissioning of the project as declared by the Commissioning Committee constituted by SNA. In case of part commissioning COD will be declared only for that part of project capacity.

18. TRANSMISSION CONNECTIVITY

- 18.1.** The WPP shall be designed for inter-connection with STU / CTU substation either directly or from pooling station where other projects also connected, through a dedicated transmission line at the appropriate voltage level, as may be specified by the Procurer.
- 18.2.** The responsibility of getting Transmission Connectivity and LTA to the transmission system owned by the STU / CTU will lie entirely with the WPG and shall be at the cost of WPG.
- 18.3.** The Inter-connection/ Metering Point, is the point at which energy supplied to the Procurer shall be measured, shall be the bus bar of the STU / CTU substation at which the wind power is injected in the transmission system of STU/CTU. For interconnection with grid and metering, the WPGs shall abide by applicable Grid Code, Grid Connectivity Standards, Regulations on Communication System for transmission of electricity and other regulations (as amended from time to time) issued by Appropriate Commission and CEA. The transmission of power up to the point of interconnection where the metering is done for energy accounting shall be the responsibility of the WPG at his own cost. All expenses including transmission charges (if any) and losses in relation to the transmission beyond the Metering Point shall be borne by the Procurer(s) except as provided under clause 7.5.
- 18.4.** The WPGs shall comply CERC/SERC regulations on Forecasting, Scheduling and Deviation Settlement, as applicable and are responsible for all liabilities related to LTA and Connectivity.
- 18.5.** The transmission connectivity to the WPG may be provided by the CTU/STU, as the case may be, prior to commissioning of the project on the request of the project developer, to facilitate testing and allow flow of infirm power generated into the grid to avoid wastage of Power.

19. TECHNICAL SPECIFICATIONS

Procurers shall promote commercially established and operational technologies to minimize the technology risk and to achieve the timely commissioning of the Projects. In order to ensure quality of wind turbines installed, only type certified wind turbine models listed in Revised List of Models and Manufactures (RLMM) brought out by MNRE from

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time to time, will be allowed for deployment in the country. The wind projects will be developed as per Guidelines issued by MNRE on Development of Onshore Wind Power Projects.

20. ROLE OF STATE NODAL AGENCIES

The State Nodal Agency appointed by respective State Government will provide necessary support to facilitate the required approvals and sanctions in a time bound manner so as to achieve commissioning of the Projects within the scheduled Timeline. This may include facilitation in the following areas:

- Coordination among various State and Central agencies for speedy implementation of projects.
- Support during commissioning of projects and constitute Commissioning Committee to verify commissioning of the projects and issue commissioning certificates.

21. PERFORMANCE MONITORING

All wind power projects shall install necessary equipment to continuously measure wind resource data and other weather parameters and electrical parameters from the each wind turbine. They are required to submit this data through online portal to National Institute of Wind Energy for monitoring the performance for the entire life of wind turbine.

22. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES

In case there is any deviation from these Guidelines and/or the SBDs, 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 60 (sixty) days.

23. ARBITRATION

In the event CERC is the Appropriate Commission, 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 CERC. All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996. In the event SERC is the Appropriate Commission, then all disputes shall be adjudicated by the SERC or shall be referred for arbitration by the SERC.

24. CLARIFICATION AND MODIFICATION TO GUIDELINES

If any difficulty arises in giving effect to any provision of these Guidelines or interpretation of the Guidelines or modification to the Guidelines, Ministry of New & Renewable Energy is empowered to do the same in consultation with Ministry of Power. The decision in this regard shall be binding on all the parties concerned.



(Shalini Prasad)

Additional Secretary to the Govt. of India