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**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

IN CASE NO. OA – 489 / 24 – 25

IN REGARD TO THE APPLICATION SUBMITTED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED UNDER SECTION 86 (1) READ WITH SECTION 63 OF THE ELECTRICITY ACT, 2003 ALONG WITH "GUIDELINES FOR PROCUREMENT OF POWER BY THE DISTRIBUTION LICENSEE" ISSUED BY THE COMMISSION FOR SEEKING APPROVAL OF THE DEVIATIONS FROM THE MODEL BIDDING DOCUMENTS AS PER THE MINISTRY OF POWER GUIDELINES DATED 06.03.2019 FOR PROCUREMENT OF 1600 MW POWER UNDER LONG TERM FROM A NEW POWER STATIONS OF 2 X 800 MW TO BE SET UP ON DESIGN, BUILD, FINANCE, OWN AND OPERATE (DBFOO) IN THE STATE OF WEST BENGAL.

PRESENT:

SRI MALLELA VENKATESWARA RAO, CHAIRPERSON

DATE: 19.09.2024



Application submitted by West Bengal State Electricity Distribution Company Limited under Section 86 (1) read with Section 63 of the Electricity Act, 2003 along with "Guidelines for procurement of power by the distribution licensee" issued by the Commission for seeking approval of the deviations from the Model Bidding Documents as per the Ministry of Power guidelines dated 06.03.2019 for procurement of 1600 MW power under long term from a new power stations of 2 x 800 MW to be set up on Design, Build, Finance, Own and Operate (DBFOO) in the state of West Bengal.



Facts in brief:

- 1.0 West Bengal State Electricity Distribution Company Limited (WBSEDCL) submitted a petition on 23.07.2024 seeking approval of the deviations from the Model Bidding documents as per the Ministry of Power guidelines dated 06.03.2019 for procurement of 1600 MW power under Long Term Arrangement from a new Power Station of 2 x 800 MW in terms of Section 86 (1) (b) read with Section 63 of the Electricity Act, 2003 along with "Guidelines for Procurement of Power by Distribution Licensees" issued by the Commission. The power plant is to be set up on Design, Build, Finance, Own and Operate (DBFOO) in the State of West Bengal. Subsequently, WBSEDCL submitted a supplementary petition on 20.08.2024 seeking changes on the proposed deviations sought for approval vide the original petition dated 23.07.2024. The petition dated 23.07.2024 along with the supplementary petition dated 20.08.2024 has been admitted by the Commission in Case No. OA – 489 / 24 – 25.
- 2.0 On scrutiny of the application, the Commission directed WBSEDCL to submit approval of Board of Directors. WBSEDCL, subsequently, submitted a copy of resolution of its Board of Directors pertaining to in-principle approval for procurement of power in long term arrangement from new power stations.
- 3.0 In the petition, WBSEDCL has inter-alia stated the following:
 - (i) WBSEDCL has envisaged that there shall be a substantial increase in power demand after the COVID – 19 due to the climate change, rapid penetration of space cooling load and migration of industrial load. Accordingly, WBSEDCL has forecasted their power demand on the basis of consumption behavior, factors related to climate change and considering CEA reports. Considering the projected demand vis-à-vis the actual availability from the existing generating stations, WBSEDCL has estimated a shortfall of 3947 MW during 2025 – 26 which has been projected to increase to 12227 MW during 2034 – 35.
 - (ii) WBSEDCL proposes to procure power from 1600 MW plant to be setup through DBFOO model in the State of West Bengal through competitive bidding under Section 63 of the Electricity Act, 2003. WBSEDCL vide letter dated 18.09.2024 has submitted a copy of a letter from the Department of Power, Government of West



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Bengal wherein the Department has agreed to be the Nodal Agency for this purpose. The Department of Power will carry out the bid process and coordinate the activities between WBSEDCL, WBSETCL and the potential bidders.

- (iii) WBSEDCL also submitted that Department of Power, GoWB has secured long term coal supply under SHAKTI Para B (iv) notified by the Ministry of Coal vide OM dated 22.05.2017 for the proposed 1600 MW plant.
- (iv) In this regard, WBSEDCL intends to make certain deviations to Model Bidding Documents to ensure clarity on contractual provisions, as the bid process envisages to facilitate e-reverse bidding, etc. Accordingly, WBSEDCL has submitted to consider deviations/ modifications in Request for Qualification (RFQ) of Model Bidding Documents to enable them to initiate the process for inviting tender.
- (v) WBSEDCL further submitted that deviations in applicable clauses in Model Request for Proposal (RFP) and Model Power Supply Agreement (PSA) shall be submitted for approval through fresh petition subsequently.

4.0 In view of the above, WBSEDCL in accordance to Clause 4 of the Guidelines dated 06.03.2019 has sought approval of the deviations/ modifications in RFQ of Model Bidding Documents from the Commission.

Observations of the Commission:

5.0 From the submission dated 02.09.2024, the Commission noted that the WBSEDCL envisages a peak demand of 11086 MW and energy requirement of 65034 MU during 2025 – 26 which has been projected to increase to 21002 MW and 117466 MU in 2034 – 35. The contracted capacity and energy availability during 2025 – 26 is 7139 MW and 58550 MU respectively which has been projected to increase to 8775 MW and 62826 MU during 2034 – 35. Thus, there will be a peak shortfall of 3947 MW in power demand and 6484 MU of shortfall in energy requirement from 2025 – 26 which will increase to 12227 MW and 54640 MU during 2034 – 35. To meet such requirement, the Board of Directors of WBSEDCL on 02.09.2024 has resolved and approved for procurement of power in long term from new power stations to be set up under PPP mode through DBFOO basis in the state of West Bengal.



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- 6.0 The Commission observed that, WBSEDCL proposes to purchase power from the proposed 1600 MW (2 x 800 MW) plant to be developed through competitive bidding process under section 63 of the Electricity Act 2003, where linkage coal will be to the proposed plant provided under SHAKTI scheme. In terms of section 63 of the Electricity Act 2003, the Commission shall adopt the tariff if such tariff is determined transparent process of bidding in accordance with the guidelines issued by the Government of India. Any deviation from the guideline and Model Bidding Procedure needs prior approval of the Commission.
- 7.0 Model Bidding Document issued by Ministry of Power, Government of India contains Model Request for Qualification (RFQ), Model Request for Proposal (RFP) and Model Power Supply Agreement (PSA). In the instant petition WBSEDCL proposed certain deviations in the RFQ and submitted that petitions for deviation in RFQ and PSA will be submitted subsequently.
- 8.0 The Commission observed that the proposed deviations by WBSEDCL in the RFQ of the Bidding Documents are primarily related to the power plant capacity, eligibility criteria of bidders and provisions to facilitate e-reverse bidding.
- 9.0 The Commission finds the proposed deviations are as per requirement of the specific project, barring few of the proposed deviations which relates to the eligibility criteria of the bidders purporting to reduce the competition thereby deviating from the objectives of the Electricity Act, 2003.

Order:

- 10.0 In view of the above, the Commission accords its approval of the deviations proposed by WBSEDCL in the RFQ from the Model Request for Qualification – DBFOO except for the following clauses as tabulated below:

SI No	Clause	Direction of the Commission
1	1.2.2, 1.2.4, 1.2.8, 2.13.3, 2.13.5, 2.17.1, 2.19.1, 2.21	WBSEDCL shall modify the clause by substituting the phrase "any other appropriate portal" with "any other portal approved by the appropriate Government".



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2	2.2.1 (a), 2.2.2, 3.2.1, 3.2.3, 3.2.4 and Annexure II and Appendix I	WBSEDCL shall retain the technical eligibility criteria for bidders falling under Category 1, 2, 3 and 4 as specified in the Model RFQ notified by the Ministry of Power, Government of India under competitive bidding guidelines.
Note: Any other provision that contradicts the directions as given above shall not be construed as approval of the Commission		

- 11.0 WBSEDCL may proceed with the tendering process in line with the directions given in paragraph 10.0 above. WBSEDCL shall also submit a copy of the modified RFQ with the changes as directed above for record of the Commission within seven (7) days from the date of issuance of the order.
- 12.0 WBSEDCL shall seek approval of the RFP and PSA on any deviation from the Model Bidding Documents.
- 13.0 A copy of the order shall be posted in the website of the Commission.
- 14.0 WBSEDCL shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-
(MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 19.09.2024

Sd/-
SECRETARY