



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. OA – 503 / 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 FOR SEEKING APPROVAL OF THE DEVIATIONS FROM THE MODEL REQUEST FOR PROPOSAL AND MODEL POWER SUPPLY AGREEMENT 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:

DR. MALLELA VENKATESWARA RAO, CHAIRPERSON

DATE: 26.11.2024



Application submitted by West Bengal State Electricity Distribution Company Limited under Section 86 (1) read with Section 63 of the Electricity Act, 2003 for seeking approval of the deviations from the Model Request for Proposal and Model Power Supply Agreement 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 06.11.2024 seeking approval of the deviations from the Model Request for Proposal and Model Power Supply Agreement 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. Subsequently, WBSEDCL submitted a supplementary petition on 14.11.2024 seeking some changes on the proposed deviations sought for approval vide the original petition dated 06.11.2024. The petition dated 06.11.2024 along with the supplementary petition dated 14.11.2024 has been admitted by the Commission in Case No. OA – 503 / 24 – 25.
- 2.0 In the petition, WBSEDCL has inter-alia stated the following:
- (i) WBSEDCL proposes to procure power from 1600 MW plant to be setup on Design, Build, Finance, Own and Operate (DBFOO) model in the State of West Bengal through competitive bidding under Section 63 of the Electricity Act, 2003. In this regard, WBSEDCL has adopted a two-stage process viz. 'Qualification Stage' and 'Bid Stage' for selection of the Bidder to award the Project. Accordingly, WBSEDCL had already sought approval on the deviations from the 'Model Request for Qualification' and the Commission had approved the same with certain directions vide order dated 19.09.2024 in Case No. OA – 489/ 24 – 25. The modified Request for Qualification (RFQ) document was submitted before the Commission vide letter dated 01.10.2024 for record. WBSEDCL submitted that the RFQ document was uploaded in the portal of Telecommunications Consultant India Limited (TCIL) with the application due date from interested parties by 20.11.2024.
 - (ii) Now, WBSEDCL intends to make certain deviations to Model Request for Proposal and Model Power Supply Agreement 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 Proposal (RFP) and Power Supply Agreement (PSA) of Model Bidding Documents to enable them to initiate the bidding process.



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- (iii) WBSEDCL submitted that deviations in applicable clauses in Model Request for Proposal (RFP) and Model Power Supply Agreement (PSA) has been done considering the directions already given by the Commission in its order dated 19.09.2024.
- (iv) WBSEDCL further submitted that in the 'Bid Stage' the lowest bid discovered from the sealed bids will serve as the Ceiling Tariff for the E-Reverse Bidding Process and the L1 bidder quoting the lowest tariff as determined by the outcome of the E-Reverse Bidding Process will be the successful bidder.
- 3.0 In view of the above, WBSEDCL in accordance to Clause 4 of the Guidelines of Ministry of Power dated 06.03.2019 has sought approval of the deviations/ modifications in RFP and PSA of Model Bidding Documents from the Commission.

Observations of the Commission:

- 4.0 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 Documents (RFQ, RFP and PSA) needs prior approval of the Commission.
- 5.0 In the instant petition WBSEDCL proposed certain deviations in the RFP and PSA and such deviations are primarily related to the deviations already approved by the Commission during the RFQ stage vide order dated 19.09.2024.
- A. RFP Document: The Commission observed that the proposed deviations by WBSEDCL in the RFP of the Bidding Documents are primarily related to the background, specifying the figures of fees and bid security, submission of bids in e-portal, provisions to facilitate e-reverse bidding in line with the principles approved in RFQ stage. The petitioner also proposed a tabular breakup of fixed and fuel charge



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and breakup of per unit railway freight and distance as a part of bid parameter. Bid parameters are proposed to be in INR denominated. The bid security refundable period has been changed to 180 days from 60 days and bids security are in form of bank guarantee only. An Appendix VIII has been proposed regarding breakup of fuel cost based on bid parameters to be submitted by bidders.

B. PSA Document: Petitioner has proposed for supply contract for 30 years in place of 25 years mentioned in the model PSA and at the same time clause related to subsequent extension for 5 years has been deleted. It is proposed that, utility will be responsible for evacuation of power in consultation with STU. Further, it is proposed that the declaration of the availability of power plant shall be in terms of the provisions of the regulations framed by the Commission. A provision of allowing additional timeline of 90 days to fulfil the condition precedence has been proposed. Beside these few modifications has been proposed in tax applicability considering change in tax regime and some clauses of force majeure and termination conditions are modified primarily to bring more clarity and address project specific conditions.

6.0 The Commission finds the proposed deviations are primarily related to the requirement of the project and evaluation of the bid through e-reverse bidding which had been also approved by the Commission in RFQ and hence the deviation to said extent in the RFP and PSA is found reasonable.

Order:

- 7.0 In view of the above, the Commission accords its approval of the deviations including e-reverse bidding proposed by WBSEDCL in the RFP and PSA from the Model Request for Proposal and Model Power Supply Agreement – DBFOO.
- 8.0 WBSEDCL may proceed with the bidding process with an intimation to the Commission. WBSEDCL shall also submit a fresh copy of the RFP and PSA for record of the Commission within seven (7) days from the date of issuance of the order.
- 9.0 WBSEDCL shall seek approval from the Commission of the Power Supply Agreement entered with the Successful Bidder in terms of the provisions of the Tariff Regulations.



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10.0 A copy of the order shall be posted in the website of the Commission.

11.0 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/-
(DR. MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 26.11.2024

Sd/-
SECRETARY