Chapter 8

Competitive Bidding Guidelines for procurement of Electricity

(Contains amendments dated 30.3.2006, 18.8.2006, 27.9.2007, 27.3.2009 and 21.7.2010)

Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees

Ministry of Power

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(Contains amendments dated 30.3.2006, 18.8.2006, 27.9.2007, 27.3.2009 and 21.7.2010)

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1. Preamble

Promotion of competition in the electricity industry in India is one of the key objectives of the Electricity Act, 2003 (the Act). Power purchase costs constitute the largest cost element for distribution licensees. Competitive procurement of electricity by the distribution licensees is expected to reduce the overall cost of procurement of power and facilitate development of power markets. Internationally, competition in wholesale electricity markets has led to reduction in prices of electricity and in significant benefits for consumers.

Section 61 & 62 of the Act provide for tariff regulation and determination of tariff of generation, transmission, wheeling and retail sale of electricity by the Appropriate Commission. Section 63 of the Act states that –

"Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."

These guidelines have been framed under the above provisions of section 63 of the Act. The specific objectives of these guidelines are as follows:

1 Promote competitive procurement of electricity by distribution licensees;

2 Facilitate transparency and fairness in procurement processes;

3 Facilitate reduction of information asymmetries for various bidders;

4 Protect consumer interests by facilitating competitive conditions in procurement of electricity;

5 Enhance standardization and reduce ambiguity and hence time for materialization of projects;

6 Provide flexibility to suppliers on internal operations while ensuring certainty on availability of power and tariffs for buyers.

2. Scope of the Guidelines

2.1. Section 10 of the Electricity Act provides that a generating company may supply electricity to any licensee in accordance with the Act and rules and regulations made there under and may, subject to the regulations made under sub-section (2) of Section 42, supply electricity to any consumer. The National Electricity Policy stipulates that a part of new generating capacity, say fifteen percent (15%) may be sold outside longterm PPAs in order to promote market development. The Tariff Policy (as amended in March 2008) also provides for hydro electricity projects to have their tariffs determined by the Appropriate Commission provided inter-alia, it has long-term PPA for at least sixty percent (60%) of the total saleable design energy of the project. The sale of electricity outside long-term PPAs is usually for a period less than one (1) year.

These guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for procurement of electricity by distribution licensees (Procurer) for:

(a) long-term procurement of electricity for a period of 7 years and above;

(b) Medium term procurement for a period of up to 7 years but exceeding 1 year.

Explanation: For the purpose of these Guidelines, the term ‘Procurer(s)’ shall mean, as the context may require, the distribution licensee(s), or the authorised representative of the licensee(s) or a Special Purpose Vehicle (SPV) constituted for the purpose of carrying out the bidding process. SPV shall be a company established under the Indian Companies Act 1956, authorized by the distribution licensee(s) to perform all tasks for carrying out the bidding process in accordance with these Guidelines. The distribution licensee(s) may also entrust initial project preparation activities (proposed to be undertaken before completion of the bid process) to the SPV. The SPV may be transferred to the successful bidder selected pursuant to the bid process.

As and when considered appropriate, the Central Government would issue the guidelines for procurement of electricity for a period of less than one (1) year under the provisions of Section 63 of the Electricity Act. Those guidelines would be applicable to the electricity to be procured outside the long-term PPA as stipulated, from time to time, in the National Electricity Policy and Tariff Policy.

2.2. The guidelines shall apply for procurement of base-load, peak-load and seasonal power requirements through competitive bidding, through the following mechanisms:

(i) Where the location, technology, or fuel is not specified by the procurer **(Case 1)**;

(ii) For hydro-power projects, load center projects or other location specific projects with specific fuel allocation such as captive mines available, which the procurer intends to set up under tariff based bidding process **(Case 2)**.

However separate RFP shall be used for procuring base load or peak load or seasonal load requirements as the case may be.

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.

2.4. Procurement by more than one distribution licensee through a combined bid process shall be permitted and in such a case the Procurers shall have the option to conduct the bid process through an authorized representative. The authorized representative may be one of the procurers or for Case 2, a special purpose vehicle (SPV) may be incorporated for such purpose. For such combined procurement, each procurer shall provide the necessary information required as per these guidelines. To ensure standardization in evaluation of bids, the payment security and other commercial terms offered to the bidders by the various procurers shall not vary. The price offered by the bidders shall also be the same for the distribution licensees inviting the bid.

In case of combined procurement where the distribution licensees are located in more than one State, the Appropriate Commission for the purpose of these bidding guidelines, except for the purpose of para 3.1(iii)(a), shall be the Central Electricity Regulatory Commission. For the purpose of para 3.1(iii)(a), the State Electricity Regulatory Commission shall be the Appropriate Commission.

2.5. All obligations on part of the procurers for the bid process shall be considered to be met only when each and every procurer meets such obligations set out in the Request for Proposal (RFP). This shall, however, not preclude the bidder from waiving such stipulation if the bidder finds it reasonable to do so, and the same shall not be construed to be violation of these guidelines.

3. Preparation for inviting bids

3.1. To expedite the bid process, the following conditions shall be met by the procurer:

(i) The bid documentation 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.

(ii) Approval of the Appropriate Commission shall be sought in event of the deviations from the bidding conditions contained in these guidelines, following the process described in para 5.16 of these guidelines.

(iii) 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 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**).

(b) For the transfer price of fuel, in case of fuel specific procurement enquiry, if such price has not been determined by government, the concerned government-owned coal company, government approved mechanism or a fuel regulator (under Case 2).

3.2 (I) In order to ensure timely commencement of supply of electricity being procured and to convince the bidders about the irrevocable intention of the procurer, it is necessary that various project preparatory activities are completed in time. For long-term procurement for projects for which pre-identified sites are to be utilized (Case 2), the following project preparatory activities should be completed by the procurer, or authorized representative of the procurer, simultaneously with bid process adhering to the milestones as indicated below:

(i) Site identification and land acquisition: If land is required to be acquired for the power station, the notification under section 4 of the Land Acquisition Act, 1894 should have been issued before the publication of RFQ. The notification under section 6 of the Land Acquisition Act, 1894 should have been issued before the issue of RFP. If the provisions of section 17 of the Land Acquisition Act, 1894 regarding emergency have not been applied, the Award under the Land Acquisition Act should have been declared before the PPA becomes effective.

(ii) Environmental clearance for the power station: Rapid Environmental Impact Assessment (EIA) report should be available before the publication of RFQ. Requisite proposal for the environmental clearance should have been submitted before the concerned administrative authority responsible for according final approval in the Central/ State Govt., as the case may be, before the issue of RFP. Environmental clearance should have been obtained before PPA becomes effective.

(iii) Forest Clearance (if applicable) for the land for the power station: Requisite proposal for the forest clearance should have been submitted before the concerned administrative authority responsible for according final approval in the Central/ State Govt., as the case may be, before the issue of RFP.

(iv) Fuel Arrangements: If fuel linkage or captive coal mine(s) are to be provided, the same should be available before the publication of RFQ. In case, bidders are required to arrange fuel, the same should be clearly specified in the RFQ.

(v) Water linkage: It should be available before the publication of RFQ.

(vi) Requisite Hydrological, geological, meteorological and seismological data necessary for preparation of Detailed Project Report (DPR), where applicable: These should be available before the issue of RFP. The bidder shall be free to verify geological data through his own sources, as the geological risk would lie with the project developer.

The project site shall be transferred to the successful bidder at a price to be intimated at least 15 days before the due date for submission of RFP bids.

(II) In Case-1 procurement, to ensure serious participation in the bid process and timely completion of commencement of supply of power, the bidder, in case the supply is proposed from a station to be set-up, should be required to submit along with its bid, documents in support of having undertaken specific actions for project preparatory activities in respect of matters mentioned in (i) to (v) below.

i) Site identification and land acquisition: Requirement of land would be considered as indicated in the proposal filed with the competent authority for seeking environmental clearance. (I) To the extent land to be acquired under the Land Acquisition Act, 1894, the Bidder shall submit copy of notification issued for such land under Section 4 of the Land Acquisition Act, 1894. (II) For the part of land excluding that to be acquired under Land

Acquisition Act 1894, the Bidder shall furnish documentary evidence in the form of certificate by concerned and competent revenue/ registration authority for the allotment/ lease (lease period more than the life of power plant)/ ownership/ vesting of at least one-third of the area of such land. These evidences shall be supported by a sworn affidavit from the developer listing the total land allotted/ in possession/ lease acquired for the power station. The affidavit shall certify that the documentary evidence provided by the bidder in relation to land is true and correct.

ii) Environmental clearance for the power station: The Bidder shall have submitted the requisite proposal, for the environmental clearance, to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.

iii) Forest Clearance (if applicable) for the land for the power station: The Bidder shall have submitted the requisite proposal, for the forest clearance, to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.

iv) Fuel Arrangements: (a) In the following cases fuel arrangements shall have to be made for the quantity of fuel required to generate power from the phase of the power station from which power is proposed to be supplied at Normative Availability for the term of the PPA.

- In case of domestic coal, the Bidder shall have made firm arrangements for fuel tie up either by way of coal block allocation or fuel linkage
- In case of domestic gas, the Bidder shall have made firm arrangements for fuel tie up by way of long term fuel supply agreement for the term & quantity as per Government of India gas allocation policy

b) Fuel arrangements in the following cases shall have to be made for the quantity of fuel required to generate power from the power station for the total installed capacity.

- In case of imported coal, the Bidder shall have either acquired mines having proven reserves for at least 50% of the quantity of coal required OR shall have a fuel supply agreement for at least 50% of the quantity of coal required for a term of at least five (5) years or the term of the PPA, which ever is less.
- In case of RLNG, the Bidder shall have made firm arrangements for fuel tie up by way of fuel supply agreement for at least 50% of the quantity of fuel required for a term of at least five (5) years or the term of the PPA, which ever is less.

Blending of Imported and Domestic coal may be used in which case, criteria for imported and domestic coal shall be met separately in the ratio of blending

v) Water linkage: The Bidder shall have obtained in-principle approval from the concerned state irrigation department or any other relevant authority for the quantity of water required for the power station.

If the Bidder is a trading licensee, it shall have executed exclusive power purchase agreement(s) for the quantity of power offered in its Bid and shall provide a copy of the same as part of its Bid. In such a case, the Bidder shall ensure that the entity with whom it has executed the exclusive power purchase agreement for supply of power under the bid process has completed the project preparatory activities as mentioned in (i) to (v) above. Furthermore, the Bidder shall be responsible for procuring from the entity developing the power station and submitting in its Bid, all the documentary evidence to establish that the project preparatory activities as in (i) to (v) above have been completed. In case of supply being proposed from an existing generating station, the Bidder should submit evidence in the form of a declaration sent to RLDC/SLDC, as the case may be, in support of commercial operation of the generating station.

3.3 It is recommended that the procurer should obtain the transmission clearances necessary for receiving power at the delivery points prior to inviting bids. However this shall not be a binding condition for the bid process. Unless otherwise specified in the bid documents, it shall be the responsibility of the selected bidder to obtain transmission linkage for evacuation and inter-State transmission of power (where applicable).

3.4 In the case of projects under Case 2 from which more than one distribution licensees located in different States intend to procure power by carrying out bidding process through a SPV, the PPA and other required project agreements (such as escrow agreement, hypothecation agreement and other project specific agreements) may be entered into between the concerned parties prior to the last date of submission of the RFP bids with the proviso that these agreements shall be effective from the date of acquisition of the SPV by the successful bidder.

4. Tariff Structure

4.1. For procurement of electricity under these guidelines, tariff shall be paid and settled for each payment period (not exceeding one month). A multi-part tariff structure featuring separate capacity and energy components of tariff shall ordinarily form the basis for bidding.

Procurement under case-2 where procurer offers a captive fuel source (such as captive coal mine) for concurrent development and use for power production covered under the procurement query would also have a multi-part tariff structure featuring separate capacity and energy components of tariff.

4.2. In case of long term procurement with specific fuel allocation (Case 2), the procurer shall invite bids on the basis of capacity charge and net quoted heat rate. The net heat rate shall be ex-bus taking into account internal power consumption of the power station. The energy charges shall be payable as per the following formula:

$$\text{Energy Charges} = \text{Net quoted heat rate} \times \text{Scheduled Generation} \times \frac{\text{Monthly Average Gross Calorific Value of Feul}}{\text{Monthly Weighted Average Price of Fuel}}$$

If the price of the fuel has not been determined by the Government of India, government approved mechanism or the Fuel Regulator, the same shall have to be approved by the appropriate Regulatory Commission.

In case of coal / lignite fuel, the cost of secondary fuel oil shall be factored in the capacity charges.

4.3. Tariffs shall be designated in Indian Rupees only. Foreign exchange risks, if any, shall be borne by the supplier. Transmission charges in all cases shall be borne by the procurer.

Provided that the foreign exchange rate variation would be permitted in the payment of energy charges [in the manner stipulated in para 4.11(iii)] if the procurer mandates use of imported fuel for coastal power station in case-2.

Provided further that the foreign exchange rate variation would also be permitted in the payment of energy charges [stipulated in para 4.11 (iii)] if the bidder chooses to supply power using domestic gas or RLNGor both or imported coal for long term procurement under Case-1.

Capacity charges

4.4 Capacity charge shall be paid based on actual availability, as per charges quoted in Rs/kwh and shall be limited to the normative availability. The normative availability for Case 1 and thermal stations under Case 2 shall be a maximum of 85%. For hydro electric stations under case-2, the normative availability shall be at the level of normative annual plant availability factor as specified in the tariff regulations of the Central Electricity Regulatory Commission (CERC) prevailing at the time of the bid process. The capacity component of tariffs may feature separate non-escalable (fixed) and escalable (indexed) components. The indices to be adopted for escalation of the escalable component shall only be Wholesale Price Index (WPI), Consumer Price Index (CPI) or a combination of both WPI and CPI and the Base year shall be specified in the bid document.

4.5 Capacity charges for availability beyond the normative availability shall be a prespecified percentage of the non-escalable component of the capacity charges. The percentage applicable shall be specified in the RFP, and shall be limited to a 40% of the non-escalable component of the capacity charges. The procurer shall have first right of refusal on energy generated beyond normative availability. In case actual availability is less than the normative availability, capacity charges shall not be payable for the shortfall compared to the normative availability. In case availability is lower than a predetermined level (which is identified in the RFP and may be about 5% below normative availability), penalty at the rate of 20% of the capacity charge shall also be applicable to the extent of the shortfall in availability below such predetermined level.

4.6 The seller (successful bidder) shall declare availability on a daily basis in accordance with the scheduling procedure as stipulated in the Indian Electricity Grid Code (IEGC) from time to time. Further the seller and procurer shall comply with all relevant provisions of the IEGC. If the procurer does not avail generation up to declared availability, the same can be sold in market by the seller, and sale realization in excess of variable charges shall be equally shared with the procurer.

4.7 Any change in law impacting cost or revenue from the business of selling electricity to the procurer with respect to the law applicable on the date which is 7 days before the last date for RFP bid submission shall be adjusted separately. In case of any dispute regarding the impact of any change in law, the decision of the Appropriate Commission shall apply.

4.8 At the bid evaluation stage, ratio of minimum and maximum capacity charge (including both the non-escalable component and the escalable component incorporating escalation as per index being used for the purpose of evaluation) over the term of the Power Purchase Agreement (PPA) shall not be less than 0.7 to avoid excessive front loading or back loading during the period of contract.

4.9 In case peakload or seasonal requirements are distinct from baseload requirements, the bidders shall indicate distinct prices for such peakload or seasonal supply which shall be evaluated separately. Differential rates quoted for the same source of power for base and peak/seasonal load shall not constitute violation of guideline or unfair practice.

4.10 Adequate payment security shall be made available to the bidders. The payment security may constitute:

(i) Letter of Credit (LC)

(ii) Letter of Credit (LC) backed by credible escrow mechanism.

In the case the seller does not realize full payment from the procurer by the due date as per payment cycle, the seller may after 7 days, take recourse to payment security mechanism by encashing the LC to the extent of short fall or take recourse to escrow mechanism. The procurer shall restore the payment security mechanism prior to the next date of payment. Failure to realize payment even through payment security mechanism shall constitute an event of payment default. In the event of payment default the seller, after giving 7 days notice, can sell up to 25% of the contracted power to other parties withoutloosing claim on the capacity charges due from the procurer. If the payment security mechanism is not fully restored within 30 days of the event of the payment default, the seller can sell full contracted power to other parties without loosing claim on the capacity charges due from the procurer. The surplus over energy charges recovered from sale to such other parties shall be adjusted against the capacity charge liability of the procurer. In case the surplus over energy charges is higher than the capacity charge liability of the procurer, such excess over the capacity charge liability shall be retained by the seller.

Energy Charges

4.11 Where applicable, the energy charges payable during the operation of the contract shall be related on the base energy charges specified in the bid with suitable provision for escalation. In case the bidder provides firm energy charge rates for each of the years of the contract term, the same shall be permitted in the tariffs.

(i) In cases other than the cases where captive fuel source is offered or cases where the procurer mandates use of imported fuels in case 2 queries, the energy charges shall be payable in accordance with fuel escalation index used for evaluation of the bid. In case of bids based on net heat rate, the price of fuel shall be taken as stipulated under para 4.2. However, the fuel escalation will be subject to any administered price mechanism of Government or independent regulatory price fixation in case of fuel produced within the country. The applicable indices for relevant fuels shall be identified in the RFP documents.

(ii) The energy charges may feature separate non-escalable (fixed) and escalable (indexed) components in case of a procurement query where the procurer offers a captive fuel source (such as a captive coal mine) for concurrent development and production of power. The ratio of minimum and maximum energy charges (including both the non-escalable component and escalable component incorporating escalation as per index being used for evaluation) over the term of PPA shall not be less than 0.5 to avoid excessive frontloading or backloading. The index for escalable component of energy charge in such a case would be as notified by the CERC under para 5.6(vi).

(iii) In cases where the procurer mandates use of imported fuel for use in a coastal power station in **case-2** procurement query or where the bidder chooses to supply from a power station using imported fuel under **case-1**, the bids may be invited for base energy charge for the first year to be escalated as per the indices identified in the RFP. Such energy charge would have following three components:

(a) Imported fuel component in US Dollars/unit.

(b) Transportation of fuel component in US Dollars/unit.

(c) Inland fuel handling component in Indian Rupees/unit

(iv) In case of linkage-based domestic coal/gas/imported fuel based projects, involving substantial inland transportation, a separate escalation component for inland transportation in Rupees / unit would be applicable.

(v) In cases where the bidder chooses to supply power from a power station using blended coal under Case I, the bids may be invited for base energy charge for the first year to be escalated as per the indices identified in the RFP, such energy charges would have the following sub components

a) Domestic fuel component in Indian Rupees/Unit

b) Inland transportation component in Indian Rupees/Unit

c) Imported fuel component in USD/Unit

d) Transportation fuel component in USD/Unit

e) Inland fuel handling component in Indian Rupees/Unit

Each of these components in (iii), (iv) and (v) above may have separate nonescalable (fixed) and escalable (indexed) sub-components. The escalation indices forescalable sub-components of these components would be as notified by the CERC under para 5.6(vi).

It is clarified that the bidders would have option to quote firm energy charge rates for each of the years of the contract.

4.12 No adjustment shall be provided for heat rate degradation of the generating stations. Even in case of bids based on net heat rate, the bidder shall factor in site conditions, loading conditions, frequency variations etc and no adjustment shall be allowed on the quoted net heat rate for the duration of the contract.

4.13 In case a procurer invites bids of hydro power under **Case 2**, the hydrological risk shall be borne by the Procurer, provided the hydrological data of such a project is based on authentic sources and is known to the parties in advance. Any hydrological advantages under Case 2, resulting in energy availability beyond the design energy shall be passed on to the Procurer without any charge. In case a bidder offers hydro power under Case 1, the hydrological risk shall be borne by the Bidder. The geological risk for the hydro project in both Case 1 and in Case 2 shall be borne by the developer.

4.14 Energy charges shall be payable by the procurer to the seller for the scheduled energy. Deviations beyond agreed energy schedules shall be settled under the ABT/UI mechanism.

Combined capacity and energy charges

4.15 In cases where the procurement process permits bidders to submit combined capacity and energy charges, the charges proposed shall be firm for each of the years of the term of the Power Purchase Agreement (PPA), and no escalation of tariffs shall be permitted over and above the rates proposed by the seller in the price bid.

4.16 The bidder shall specify the normative availability from the project on an annual basis. The model PPA made available to the bidders at the RFQ/RFP stage shall feature appropriate provisions for penalties in event of the normative availability not being met by the seller. The RFQ/RFP shall also specify minimum offtake conditions for procurement from such stations.

4.17 The per kwh rates payable to the seller for offtake by the procurer over and above the normative levels shall be the same as the rates applicable till normative availability. In case the procurer does not schedule the energy made available by the seller as per the contract, the seller shall be free to sell to other parties. The seller shall not be required to make any payments to the procurer for such sales to third parties.

Bidding Process

5.1 For long-term procurement under Case 2, a two-stage process featuring separate Request for Qualification (RFQ) and Request for Proposal (RFP) stages shall be adopted for the bid process under these guidelines. The procurer may, at his option, adopt a single stage tender process for long term or medium term procurement under Case 1, combining the RFP and RFQ processes. However, as specified earlier in para 2.2, the Procurer shall adopt separate RFP processes for procuring base load or peak load or seasonal load requirements, as the case may be. Procurer or authorized representative shall prepare bid documents including the RFQ and RFP (only RFP in single stage process) in line with these guidelines and standard bid documents.

5.2 The procurer shall publish a RFQ (RFP in single stage process) notice in at least two national newspapers, company website and preferably in trade magazines also to accord it wide publicity. The bidding shall necessarily be by way of International Competitive Bidding (ICB). For the purpose of issue of RFQ (RFP in single stage process) minimum conditions to be met by the bidder shall be specified by the procurer in the RFQ (RFP in single stage process) notice.

5.3 Procurer shall provide only written interpretation of the tender document to any bidder / participant and the same shall be made available to all other bidders. All parties shall rely solely on the written communication and acceptances from the bidders.

5.4 Standard documentation to be provided by the procurer in the RFQ (RFP in single stage process) shall include,

(i) Definition of Procurer's requirements, including:

- Quantum of electricity proposed to be bought in MW. To provide flexibility to the bidders, this may be specified as a range, within which bids would be accepted. Further, the procurer may also provide the bidders the flexibility to bid for a part of the tendered quantity, subject to a given minimum quantity;
- The procurer shall specify the nature of load requirement (either base load or seasonal load or diurnal load), the duration in months for which proposed power is being contracted for seasonal procurement, and duration in hours for which power is proposed to be contracted for diurnal requirement;
- Term of contract proposed: As far as possible in Case 2, it is advisable to go for contract coinciding with life of the project in case of long term procurement. The bidder shall be required to quote tariff structure for expected life of the project depending upon fuel proposed by him. The expected life project is estimated to be 15 years for gas/liquid fuel based projects, 25 years for coal based projects and 35 years for hydro projects.

In Case 1, the procurer shall be free to specify the term of the contract for a specific bid process irrespective of the source of supply of power.

- Normative availability requirement to be met by seller (separately for peak and off-peak hours, if necessary);
- Definition of peak and off-peak hours, if relevant for the procurement query;
- Expected date of commencement of supply;
- Point(s) where electricity is to be delivered;
- Wherever applicable, the procurer may require construction milestones to be specified by the bidders;
- Financial requirements to be met by bidders including minimum net-worth etc with necessary proof of the same as required in the bid documents.

(ii) Model PPA proposed to be entered into with the seller of electricity. The PPA shall include necessary details on:

- Risk allocation between parties;
- Technical requirements on minimum load conditions;
- Assured offtake levels;
- Force majeure clauses as per industry standards;
- Lead times for scheduling of power;
- Default conditions and cure thereof, and penalties;
- Payment security proposed to be offered by the procurer.

(iii) Period of validity of offer of bidder;

(iv) Requirement of transfer of assets by the selected bidder (if any) to the procurer at the end of the term of the PPA.

(v) Other technical, operational and safety criteria to be met by bidder, including the provisions of the IEGC/State Grid Code, relevant orders of the Appropriate Commission (e.g., the ABT Order of the CERC), emission norms, etc., as applicable.

(vi) The procurer may, at his option, require demonstration of financial commitments from lenders at the time of submission of the bids. This would accelerate the process of financial closure and delivery of electricity;

(vii) The procurer or the supplier may exercise exit option subject to the condition that the new party satisfies all RFQ and RFP conditions and also undertakes to accept all the obligations and responsibilities of the PPA.

5.5 RFP shall be issued to all bidders who have qualified at the RFQ stage in a two-stage bidding process. In case the bidders seek any deviations and the procurer finds that the deviations are reasonable, the procurer shall obtain approval of the Appropriate Commission before agreeing to the deviations. The clarification/revised-bidding document shall be distributed to all who had bought the RFP document informing about the deviations and clarifications and an intimation shall also be sent to the Appropriate Commission. Final PPA shall also be displayed on the website of the procurer. Wherever revised bidding documents/amendments are issued, the procurer shall provide bidders at least sixty (60) days in case of two stage bidding process and at least forty-five (45) days in case of a single stage bidding process after issue of such documents for submission of bids. However, a lesser time may be given for submission of RFP bids after any such revision/amendments in the RFP documents, with the written consent of all the prequalified bidders who have bought the RFP.

5.6 Standard documentation to be provided by the procurer in the RFP shall include,

(i) Structure of tariff to be detailed by bidders;

(ii) **PPA proposed to be entered with the selected bidder.**

The model PPA proposed in the bidding documents may be amended based on the inputs received from the interested parties, and shall be provided to all parties responding to the RFP. No further amendments shall be carried out beyond the RFP stage;

(iii) **Payment security to be made available by the procurer**.

The payment security indicated in the bidding documents could be modified based on feedback received during the bid process and as specified in the bid documents. However no further amendment to payment security would be permissible beyond the RFP stage.

(iv) **Bid evaluation methodology to be adopted by the procurer including the discount rates for evaluating the bids**.

The bids shall be evaluated for the composite levellised tariffs combining the capacity and energy components of the tariff quoted by the bidder. In case of assorted enquiry for procurement of base load, peak load and seasonal power, the bid evaluation for each type of requirement shall be carried out separately. The capacity component of tariffs may feature separate non-escalable (fixed) and escalable (indexed) components. The index to be adopted for escalation of the escalable component shall be specified in the RFP.

For the purpose of bid evaluation in cases other than where a captive fuel source is offered, escalation rate, as notified by the CERC from time to time on the basis of historical data, of the relevant fuel index (as identified in the RFP) in the international market or domestic market as the case may be, shall be used for escalating the energy charge (or the derived energy charge in cases referred to in clause 4.2) quoted by the bidders. The provisions of clauses 4.11(iii), (iv) and (v) would also apply to evaluation of bids in cases where the procurer mandates use of imported fuel for coastal power stations. However, in cases where the bidder quotes firm energy charges for each of the years of proposed supply, the energy charges proposed by the bidder shall be adopted for bid evaluation.

Where the procurer offers a captive fuel source (such as a captive coal mine) for concurrent development and production of power, the provisions of para 4.11(ii) would apply.

The rate for discounting the combination of fixed and variable charges for computing the levellised tariff shall be as notified by CERC keeping in view prevailing rate for 10 year Government of India securities. This rate is to be specified in the RFP.

(v) The RFP shall provide the maximum period within which the selected bidder must commence supplies after the PPA becomes effective, subject to the obligations of the procurer being met. This shall ordinarily not be less than four years from the date of the PPA becoming effective in case supply is called for long term procurement. The model PPA which forms a part of the RFP documents shall also specify the liquidated damages that would apply in the event of delay in supplies.

(vi) Following shall be notified and updated by the CERC every six months:

1. Escalation rate for domestic coal. (Separately for evaluation and payment)
2. Escalation rate for domestic gas. (Separately for evaluation and payment)
3. Escalation rates for different escalable sub-components of energy charge for plants based on imported coal. (Separately for evaluation and payment)
4. Escalation rates for inland transportation charges for coal (Separately for evaluation and payment)
5. Escalation rates for inland transportation charges for gas (Separately for evaluation and payment)
6. Escalation rate for different escalable sub-components of energy charge for plants based on imported gas. (Separately for evaluation and payment)
7. Inflation rate to be applied to indexed capacity charge component.
8. Inflation rate to be applied to indexed energy charge component in cases of captive fuel source.
9. Discount rate to be used for bid evaluation.
10. Dollar-Rupee exchange variation rate. (For the purpose of evaluation)
11. Escalation for normative transmission charges (For the purpose of evaluation)

Bid submission and evaluation

5.7 To ensure competitiveness, the minimum number of qualified bidders should be at least two other than any affiliate company or companies of the procurer. If the number of qualified bidders responding to the RFQ/RFP is less than two, and procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

5.8 Formation of consortium by bidders shall be permitted. In such cases the consortium shall identify a lead member and all correspondence for the bid process shall be done through the lead member. The procurer may specify technical and financial criteria, and lock in requirements for the lead member of the consortium, if required.

5.9 The procurer shall constitute a committee for evaluation of the bids with at least one member external to the procurer's organisation and affiliates. The external member shall have expertise in financial matters / bid evaluation. The procurer shall reveal past associations with the external member - directly or through its affiliates - that could create potential conflict of interest.

5.10. Eligible bidders shall be required to submit separate technical and price bids. Bidders shall also be required to furnish necessary bid-guarantee along with the bids. Adequate and reasonable bid-guarantee shall be called for to eliminate non-serious bids. The bids shall be opened in public and representatives of bidders desiring to participate shall be allowed to remain present.

5.11 The technical bids shall be scored to ensure that the bids submitted meet minimum eligibility criteria set out in the RFP documents on all technical evaluation parameters. Only the bids that meet all elements of the minimum technical criteria set out in the RFP shall be considered for further evaluation on the price bids.

5.12 The price bid shall be rejected if it contains any deviation from the tender conditions for submission of price bids.

5.13 Wherever applicable, the price bid shall also specify the terminal value payable by the Procurer for the transfer of assets by the selected bidder in accordance with the terms of the RFP.

5.14 In the case of procurement under Case-1,

(i) the bidder shall quote the price of electricity at the interconnection point, i.e., being the point where the electric lines of the generating station connect to inter/intra state transmission network. For the purposes of standardisation in the process of bid evaluation, the tariffs shall be compared at the delivery point, i.e., the interface with the STU network in the procurer's state where power is delivered to the procurers. For generation source in the state of the procurer, the delivery point shall be the generation switchyard. Bid evaluation shall duly consider normative transmission charges, if any, from the injection point, i.e., the CTU interface point, to the delivery point with respective escalations provided by the CERC. Transmission losses from the interconnection point to the delivery point, as specified by the Appropriate Commission shall also be considered for evaluation and reflected in the final levelised tariff;

(ii) actual transmission charges, as specified by the Appropriate Commission, from the injection point to the delivery point shall be borne by the procurers. Charges up to the injection point shall be borne by the bidder.

5.15 The bidder who has quoted lowest levellised tariff as per evaluation procedure, shall be considered for the award. The evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.

Deviation from process defined in the guidelines

5.16 In case there is any deviation from these guidelines, the same shall be with the prior approval of the Appropriate Commission. The Appropriate Commission shall decide on the modifications to the bid documents within a reasonable time not exceeding 90 days.

Arbitration

5.17 Where 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 Appropriate Commission. All other disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996.

Time Table for Bid Process

5.18 In the two stage bid process, (i) a minimum period of 45 days shall be allowed between the publication of RFQ and last date of submission of responses to RFQ and (ii) a minimum period of 150 days shall be allowed between the issuance of RFP and the last date of RFP bid submission.

Subject to the completion of necessary milestones in respect of project preparatory activities as given in clause 3.2 of these guidelines, the timetable for the bid process is indicated in Annexure-I. In normal circumstances, the bid process is likely to be completed in a period of 270 days.

The Procurer may give extended timeframe than indicated in the Annexure-I. However, if the bidding process is likely to take more than 730 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

5.19 In the single stage bid process, a minimum period of 75 days shall be allowed between the issuance of RFP documents and the last date of bid submission. The timetable for the bid process is indicated in Annexure-II. In normal circumstances, the bid process is likely to be completed in a period of 120 days.

The Procurer may give extended timeframe than indicated in the Annexure-II. However, if the bidding process is likely to take more than 195 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

6. Contract award and conclusion

6.1 The PPA shall be signed with the selected bidder/SPV (after its acquisition by the selected bidder under Case-2) consequent to the selection process in accordance with the terms and conditions as finalized in the RFP bid documents.

For cases referred to in clause 3.4 of these Guidelines, the PPA and other project documents may be executed by the SPV and the concerned parties prior to the last date of submission of RFP bids.

6.2 After the conclusion of bid process, the Evaluation Committee constituted for evaluation of RFP bids shall provide appropriate certification on conformity of the bid process evaluation according to the provisions of the RFP document. The procurer shall provide a certificate on the conformity of the bid process to these guidelines.

6.3 For the purpose of transparency, the procurer shall make the bids public by indicating all the components of tariff quoted by all the bidders, after signing of the PPA or PPA becoming effective, whichever is later. While doing so, only the name of the successful bidder shall be made public and details of tariffs quoted by other bidders shall be made public anonymously. The procurer shall also make public the PPA signed in accordance with clause 6.1.

For above purpose, a notice will be published in at least two national newspapers and full details shall be posted on the website of the procurer for at least thirty days.

6.4 The signed PPA along with the certification certificates provided by the evaluation committee and by the procurer as provided in clause 6.2 shall be forwarded to the Appropriate Commission for adoption of tariffs in terms of Section 63 of the Act.

Annexure-I : Time Table for two stage bid process

Sl.No.	Activities to be completed before Event in next column takes place	Event	Elapsed Time from Zero date
1.	- Land: Section 4 notification under the Land Acquisition Act, 1894 should have been issued for land of power station. - Environmental clearance: Rapid EIA report for power station should be available. - Fuel arrangements: Fuel linkage or allocation of coal mine(s) should be available, if applicable. - Water linkage should be available.	Publication of RFQ	Zero date
2.		Submission of Responses of RFQ	45 days
3.	- Land: Section.6 notification under the Land Acquisition Act, 1894 should have been issued for land of power station. - Environmental clearance: The proposal for environmental clearance for power station should have been submitted before the concerned authority responsible for according final approval. - Forest Clearance (if applicable):Requisite proposal for forest clearance for the land for the power station should have been submitted before the concerned authority responsible for according final approval. - Data: For preparation of DPR, following data should be available:- Hydrological, geological, meteorological, seismological data	Issuance of RFP	75 days
4.		Bid clarification, conferences etc	-
5.		Final clarification and revision of RFP	*

6.		RFP bid submission	<u>225 days</u>
7.		Evaluation of bids and issue of (Letter of Intent) LOI	<u>240 days</u>
8.	- Environmental clearance for the power station should have been obtained. - If the provisions of section 17 of the Land Acquisition Act,1894 regarding emergency have not been applied, the Award for the power station land under Land Acquisition Act should have been declared.	PPA becomes effective: Signing of Agreements: i) Power purchase agreement, escrow agreement, hypothecation agreement and any other agreement as applicable (if these have not been already signed under clause 3.4). ii) Signing of share purchase agreement and transfer of SPV, if applicable.	**<u>270 days</u>**

*In case of any change in RFP document, the procurer shall provide bidders additional time in accordance with clause 5.5.

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 the these Guidelines. However, if the bidding process is likely to take more than 730 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

Annexure-II : Time Table for single stage bid process for Case-1

Sl.No.	Event	Activities to be completed by the Bidder prior to submission of Bid	Elapsed Time from Zero date
1.	Date of issue of RFP		Zero date
2.	Bid clarification, conferences etc. & revision of RFP		* *
3.	RFP Bid submission	– Land : For land to be acquired under Land Acquisition Act 1894, notification under Section 4 should have been issued. Out of the remaining land, one-third of the land should be under allotment/lease (lease period more than life of power plant)/ownership of the bidder. – Environmental clearance : Requisite proposal for the environmental clearance to the concerned authority should have been subimitted – Forest Clearance (if required) : Requisite proposal for the environmental clearance to the concerned authority should have been submitted. – Fuel Arrangement : Fuel arrangements by way of mine allocation/fuel linkage/fuel supply agreements should be available – Water linkage : In – principle approval from the concerned state irrigation department or any other relevant authority should be available.	75 days
4.	Evaluation of bids and issue of LOI		100 days

Sl.No.	Event	Activities to be completed by the Bidder prior to submission of Bid	Elapsed Time from Zero date
5.	PPA becomes effective : Signing of Agreements: i) Power purchase agreement, escrow agreement, hypothecation agreement and any other agreement as applicable (if these have not been already signed under clause 3.4). ii) Signing of share purchase agreement and transfer of SPV, if applicable.		120 days

** In case of any change in RFP document, the procurer shall provide bidders additional time in accordance with clause 5.5.

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. However, if the bidding process under Case-1 procurement is likely to take more than 195 days, approval of the Appropriate Commission shall be obtained in accordance with clause 5.16.

(Pranay Kumar)
Director