

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru S.Akshayakumar	Chairman
Thiru G.Rajagopal	Member
	and	
Dr.T.Prabhakara Rao	Member

M.P.No.17 of 2018

Tamil Nadu Generation and Distribution Corporation Ltd.
Represented by the Chief Engineer / Non-Conventional Energy Sources
144, Anna Salai
Chennai – 600 002.

... Petitioner
(Thiru M.Gopinathan
Standing Counsel for TANGEDCO)

Vs.

NIL

...Respondent

Date of hearing : 18-09-2018

Date of Order : 16-11-2018

The M.P.No.17 of 2018 came up for final hearing on 18-09-2018. The Commission upon perusal of the Petition and connected records and after hearing the submissions of the Petitioner hereby makes the following:

ORDER

1. Prayer of the Petitioner in M.P.No.17 of 2018:-

The prayer of the Petitioner in the above M.P.No.17 of 2018 is to –

- (a) grant approval for the draft tender specification (RFS document) and draft Power Purchase Agreement (PPA).
- (b) grant approval for the modification in the payment clause and relaxation from “Change in law” and “FDI” clauses.
- (c) grant approval for fixing maximum capacity limitation of 50 MW in a single location.
- (d) pass such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. Facts of the Case:-

The petition has been filed seeking approval for the draft tender specification (RFS document) and draft Power Purchase Agreement (PPA) evolved by the TANGEDCO in line with the guidelines for competitive bidding process for the grid connected solar PV power plants issued by Ministry of Power, GoI and specific approval for certain deviations of the guidelines issued by Ministry of Power, GoI for procurement upto 500 MW (Stage 1) solar power by TANGEDCO from the private developers through reverse bidding process considering the tariff of Rs.3.00 per unit, as upper limit.

3. Contentions of the Petitioner:-

3.1. TANGEDCO has filed a Miscellaneous Petition in M.P.No.9 of 2018 before the Commission seeking approval for the procurement of 1500 MW of solar power from the developers establishing solar power plants in Tamil Nadu under reverse bidding process to meet its RPO obligation fixed by the MNRE, GoI for the year 2019-20, considering an upper limit tariff of Rs.3.00 per unit.

3.2. Based on the request of TANGEDCO, the Commission has accorded approval for the procurement of 1500 MW of solar power from the developers establishing solar power plants in Tamil Nadu under reverse bidding process, considering an upper limit tariff of Rs.3.00 per unit and advised the TANGEDCO to go for procurement in three stages of 500 MW each through reverse bidding process as per Gol guidelines, instead of inviting tender for entire quantum of 1500 MW in its order dated 24.04.2018 in M.P.No.9 of 2018.

3.3. The Commission has also directed TANGEDCO to file separate petition seeking approval for draft tender specification (RFS document) and draft PPA.

3.4. Based on the direction of the Commission, this petition has been filed by TANGEDCO seeking approval for the draft tender specification (RFS document) and draft Power Purchase Agreement (PPA) evolved and approved by the Board of TANGEDCO, in line with the guidelines for competitive bidding process for the grid connected solar PV power plants issued by Ministry of Power, Government of India vide Resolution dated 03.08.2017.

3.5. Clause 18 of the guidelines for competitive bidding process for the grid connected solar PV power plants issued by Ministry of Power, GOI provides as follows:-

"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 90 (ninety) days".

3.6. TANGEDCO has considered certain deviations with regard to modification in "Payment Security" clause and relaxation from "Compliance of FDI Laws by foreign bidders" and "Change in Law" Clauses. TANGEDCO has also considered deviation for fixing maximum capacity limitation of 50 MW in a single location. The reasons for such deviations are detailed below:-

3.6.1. As per the Ministry of Power, GoI guidelines, the procurer shall provide payment security to the solar power generator through (i) Revolving Letter of Credit (LC) of an amount not less than 1 (one) month average billing and (ii) Payment Security Fund which shall be suitable to support payment for at least 3 (three) months billing. In addition to Revolving Letter of Credit and Payment Security Fund, the procurer shall also choose to provide State Government Guarantee, ensuring the SPG both in terms of payment of energy charges and termination compensation if any.

3.6.2. Considering the present financial position of TANGEDCO, TANGEDCO has proposed to adopt the following payment mode in this tender, as followed in previous tender instead of the payment mode specified in the guidelines.

"The due date for payment of energy bill shall be 60 days from the date of receipt (excluding the date of receipt) of bill in complete from the generator. TANGEDCO shall provide unconditional revolving and irrevocable LC which shall be drawn upon the SPGs. TANGEDCO shall provide LC from public sector/scheduled commercial bank. The payment shall be made on 60th day from the date of receipt of passed bill (Invoice) at LC opener's bank. If the 60th day (due date) happens to be a holiday for TANGEDCO and/or Banks, then payment will be made on the next working day. All expenses relating to LC viz. Opening charges, Maintenance Charges, Negotiation Charges and renewal charges are to the account of SPGs. The revolving LC shall have a term of 12 months and validity of the LC shall be renewed year after year and remains valid upto expiry of the agreement and the amount shall also be renewed for an amount equal to 105% of the average of monthly billing of proceeding 12 months".

3.6.3. As per the guidelines, in case a foreign company is selected as the successful bidder, the company shall comply with all the laws and provisions related to Foreign Direct Investment (FDI) in India. In the previous tender floated, "Provision of FDI" clause was not incorporated. In spite of this, the response for the tender was good and competitive offers obtained from Indian companies. Further, in the guidelines, it is not elaborately mentioned how to comply with all the laws and provisions related to Foreign Direct Investment (FDI) in India for the successful foreign bidders. Hence, TANGEDCO has proposed to remove this clause from the tender specification.

3.6.4. As per the guidelines, "Change in law" which refers to the occurrence of any of the following events after the last date of the bid submission including (i) 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 licence or (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or licence, not owing to any default of the Solar Power Generator or (v) any change in the rates of any Taxes which have a direct effect on the Project is permitted. This tender is to be floated for procurement of solar power and PPA will be executed with successful bidders for a period of 25 years. Considering the long term PPA to be entered with the developers and as TANGEOCO has not included "Change in Law" clause in previous tender, TANGEOCO has proposed to exclude the clause "Change in Law" specified above from tender specification.

3.6.5. As per the guidelines, the minimum capacity restriction is 5 MW and above. As per the MNRE guidelines, for the projects having capacity upto 250 MW shall have commissioning period of 13 months from the date of signing of PPA and for the

projects having capacity more than 250 MW shall have commissioning period of 15 months from the date of signing of PPA. The commissioning of projects within the stipulated time period specified by MNRE is possible only if the connectivity of the proposed project is finalized in the existing TANGEDCO/TANTRANSCO SS itself for power evacuation. Considering the present evacuation availability of TANGEDCO/TANTRANSCO Sub-Stations, if the proposed project capacity is limited upto 50 MW in a single location, the generated power could be evacuated through existing 110/230 kV SS itself and there will not be any issues to TANGEDCO for evacuating power. Further if the capacity of each project is restricted to 50 MW, the projects could be commissioned within 13 months from the date of signing of PPA and the State will also meet its RPO requirement for the year 2019-20.

Hence, TANGEDCO has proposed to float this Phase 4 tender (Stage 1) with maximum capacity limitation of 50 MW in a single location so that the entire generated power can be evacuated with the existing infrastructure of 110/230 kV TANTRANSCO SS.

3.7. The BLTC of TANGEDCO in its 285th meeting held on 09.07.2018 and the Board of TANGEDCO in its 81st meeting held on 26.07.2018 has accorded approval for the following:-

(a) to float tender (e-tender) for the procurement of 500 MW (Stage 1) of solar power from the private developers establishing solar power plants in the State, under reverse bidding process with a upper ceiling limit of Rs.3 per unit, after getting approval from the Commission for the draft tender specification and draft PPA format.

(b) to adopt the specification with the commercial, technical conditions formulated based on the guidelines of the MNRE, with modification in the payment clause and relaxation from "Change in law" and "FDI" clauses.

(c) to file a petition before the Commission seeking approval for the following:

(i) Approval for draft tender specification and draft PPA along with the deviations in certain clauses of the MNRE guidelines.

(ii) Approval for deviation for fixing maximum capacity limitation of 50 MW in a single location.

In the light of the above submissions, the Petitioner has prayed to pass appropriate orders on its petition.

4. Findings of the Commission:-

4.1 The petitioner, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), the Distribution Licensee in the State has sought approval for the draft tender specification (Request for Submission (RFS) document) and draft Energy Purchase Agreement with deviations in certain clauses of the MNRE guidelines for procurement of 500 MW (Stage 1) of solar power from private developers with an upper ceiling limit of Rs.3.00 per unit. Approval has also been sought for fixing the maximum capacity limitation of 50 MW in a single location.

4.2. The Commission, in its Order dated 24.04.2018, while granting approval for procurement of power of 1500 MW through competitive bidding to meet the SPO target, opined that the procurement may be taken up in three stages of 500 MW each through reverse bidding as per GOI guidelines. The petitioner was also directed to straight away go for such reverse bidding process without seeking fresh approval

from the Commission in case there is no new deviation in the present procurement other than the ones sought for and approved by the Commission in the earlier phases.

4.3 The petitioner has however filed the present petition seeking specific approval for certain deviations in guidelines issued by Ministry of Power, Government of India vide resolution dated 03.08.2017 for procurement of 500 MW (Stage 1) solar power.

4.4 The petitioner has considered deviations from GOI Competitive Bidding guidelines with regard to modification in “Payment Security” clause and relaxation from “Compliance of FDI Laws by Foreign bidders” and “Change in Law” Clauses. The petitioner has also sought approval for fixing the maximum capacity limitation of 50 MW in a single location. The reasons for such deviations has also been detailed by the petitioner.

4.5 The Competitive Bidding Guidelines of GoI stipulates as follows with respect to deviation from process defined in the guidelines:

“18. 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 90 (ninety) days.”

4.6 Commission accepts the request of the petitioner for modification/relaxation of GOI competitive bidding guidelines with respect to the clauses relating to Payment

Security, Change in Law and Compliance of FDI Laws by Foreign bidders in view of the long term of 25 years of Energy Purchase Agreement of the petitioner with the Solar Power Developer.

4.7 The other prayer of the petitioner is to grant approval to limit the project capacity upto 50 MW in a single location considering the present evacuation availability in TANGEDCO/TANTRANSCO Sub Stations so that the projects could be commissioned within 13 months and enable the State to meet its RPO requirement for the year 2019-20. The Commission concedes to the request of the petitioner considering the obligation to meet the SPO target.

4.8 The Commission herewith wish to state that during the hearing of the petition by the Commission for admission on 18.09.2018, the petitioner was advised to proceed with the e-tendering adopting reverse auction in the bidding process to get a competitive price.

4.9 The petitioner is also directed to file a separate petition for approval of the tariff on completion of the bidding process furnishing full details of the tendering process including details of Evaluation Committee, tariff quoted by the other bidders and a copy of Energy Purchase Agreement to be signed with the developers.

5. Appeal: - An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003, within a period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

(Sd)
(Dr.T.Prabhakara Rao)
Member

(Sd.....)
(G.Rajagopal)
Member

(Sd.....)
(S.Akshayakumar)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission