

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

PRESENT:-

Thiru.S.Kabilan	...	Chairman
Thiru.K.Venugopal	Member
and		
Thiru. S. Nagalsamy	Member

M.P. No. 48 OF 2010

The Chairman cum Managing Director
Tamil Nadu Generation and Distribution Corpn. Ltd.,
No.144, Anna Salai, Chennai – 600 002.

.... Petitioner
(Thirumathi. L.Kanimozhi,
Advocate for Petitioner)

Vs.

Nil	...	Respondent
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Date of hearing 3-12-2010

Date of order 3-12-2010

The M.P.No. 48 of 2010 came up for final hearing before the Commission on **3-12-2010**. The Commission upon perusing the above M.P.No.48 of 2010 and other connected records and after hearing the petitioner passes the following:-

ORDER

1. **Prayer in M.P. No. 48 of 2010:-**

The prayer in M.P. No. 48 of 2010 is to approve the deviation in respect of clause 8.4.11 of PPA relating to provision of credible

escrow mechanism as backup to letter of credit and to incorporate new clause 8.4.0 for making direct payment and to permit this petitioner to open a standby letter of credit instead of unconditional revolving and irrevocable letter of credit as mentioned in 8.4 of the PPA and corresponding deletion in the RFP section 2.2.7 b & c 5.2.5 and 5.5 enclosure 2 & 3 in the proposed procurement of power under case 1 bidding process.

2. Facts of the case :-

The Tamil Nadu Generation and Distribution Corporation Limited has, in view of shortage of power and to meet the demand for the present and for the near future, decided to procure power as contemplated under Section 63 of the Electricity Act, 2003. In this regard, the Government of India, Ministry of Power had issued Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensee on 19-1-2005 and updated as on 21-7-2010 by exercising power under Section 63 of the said Act. The petitioner propose to procure 450MW of power on medium term basis from generators falling under clause 2.2 (i) of the said guidelines i.e., Where the location, technology, or fuel is not specified by the procurer (case 1).

Clause 3.1 (i) of the said guidelines provides inter alia that the bid documentation shall be prepared in accordance with the 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.

Clause 3.1 (ii) of the said guidelines provides that approval of the Appropriate Commission shall be sought in the event of the deviations from the bidding conditions contained in the guidelines.

Further, Clause 5.16 of the said guidelines provides as follows:-

“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”.

Clause 4.10 of the guidelines requires that adequate payment security shall be made available to the bidders and that the payment security may constitute

(i) Letter of Credit (LC);

(ii) Letter of Credit (LC) backed by credible Escrow Mechanism.

In view of the precarious financial position the petitioner corporation is not in a position to provide letter of credit (LC) backed by credible escrow mechanism as stipulated in the guidelines. However, the petitioner will be in a position to provide payment security mechanism in the form of stand by letter of credit. This constitutes a deviation from the process defined in the said guidelines. Further, on account of the proposed change in the payment security mechanism, in the RFP the expression “Default escrow agreement and Hypothecate cum deed of Hypothecation (in clauses 2.2.7 – b &c, 5.2 to 5; 5.5) and clause 8.4.11 of the PPA need to be deleted. Further, a new clause 8.4.0 is

to be added in the PPA and suitable amendments are to be made referring to the proposed stand by letter of credit in clauses 8.4.1 to 8.4.9 and deletion of clause 8.4.10.

The proposed deviation is necessitated on account of accumulated loss of Rs. 17413.92 crores upto 2008-09 incurred by the petitioner corporation. The petitioner corporation assures and undertakes that it will honour its obligation in payments under the proposed power purchase without any default by maintaining suitable stand by letter of credit.

The petitioner has sought approval of the Commission for the above deviation from the Guidelines issued by the Ministry of Power, Government of India for procurement of power under case 1 bidding.

3. Arguments of the petitioner:-

The counsel for the petitioner submitted that the standard bid document issued by the Ministry of Power prescribed escrow mechanism for payment security to the energy supplied. The TNEB is not in a position to provide escrow account in favour of the seller of energy due to financial stringency. Approval of the Commission is sought for stand by letter of credit mechanism instead of escrow account, by making deviation in competitive bid document.

The counsel for the petitioner submitted that escrow facility is extended only in favour of Central Generating Stations and that the tender proposed is for medium term of 5 years and that as of now there are no guidelines for

procurement of power in short term for less than one year through competitive bidding. Petitioner also submitted that though there is shortage of power to the tune of 1500MW for the present it is decided to invite tender for 450 MW only and that the TANGEDCO will go in for further bidding based on the response to the proposed tender. The proposed tender is a global tender and the power requirement is worked out as for May 2011.

4. Findings of the Commission:-

On perusal of the petition and the related documents in the typeset, the Commission observed the following flaws in the tender document and took serious note of the same.

- a) The basis on which the quantum of 450 MW has been arrived is not stated;
- b) The delivery schedule has not been indicated;
- c) The criteria for evaluation of the bid are not furnished;
- d) The upset price for acceptance of bid has not been worked out.

The Commission observed that the above gaps which ought to have been filled up by the petitioner has to be unpleasantly raised by the Commission.

5. Order of the Commission : -

In accordance with clause 5.16 of the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by

Distribution Licensees of the Ministry of Power, Government of India, amended as on 21-7-2010, the deviation sought for by the TNEB in the tender document for substitution of unconditional revolving and irrecoverable Letter of Credit backed by Escrow Mechanism by a stand by letter of credit is approved by the Commission subject to fulfilment of the following conditions.

- a) Delivery schedule should be indicated in the bid documents duly taking into account the requirement of power;
- b) The criteria for evaluation of the bid need to be furnished;
- c) The upset price for acceptance of bids needs to be approved by the competent authority in advance strictly in confidence.

6. Appeal:-

An appeal against this order lies to the Appellate Tribunal for Electricity as per section 111 of the Electricity Act, 2003 within a period of forty five days.

Delivered on 24-12-2010

(Sd.....)
(S. Nagalsamy)
Member - II

(Sd.....)
(K.Venugopal)
Member - I

(Sd.....)
(S.Kabilan)
Chairman

/ True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**