

Bihar Electricity Regulatory Commission, Patna

Case No. SBD-04/2011

Dated : 16.09.2011

ORDER

Bihar State Electricity Board (BSEB) had submitted an application seeking approval of the Commission to the deviations proposed by BSEB in Standard Bid Document (SBD) of Case-I for procurement of 450 MW ($\pm 20\%$) power through tariff based competitive bidding process based on the guidelines issued by the Govt. of India (Ministry of Power) in this regard on medium term basis w.e.f. 1st March, 2012 upto 31st December, 2015.

BSEB has proposed 12 deviations in the SBD. The deviations proposed and the decision of the Commission on the proposed deviations are summarized below:

- 1) BSEB had communicated its intention to procure 500MW ($\pm 20\%$) power from 1st March, 2012 upto 31st December, 2015. Now the Board has revised its proposal to procure 450MW ($\pm 20\%$). The Board has proposed to add in the SBD a sentence “minimum bid capacity will be 100MW”. For procurement of 500 MW or above power, the scheduled delivery date has to be a minimum of 4 years after the effective date. But for procurement of lesser quantity of power, the distribution utility may fix the scheduled delivery date at its discretion. In the present case the scheduled delivery date is 1st March, 2012 which will be less than 4 (four) years from the effective date, the proposal to procure 450MW ($\pm 20\%$) will be within the guidelines. The qualifying criteria of minimum bid capacity to 100 MW for the bid is also approved, since it is as per the guidelines.
- 2) The Board has proposed deviation in serial no.-4 of the standard RFP for Case-I. The Standard RFP provides following :

“**Technology:** The Bidder is free to choose any power generation technology, including but not limited to sub-critical / supercritical, open / combined cycle, etc”

The Board has proposed to delete the clause “*including but not limited to sub-critical / supercritical, open / combined cycle, etc*”

The Commission feels that the proposed deviation does not make any material difference and therefore, there is no need to approve the proposed deviation. Accordingly the proposed deviation is not approved.

- 3) The Board has proposed deviation in serial no.-5 of the Standard RFP in respect of fuel. The Standard RFP mentions the following:-

“**Fuel:** The choice of fuel, including but not limited to coal or gas, its sourcing and transportation is left entirely to the discretion of the Bidder. The Successful Bidder(s) shall bear complete responsibility to tie up the fuel linkage and the infrastructural requirements for fuel transportation, handling and storage.”

The Board has proposed to abridge the provision as follows:

“*The bidder is free to choose the fuel for power generation.*”

The Commission does not consider the proposed deviation necessary since it does not make any material difference and, therefore does not approve it.

- 4) The Board has proposed deviation in serial no.-6 of Standard RFP. The Standard RFP provides the following :-

“**Power generation source:** Bidders are free to supply from any source of power generation including but not limited to hydel power. In case supply of power is proposed from a hydel source the hydrology risk shall be entirely borne by the Bidders. However, if the available capacity of the Seller from a generating station is in excess of the total Contracted

Capacity of the Seller, then this excess capacity shall be at the disposal of the Seller.”

The Board has proposed to abridge this provision as follows:

“Bidders are free to supply from any source of power generation in the country”

The Commission does not consider this deviation necessary since it does not make any material difference and therefore does not approve it.

- 5) The Board has proposed omission of the definition of “CTU Interface on the ground that all power stations shall supply power at any of the Delivery Points indicated in schedule-1 to the PPA. Considering the reason given by BSEB the proposed deviation is approved.
- 6) The Board has proposed deviation in the definition of “STU Interface(s)” to omit the provision related to supply from a power station located in the State. Since there is no existing power station or a power station likely to be commissioned before scheduled date of delivery, from which power can be supplied under this bid, the deviation is approved.
- 7) The Board has proposed deviation in clause 2.1.2.2 of the standard RFP. The standard RFP relates to the bidders who propose to supply power from a power plant which is yet to be commissioned. As per the standard RFP the bidder is required to indicate the requirement of land and status of availability of land, status of availability of fuel, status of availability of water, status of submission of the proposal for environmental clearance and forest clearance for the proposed project. The Board has proposed to omit this provision.

If this provision is omitted, the Board may not be able to know the status of implementation of the project from where the bidder proposes to supply power. Therefore, the Commission does not approve the deviation.

- 8) The Board has proposed deviation in clause 3.5.4 of the standard RFP. The clause relates to a situation where the lowest bidder has not offered full requisitioned quantity of power. According to standard RFP, in such a situation the offer of the second lowest bidder has to be considered in which case the Board will have to procure the balance quantity of power at the tariff quoted by the 2nd lowest bidder which will be higher than the lowest bid tariff. The Board has proposed to omit this provision since this is dealt in the subsequent clause 3.5.9 of RFP.

The Commission approves the deviation considering the interest of the consumers to get power at the lowest tariff.

- 9) The Board has proposed deviation in clause 3.5.9 of the Standard RFP. This clause mentions that there can be no negotiation between the procurer and the bidder. The Board has proposed that if the lowest bidder does not offer full requisitioned quantity of power, the Board can negotiate with the second lowest bidder to procure balance power from the 2nd lowest bidder at the rate offered by the lowest bidder. The proposed deviation will give an opportunity to BSEB to procure power at the lowest tariff. The Commission approves the deviation as follows:

“There shall be no negotiation on the quoted tariff between the procurer and the bidder(s) with the lowest levelised tariff. The procurer reserves the right to invite L-2 (2nd lowest) bidder to make counter offer and match the quoted levelised tariff of the L-1 (lowest) bidder. The Selection process of the successful bidder as mentioned above shall be repeated for all the remaining financial bids of qualified bidders until entire requisitioned capacity is met. The bidders shall be invited to make counter offers in order of the ranks from the lowest bid to the highest bid.

- 10) The Board has proposed to omit the provision related to availability of land, water, fuel and submission of proposal for forest clearance and environmental clearance in format 4.6 B of Standard RFP.

The Commission considers the stipulation in the standard RFP necessary for evaluation of proposals received from bidders proposing to supply power from projects which are yet to be commissioned. Therefore, the proposed deviation is not approved.

- 11) The Board has proposed deviation in clause 8.3.5 of the standard PPA. This relates to Late Payment Surcharge. The Board has proposed Late Payment Surcharge in line with clause 35 of CERC (Terms and Conditions of Tariff) Regulations, 2009.

The proposal of BSEB is approved.

- 12) The Board has proposed deviation in clause 8.3.6 of the standard PPA. This relates to rate of rebate payable by the seller to the procurer in case of timely payment of monthly bills. The Board has proposed deviation as per clause 34 of CERC (Terms and Conditions of Tariff) Regulations, 2009.

The Commission approves the proposal.

The chart incorporating the provisions of the standard RFP, proposal of BSEB along with justification and decision of the Commission is also enclosed.

Sd/-
(S.C. Jha)
Member

Sd/-
(R.N. Sharma)
Member

Sd/-
(U.N. Panjiar)
Chairman