

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 365/AT/2024

**Coram:
Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 31st January, 2025

In the matter of

Petition under Section 63 read with Section 79(1)(k) of the Electricity Act, 2003 for the adoption of tariff for Long Term Procurement of Solar Power of 300 MW from Grid Connected Project under tariff Based Competitive Bidding for meeting Renewable Purchase Obligation (RPO) as per applicable regulations, which has been discovered through a transparent process by way of competitive bidding conducted in terms of the competitive bidding guidelines issued by the Ministry of Power.

And

In the matter of

CESC Limited,
CESC House, Chowringhee Square,
Kolkata – 700001, West Bengal

.....Petitioner

Vs

1. M/s. Purvah Green Power Private Limited,
2A, Lord Sinha Road, First Floor,
Kolkata-700071, West Bengal

2. HRP Green Power Private Limited,
6th Floor, MGF Corporate Mall, Saket,
New Delhi - 110017.

.....Respondents

Parties Present:

Shri Sanjay Sen, Sr. Advocate, CESCL
Ms. Divya Chaturvedi, Advocate, CESCL
Shri Jai Dhanani, Advocate, CESCL
Ms. Shikha Ohri, Advocate, GGPPL & HGPPL
Shri Kartik Sharma, Advocate, GGPPL & HGPPL

ORDER

The Petitioner, CESC Limited (hereinafter referred to as 'CESC'), has filed the present Petition for the adoption of tariff of the 300 MW Solar Power Projects (150 MW



of Base Solar PV Capacity and another 150 MW of Greenshoe Solar PV Capacity) connected with the Inter-State Transmission System (ISTS) and selected through the competitive bidding process as per the “*Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects*” dated 28.7.2023 (‘the Solar Guidelines’) issued by the Ministry of Power, Government of India, as amended from time to time and interpreted and modified by the Central Government vide subsequent communications/ notifications. The Petitioner has made the following prayers:

“a) *Adopt the tariff discovered in the tariff based competitive bid process conducted in pursuance of the Request for Selection dated 26.07.2024 issued by the Petitioner for procurement of power from the Respondent for meeting energy requirement and applicable renewable purchase obligation of the Petitioner; and*

(b) Pass such other order(s) which the Commission deems fit in the facts and circumstances of the instant case.”

Submission of the Petitioner

Factual Matrix

S. No.	Particulars	Details
1.	Location of the Project (s)	Rajasthan
2.	Total Capacity	300 MW (150 MW +150 MW under Greenshoe Option)
3.	Power Supplied to	State of West Bengal
4.	Guidelines	Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects dated 28.7.2023 (‘ Solar Guidelines ’)
5.	Status of the PPA	NA
6.	Intermediary/ Nodal Agency	NA

2. The Petitioner, CESC, has submitted that on 26.7.2024, it issued a Request for Selection (RfS) along with the Standard Power Purchase Agreement (the PPA) and the Power Sale Agreement (the PSA) documents for setting up the 150 MW ISTS connected Solar PV Power Project(s) with Greenshoe Option up to 150 MW for meeting its energy requirements and applicable RPO, under Competitive Bidding as



per the Solar Guidelines dated 28.7.2023, issued by the Ministry of Power, Government of India, on the ISN Electronic Tender System (ETS) e-bidding portal. In response, three bids were received, offering an aggregate capacity of 350 MW, and all were found to fully meet the techno-commercial criteria. On 23.8.2024, as per the prescribed procedure in the RfS, the financial bids of the three technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS, all three bidders were shortlisted for participating in the e-reverse auction. The e-reverse auction was conducted on 27.8.2024 on the ISN ETS e-bidding portal, on the basis of which the final tariff was arrived at. Thereafter, confirmation/acceptance was sought by the Petitioner from the shortlisted bidder for availing the 150 MW additional capacity under the Greenshoe Option. Subsequently, in pursuance of confirmation received from the shortlisted bidder with respect to the additional allocation under Greenshoe Options, the Petitioner, on 7.9.2024 issued the Letter of Award to the successful bidder, namely, Purvah Green Power Private Limited for a total of 300 MW capacity (150 MW towards initially allocated capacity and 150 MW towards allocation of power under Greenshoe option). In view of the above, the Petitioner has prayed for the adoption of a tariff for the procurement of 300 MW Solar Power Project(s) as discovered through a competitive bidding process carried out by CESC.

Hearing dated 5.11.2024

3. During the course of the hearing on 5.11.2024, learned counsel for the Petitioner, CESC, reiterated the submissions made in the pleadings and submitted that since the generating station is to be situated in the State of Rajasthan – leading to an inter-State transaction-this Commission is the Appropriate Commission for the



adoption of a tariff. Learned counsel for the Petitioner further submitted that parallelly, the Petitioner has also moved the West Bengal Electricity Regulatory Commission seeking approval of the PPA under Section 86(1)(b) of the Act.

4. In response to the specific query of the Commission regarding any deviations in the Bid documents and the prior approval thereof, the learned counsel for the Petitioner submitted that the Petitioner had undertaken certain deviations in the Bid documents from the provisions of the Solar Guidelines and for such deviations, it has obtained the approval from the Government of West Bengal. Learned counsel for the Petitioner further added that the Petitioner has also moved an IA seeking an impleadment of HRP Green Power Private Limited, a Special Purpose Vehicle created by the Respondent herein for the development of the Solar Project.

5. After hearing the learned counsel for the parties, the Commission allowed IA, and an amended memo of parties was taken on record. Notices were issued to Respondents to file their respective replies. However, none of the Respondents have filed any reply to the Petition.

6. Vide Record of Proceedings for the hearing dated 5.11.2024, the Petitioner was directed to briefly explain, on an affidavit, how the 'Appropriate Government' as envisaged in Clause 16 of the Solar Guidelines would be a State Government since the instant case involves an inter-State supply of electricity. In response, the Petitioner, vide its affidavit dated 16.11.2024, has mainly submitted as under:

(a) Clause 16 of the Solar Guidelines allows the procurers to seek deviation from the Guidelines while preparing bid documents with the approval of the Appropriate Government. Pertinently, the term "Appropriate Government" has



not been defined in the Solar Guidelines. Notably, “Electricity” is listed as Item 38 in List III of the Seventh Schedule of the Constitution of India. Therefore, being a part of the concurrent list of the Constitution of India, it is a settled position of law that both Central and State Governments have jurisdiction over the subject. In the aforesaid background, the definition of the “Appropriate Government” under the Act becomes relevant.

(b) As per the definition of the Appropriate Government under the Act, the Central Government is to be treated as the Appropriate Government only in the limited instances listed in Section 2(5)(a)(i) to (iv). The aforesaid instances do not include seeking approval for deviation from the competitive bidding guidelines. Therefore, the Central Government could not have been understood to mean the Appropriate Government prior to bidding being carried out by the Petitioner. Notably, in terms of Clause 16 of the Solar Guidelines, approval for deviations from the standard bidding guidelines has to be obtained prior to the starting of the bidding process. Prior to the bidding process, the distribution licensee is not aware of whether the power procurement would be from within the State and/or outside the State. Therefore, the Petitioner, in the present case, as a prudent licensee operating in the State of West Bengal, approached the Government of West Bengal (“GoWB”), as the power procurement by the Petitioner was to supply the power to the consumers in the State of West Bengal.

(c) The Petitioner had approached the State Government of West Bengal for approval of the deviation taken from Clause 5.3 of the Solar Guidelines, which provides that a single bidder cannot be allocated more than 50% of the total capacity, for which the bid is invited by the procurer. As the aforesaid condition would have resulted in increased procurement cost for balance 50% capacity, the Petitioner had requested for it to be allowed to procure the 100% power from the L1 Bidder itself. The aforesaid request was made in order to ensure the most cost-effective procurement of renewable energy, which in the end would prove to be beneficial for the consumers.



(d) In terms of Section 86(1)(b) of the Act, State Electricity Regulatory Commissions (“SERC”) have the jurisdiction to approve the Power Purchase Agreements entered into between the parties for the supply of power in the respective States, as the SERCs would always be better placed to have knowledge regarding the procurement status in the respective State. Similarly, GoWB would be in a better position to take into account the position of power procurement in the State of West Bengal.

(e) In a similar factual scenario, where Gujarat Urja Vikas Nigam Limited (“GUVNL”) and Torrent Power Limited (“TPL”) in the past had approached the Government of Gujarat for the approval of deviation. On 16.11.2023, the Government of Gujarat accorded the approval for deviation from the Guidelines for Tariff Based Competitive Bidding Process dated 9.6.2023.

(f) In view of the aforesaid, it is evident that the State Government is the Appropriate Government in the present case, and the Petitioner herein had rightly approached the State Government for seeking approval for deviations from the Solar Guidelines.

Hearing dated 10.12.2024

7. During the course of the hearing learned counsel for the Petitioner submitted that the Petitioner had filed a compliance affidavit furnishing the additional details/information as called for vide Record of Proceedings for the hearing dated 5.11.2024. Learned counsel further added that as per the Petitioner, there are some ambiguities in the provisions of the Solar Guidelines as in certain clauses, reference is made only to “the Government,” whereas, in certain clauses, the reference is made to “the Appropriate Government.”

8. Learned counsel for the Respondents supported the submissions of the Petitioner and prayed to adopt the tariff.



9. Considering the submissions made by the learned senior counsel and learned counsel for the parties, the Commission reserved the matter for order.

Analysis and Decision

10. We now proceed to consider the prayer of the Petitioner as regards the adoption of tariff under Section 63 of the Act in respect of the solar power projects, as discovered pursuant to the competitive bid process carried out in terms of the Guidelines issued by the Government of India.

11. Section 63 of the Act provides as under:

“Section 63. Determination of tariff by bidding process: 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.”

12. Thus, in terms of Section 63 of the Act, the Commission is required to adopt the tariff on being satisfied that the transparent process of bidding in accordance with the Guidelines issued by the Government of India under Section 63 of the Act has been followed in the determination of such tariff.

13. The Ministry of Power, Government of India, has notified the Solar Guidelines under Section 63 of the Act vide Resolution No.27/01/2023-RCM on 28.7.2023. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for the procurement of power from grid connected solar PV power projects, with or without Energy Storage, through tariff based competitive bidding to be conducted by ‘Procurer’, which includes distribution licensees, or the Authorized Representative(s), or Intermediary procurers.

(b) The Procurer shall prepare the bid documents in accordance with the Guidelines. The principles outlined in the Guidelines may be suitably expanded and made exhaustive in the Standard Bid Documents. In case of any deviation from the provisions of the Guidelines and/or Standard Bid Documents, approval of the Appropriate Government would be necessary prior to initiation of the bid process.

(c) Bids shall be invited in Power Capacity (MW) terms specifying the total quantum to be contracted by the Procurer. The minimum quantum of power that can be offered by the bidder should be 50 MW for projects connected with the inter-State transmission systems. The bidder can quote for a part of the total quantum to be procured by the Procurer. A maximum of 50 percent of total capacity as specified in the RfS can be allocated to a single bidder. The bid evaluation parameter shall be the tariff per unit supply of solar power fixed for the entire term of the PPA.

(d) The procurement of power - shall be in power (MW) terms. The range of the Capacity Utilisation Factor (CUF) will be indicated in the bidding documents. Calculation of the CUF will be on a yearly basis.

(e) The Draft PPA proposed to be entered into with the successful bidder and the draft PSA, if applicable, shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include, *inter-alia*, the PPA Period, Power Procurement, Payment Security Mechanism (PSM), Force Majeure, Generation Compensation for off-take Constraints, Event of default and consequences thereof, and Change in Law and shall be provided for, on back-to-back basis, in the PSA.

(f) The adequate payment security shall be provided as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 including amendments and clarification, if any, thereof, issued from time to time. In addition, the Intermediary Procurer may maintain a payment security fund. To be eligible for the coverage from the fund, the developer will undertake to pay the PSM charges at the rate of 2 paise per unit.

(g) The Procurer/intermediate procurer shall call for the bids adopting a single stage, two part (Technical Bid & Financial Bid), bidding process to be conducted through electronic mode (e-bidding). The technical bid shall be opened first. The financial bids of only those bidders who qualify in the technical bid shall be opened. E-procurement platforms with a successful track record and with adequate safety, security, and confidentiality features will be used.

(h) The RfS notice shall be issued in at least two national newspapers and on the websites of the Procurer to provide the wide publicity. Standard provisions to be provided by the Procurer in the RfS document shall include Bid Responsiveness, Technical Criteria, Financial Criteria, Quantum of the Earnest Money Deposit (EMD), and Compliance of FDI Laws by foreign bidders, etc.

(i) The bidders shall be required to submit the separate technical and price bids. The bidders shall also be required to furnish the necessary bid-guarantee in the form of an Earnest Money Deposit (EMD) along with the bids. The technical bids shall be evaluated to ensure that the bids submitted meet the eligibility criteria set out in the RfS document on all evaluation parameters. Only the bids that meet the evaluation criteria set out in the RfS document shall be considered for further evaluation on the price bids. To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after three attempts of the bidding, and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(j) The Procurer shall constitute a committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters / bid evaluation. After the conclusion of bidding process, the Evaluation Committee constituted for the evaluation of RfS bids shall critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity with the provisions of the RfS document. The Evaluation Authority should also satisfy itself that the price of the selected offer is reasonable and consistent with the requirement.

(k) The PPA shall be signed with the successful bidder/ project company or an SPV formed by the successful bidder.

(l) After the execution of the PPA, publicly disclose the name(s) of the successful bidder(s) and the tariff quoted by them together with the breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of the Procurer for at least 30 (thirty) days.

(m) The distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for the adoption of the tariffs discovered, in terms of Section 63 of the Act, within 15 (fifteen) days of the discovery of the tariffs through e-reverse auction or otherwise, in the transparent competitive bidding process conducted in accordance with these Guidelines. In case the Appropriate Commission does not decide upon the same within 60 (sixty) days of such submission or within 120 (one hundred and twenty) days from the date of the PSA, whichever is more, the Procurer shall grant the appropriate extension of time in Scheduled Commencement of Supply Date (SCSD) to the generators corresponding to the delay (beyond 60 days of submission or 120 days of PSA, whichever is more) in the adoption/ approval by the Appropriate Commission till the date of the adoption/ approval by the Appropriate Commission.

14. In terms of the provisions of Section 63 of the Act, we have to examine whether the process as per provisions of the Solar Guidelines has been followed in the present case for arriving at the lowest tariff and for the selection of the successful bidder(s).

15. The Solar Guidelines provide for the procurement of solar power at a tariff to be determined through a transparent process of bidding by the procurer(s) from the grid-connected solar power projects with or without energy storage. As per the Guidelines, CESC, engaged in the business of distribution of electricity to Kolkata and its suburbs as a deemed distribution licensee under Section 14 of the Electricity Act,

invited proposals for the selection of Solar Power Developers for setting up the 150 MW ISTS connected Solar Power Projects. As per the arrangements, CESC is to procure solar energy from Grid-Connected Solar Project to meet its energy requirements and Renewable Purchase Obligation ('RPO') as per applicable regulations.

16. The key milestones in the bidding process were as under:

S. No.	Event	Date
1.	RfS issued by CESC	26.7.2024
2.	Pre-bid meeting held	5.8.2024
3.	Clarification -1 to the RfS documents issued on	10.8.2024
4.	Last date of bid submission	19.8.2024
5.	Opening of technical bids	20.8.2024
6.	Opening of financial bids	23.8.2024
7.	e-Reverse Auction conducted	27.8.2024
8.	Issuance of Letter of Award (LoA) to successful bidder	7.9.2024

17. On 26.7.2024, CESC issued the RfS documents, along with the draft PPA and PSA, for the selection of 150 MW ISTS-connected Solar Power Project(s) with Greenshoe Option up to 150 MW for meeting its energy requirements and applicable RPO under Competitive Bidding under tariff-based competitive bidding. The said tender/RfS document was floated on the ISN Electronic Tender System (ISN ETS) e-Tender portal. As per Clause 7.5 of the Guidelines, RfS notice is required to be published in at least two national newspapers and its own website to accord wide publicity. In this regard, CESC has placed on record the relevant copies of the newspapers, i.e., various editions of 'Financial Express, Indian Express, and local newspaper 'Aajkal' dated 26.7.2024, in which notice of issuance of the RfS was published to accord wide publicity.

18. The Bid Evaluation Committee (BEC) comprising the following was constituted for the opening and evaluation of bids under RFS No. ED(PM)/2024-25/165 dated 26.7.2024:

Tender	Dept.	Offline and Online Techno- commercial and Financial Bid Opening and Techno-commercial and Financial evaluation and post-e-RA recommendation
Solar PV Power Project of 150 MW and additional 150 MW capacity under Greenshoe option	Corporate Services	Mr. Nilanjan Chakrabarti, General Manager
	Finance	Mr. Arunava Roy, General Manager
	Power Marketing	Mr. Ranajit Bhattacharya, Deputy General Manager
	Power Marketing	Mr. Soumya Sarkar, Additional Manager
	System Control	Mr. Anupam Biswas, Additional Manager

19. The last date of submission of the bid was 19.8.2024, and the technical part of the bid was opened on 20.8.2024. Response to the RfS was received from three bidders, and all of them met the technical criteria and, consequently, were found to be qualified for the opening of the financial bid. On 23.8.2024, financial bids of all three technically qualified bidders were opened on the ISN ETS e-bidding portal in the presence of a member of the Bid Evaluation Committee. As per the eligibility criteria mentioned in the RfS document, all three bidders aggregating 350 MW were shortlisted for e-reverse auction.

20. The e-reverse auction was carried out on 27.8.2024 in the presence of the members of BEC. After completion of the e-reverse auction, the following was declared as successful bidder:

S. No.	Name of the Bidder	Quoted Capacity (MW)	Allocated Capacity in e-RA (MW)	Quoted Tariff in e- RA (Rs. / kWh)
1.	Purvah Green Power Private Limited	150	150	2.69



21. As per the provision of the Greenshoe option stipulated in the RfS, the total additional capacity awarded under the Greenshoe option is 150 MW, which is equal to the initially allocated capacity. In accordance with the RfS, the Petitioner sent a letter dated 3.9.2024 to the selected bidder, i.e., Purvah Green Power Private Limited, requesting that it confirm or accept its acceptance of the opportunity to use Greenshoe Power. In compliance with the same, the selected bidder gave its consent for allocation in relation to Greenshoe Power. In accordance with the process as stated above, as well as the subsequent confirmations received from the bidder with respect to additional allocation under Initial offer Options, CESC issued a Letter of Award dated 7.9.2024 to the successful bidder. The relevant portion of the Letter of Award issued to the successful bidder, namely Purvah Green Power Private Limited, is as under:

“Sub: Selection of Solar Power Projects under RfS No. ED(PM)/2024-25/165 for setting up of 150 MW ISTS connected Solar PV Power Projects in India under Tariff-based Competitive Bidding with Greenshoe Option up to 150 MW - Letter of Award for setting up of Solar PV Power Project of 150 MW and additional 150 MW capacity under Greenshoe option to M/S Purvah Green Power Private Ltd. (“SPD”)

In reference to above and subject to the provisions of RfS, we confirm having accepted your final offer discovered after e-Reverse Auction & exercise of greenshoe option and issue this Letter of Award on M/s Purvah Green Power Private Limited as per the following details.

<i>Project Capacity</i>	<i>Project Location</i>	<i>Inter Connection Point Details</i>	<i>CUF</i>	<i>Applicable Tariff</i>
<i>Base Solar PV Capacity: 150 MW</i>	<i>Nokh, Phalodi, Rajasthan</i>	<i>220 kV Bhadla-III PS in Rajasthan</i>	<i>29.4%</i>	<i>Rs. 2.69/kWh (Rupees Two and Paise Sixty Nine only)</i>
<i>Greenshoe Solar PV Capacity: 150 MW</i>	<i>Nokh, Phalodi, Rajasthan</i>	<i>220 kV Bhadla-III PS in Rajasthan</i>	<i>29.4%</i>	<i>Rs. 2.69/kWh (Rupees Two and Paise Sixty Nine only)</i>

CESC shall purchase the power generated from the proposed ISTS-Connected Solar Power Project subject to the following terms and conditions as stated in RfS, PPA and their clarifications, amendments etc. and briefly brought out hereinafter.

- 1. The applicable tariff as mentioned above for power generated from the proposed Solar Power Project for the term of Power Purchase Agreement (PPA) to be entered into between Project Company or the SPD and CESC, for the Project, shall be firm for the entire term of the PPA (25 years).*



2. *The SPD will be free to avail fiscal incentives like Accelerated Depreciation, Concessional Customs and Excise Duties, Tax Holidays, etc. as available for such projects. No claim shall arise on CESC for any liability if the SPD is not able to avail fiscal incentives and this will not have any bearing on the applicable tariff.*
3. *The award of the above Project is subject to the Guidelines including amendments/ clarifications issued by Government of India and terms and conditions of the RfS document including its clarifications/ amendments/ elaborations/ notifications etc. issued by CESC.*
4. *No change in the controlling shareholding of the Bidding Company or Bidding Consortium shall be permitted from the date of submission of response to RfS till the execution of the PPA. However, in case the Project is being set up by a listed Company, this condition will not be applicable.*
5. *In case the SPD itself executing the PPA, it shall ensure that its promoters shall not cede control (Control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors) of the Bidding Company/Consortium till 01 (one) year after the Scheduled Commencement of Supply Date ("SCSD"), except with the prior approval of CESC.*
6. *In case of companies having multiple promoters (but none of the shareholders having more than 51% of voting rights and paid-up share capital), it shall be considered as a company under joint control. In such cases, the shareholding pattern in the company as submitted at the time of bidding, shall be maintained for a period of 01 (one) year after SCSD.*
7. *In case of Projects being implemented through SPVs, the SPD executing the project, if being a single company, shall ensure that its shareholding in the SPV/project company executing the Power Purchase Agreement (PPA), shall not fall below 51% at any time prior to 01 (one) year after the SCSD, except with the prior approval of CESC. In the event the SPD is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the PPA, shall not fall below 51% at any time prior to 1 (one) year after SCSD, except with the prior approval of CESC. Further, the SPD shall ensure that its promoters shall not cede control of the bidding company till 1 (one) year from the SCSD, except with the prior approval of CESC.*
8. *Any change in shareholding in the SPV/project company after the expiry of 1 (one) year after SCSD can be undertaken with intimation to CESC.*
9. *PPA will be executed between CESC and the SPD for the cumulative Project capacity i.e., 150 MW awarded to the SPD with another 150 MW under Greenshoe option. This LOA is being issued in line with the Project capacity quoted in the Covering Letter dated 13.08.2024 as part of your response to RfS and your communication dated 06.09.2024 agreeing with the greenshoe option of 150 MW.*
10. *The PPA will remain in force for a period of 25 years from the SCSD.*
11. *The SPD will have to submit the required documents as mentioned below to CESC within 15 days from date of this LOA. In case of delay in submission of documents beyond the timeline as mentioned above, CESC shall not be liable for delay in verification of documents and subsequent delay in signing of PPA:*
 - (a) *Copy of the Certificate of Incorporation of the SPD.*
 - (b) *The details of promoters and their shareholding in the SPD, duly certified by the practicing Chartered Accountant/ Company Secretary in original at least 7 (seven) days prior to date of their document submission (certificate date should be after the date of LOA) along with latest documents filed with ROC.*



- (c) Copy of the Memorandum of Association (MoA) of the SPD highlighting the object clause related to generation of Power/Energy/Renewable Energy/Solar/Wind Power plant development.
- (d) In case the project being executed by a Special Purpose Vehicle (SPV) incorporated by the SPD, such SPV shall be at least 51% shareholding subsidiary, in line with provisions of the RfS. Further, the SPD shall submit a Board Resolution prior to signing of PPA with CESC, committing total equity infusion in the SPV as per the provisions of RfS.
- (e) Copy of Board Resolution for authorization of signing of PPA and subsequent relevant documents.
- (f) Copy of Board resolution from Affiliate(s) to meet the financial requirements to contribute the required equity funding as per the clause no. 34.3 of RfS, if applicable.
12. SPD shall submit Performance Bank Guarantee of value calculated at Rs. 40,00,000/MW (Indian Rupees Forty Lakh/MW) prior to signing of PPA. Performance Guarantee shall be according to the Format as provided in Schedule-1 of PPA document and having validity period up to (& including) the date as on twelve months after the SCSD 'of the Project.
13. As per clause 7.9 of the RFS, the SPD shall apply for connectivity at the identified substations within 30 days after the date of Tariff adoption by the Appropriate Commission and shall furnish copies of the application, complete in all respect, to CESC within 15 days of date of filing of application. Further the SPD shall also have to provide copies of granted connectivity (In-Principal and Final grant of connectivity and connectivity agreement) within 15 (fifteen) days of issuance of letter by CTU / signing of connectivity agreement, as the case may be to CESC.
14. In case, CESC offers to execute the PPA with the SPD and the SPD refuses to execute the PPA within the stipulated time period, then the Bank Guarantee equivalent to the amount of the EMD shall be encashed by CESC as per clause 16.5 (ii) of RFS from the Bank Guarantee available with CESC (i.e. EMD) as liquidated damages not amounting to penalty, the selected Project shall stand cancelled and the selected SPD expressly waives off its rights and objections, if any, in that respect.
15. The SPD shall meet financial closure requirements for the Project in line with Clause 19 of the RfS document, by the date as on 6 (six) months prior to SCSD/ extended SCSD. Accordingly, the SPD shall furnish the documents pertaining to compliance of financial closure as per the above provisions.
16. The SPD/Project Company shall achieve commissioning of full capacity of the Project within 18 months from the Effective Date of the PPA as per the conditions stipulated in Clause 9.2 of the RfS and relevant articles of PPA. In case of failure to achieve this milestone, liquidated damages not amounting to penalty shall be levied on the SPD as per the above provisions.
17. You are requested to make it convenient for signing of Power Purchase Agreement (PPA) as per Clause 18 of RfS, failing which, provisions as per Clause 16.5 (Forfeiture of EMD) of the RfS shall be applicable.
18. All disputes arising out of and/ or in connection with the selection of Solar Power Projects under the said RfS and execution of PPA thereto shall be governed by laws of India and shall be subject to the jurisdiction of Courts of Kolkata.

*****”



22. As per Clause 10.2 of the Solar Guidelines, the Evaluation Committee is required to certify that the bidding process and the evaluation have been conducted in conformity with the provisions of the RfS document. Also, the Evaluation Authority should satisfy itself that the price of the selected offer is reasonable and consistent with the requirement. In compliance with the above, the Petitioner has furnished the various conformity certificates on record. *Vide* conformity certificate dated 3.9.2024, the Petitioner has certified that the applicable Guidelines and amendments /clarifications thereof, if any, issued by the Government of India read with approved deviation by the Government of West Bengal, *vide* communication dated 28.6.2024, were followed for the bidding process in the above tender. The relevant extract of the aforesaid conformity certificate is as under:

“CONFORMITY CERTIFICATE

With respect to Request for selection No. ED(PM)/2024-25/165 dated 26.7.2024 issued by CESC Limited, it is hereby declared as follows:

1. *The "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects" issued by the Ministry of Power vide Gazette Resolution dated 28.07.2023, including its subsequent amendments dated 17.11.2023 and 02.02.2024 and the approved deviation by the Government of West Bengal vide its communication no. 1044-POW-30015(13)/3//2019-SECTION (POWER) dated 28.06.2024 were followed for the bidding process in the aforesaid tender.*

2. The bid evaluation was conducted by the Bid Evaluation Committee (“BEC”) in terms of provisions of the RfS...”.

23. The Petitioner has also filed a certificate dated 9.9.2024 issued by the Administrative Staff College of India (‘ASCI’) indicating that the prices discovered under the subject tender are reasonable, in line with the market trends and process adherence. The relevant extract of the said conformity certificate is as under:

“CERTIFICATE



Sub: Certification of Competitive Tariff of Solar Power Reg.

2. *It may be noted that the discovered tariff of 269 paise per kWh for Solar Power seems competitive and aligned with market realities. It also falls within the range of the recently adopted and discovered prices at other Solar auctions as detailed below:*

.....

3. *On examination of the Bid Documents issued by CESC Limited, the process followed during the bidding process including e-RA, bid evaluation and issuance of LOA on the L1 bidder, it has been found that the process was transparent and the same have been conducted in accordance with the Solar Guidelines.”*

24. Moreover, it is observed that the BEC, in its Bid Evaluation Report dated 3.9.2024, has indicated as under:

“7 h. The Bid Evaluation Committee has evaluated the L1 tariff against the approved and actual power purchase rates and has ascertained that the discovered price is reasonable and consistent with the requirement of CESC. The Bid Evaluation Committee has also found that the discovered tariff is aligned with the prevailing market prices.”

25. However, the Commission sought clarification from the Petitioner, vide RoP for the hearing held on 5.11.2024, as to how “the Appropriate Government” as envisaged in Clause 16 of the Solar Guidelines would be “State Government” since the instant case involved an inter-State supply of electricity. In response to the query of the Commission, the Petitioner, CESC, vide affidavit dated 16.11.2024, has submitted that the Solar Guidelines allow the procurers to seek deviation from the Guidelines while preparing bid documents with the approval of the Appropriate Government. Pertinently, the term “Appropriate Government” has not been defined in the Solar Guidelines. Further, as per the definition of the Appropriate Government under the Act, the Central Government is to be treated as the Appropriate Government only in the limited instances listed at Section 2(5)(a)(i) to (iv). The aforesaid instances do not include



seeking approval for deviation from competitive bidding guidelines. Therefore, the Central Government could not have been understood to mean the Appropriate Government prior to bidding being carried out by the Petitioner. In terms of Clause 16 of the Solar Guidelines, approval for deviations from the standard bidding guidelines has to be obtained prior to the starting of the bidding process. Prior to the bidding process, the distribution licensee is not aware of whether the power procurement would be from within the State and/or outside the State. Therefore, the Petitioner, in the present case as a prudent licensee operating in the State of West Bengal, approached the Government of West Bengal (“GoWB”), as the power procurement by the Petitioner was to supply the power to the consumers in the State of West Bengal. The Petitioner, vide the Application seeking approval for deviation filed before the State Government, had primarily sought deviation from Clause 5.3 of the Solar PV Guidelines, which provides that a single bidder cannot be allocated more than 50% of the total capacity for which the bid is invited by the Procurer. As the aforesaid condition would have resulted in increased procurement cost for the balance 50% capacity, the Petitioner had requested for it to be allowed to procure the 100% power from the L1 bidder itself. The aforesaid request was made in order to ensure the most cost-effective procurement of renewable energy, which in the end would prove to be beneficial for the consumers. In a similar factual scenario, Gujarat Urja Vikas Nigam Limited and Torrent Power Limited, in the past, have approached the Government of Gujarat for the approval of the deviation. Subsequently the Government of Gujarat vide letter dated 16.11.2023 had accorded its approval for said deviation from the Guidelines for Tariff Based Competitive Bidding Process dated 9.6.2023.



26. Moreover, during the course of the hearing dated 10.12.2024, the learned senior counsel for the Petitioner submitted that, as per the Petitioner, there are some ambiguities in the provisions of the Solar Guidelines as certain clauses, reference is made only to “the Government,” whereas, in certain clauses, the reference is made to “the Appropriate Government”.

27. We have considered the submissions made by the learned senior counsel for the Petitioner. Clause 16 of the Solar Guidelines and Section 2(5) of the Act are extracted as under:

Clause 16 of the Guidelines

“16. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES

The objective of these Guidelines is to bring standardization & uniformity in processes so that there is fairness & transparency in procurement. As such, these Guidelines need to be strictly followed in the bidding process and no bid, under section 63 of the Electricity Act, for procurement of Solar power from the Projects with or without Energy Storage System shall be issued in contravention to these Guidelines. However, in case it becomes imperative for the Procurer to deviate from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Government before the initiation of bidding process itself. The Appropriate Government shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days of filing such petition.”

Section 2(5) of the Act

“2. Definitions. In this Act, unless the context otherwise requires,

(5) "Appropriate Government" means, -

(a) the Central Government, -

(i) in respect of a generating company wholly or partly owned by it;

(ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;

(iii) in respect of the National Load Despatch Centre; and Regional Load Despatch Centre;

(iv) in relation to any works or electric installation belonging to it or under its control;

(b) in any other case, the State Government, having jurisdiction under this Act;”



28. It is apparent from Clause 16 of the Solar Guidelines that if the Procurer requires any deviation from the provision of the Guidelines and/or the Standard Bid Documents, the approval of the Appropriate Government would be necessary before the initiation of the bidding process. However, the Solar Guidelines do not define the term 'Appropriate Government'. As per the definition of the 'Appropriate Government' in the Act, the 'Appropriate Government' in relation to any inter-State generation, transmission, trading, or supply of electricity is the Central Government. However, in the present case, the Petitioner has pointed out that as per the Solar Guidelines, the approval of deviations, if any, is required to be obtained prior to the initiation of the bidding process itself, and at this stage, the distribution licensee is not aware as to whether the power procurement would be from the within the State or outside the State. Accordingly, the Petitioner, being a licensee operating in the State of West Bengal, approached the Government of West Bengal for the approval of deviation as the power procurement by the Petitioner was to supply to the consumers in the State of West Bengal. In this regard, the Petitioner has placed reliance upon the approvals sought by the distribution licensees of Gujarat, namely, GUVNL and TPL from the Government of Gujarat, and the consequent approval accorded by the State Government. Keeping in view of the above submissions and the fact that the Petitioner had obtained the prior approval of the Government of West Bengal on the deviations, we are inclined to consider that the deviations as undertaken by the Petitioner from the provisions of the Solar Guidelines were after due approval of the Government of West Bengal before the initiation of bid process itself. However, licensees are advised to, henceforth, approach the Central Government for the approval of deviations if the tenders issued by them are not their State Specific. In other words, if the tender permits the generators to set up their project anywhere in India, they ought to approach the



Central Government as such tender essentially envisages inter-State supply right from the beginning.

29. We further note that insofar as the invoking the jurisdiction of this Commission for the adoption of tariff is concerned, the Petitioner has submitted that post bidding, the transaction of generation and supply of electricity involves the Inter State transmission of electricity between the Petitioner and Respondent in more than one State, i.e., the procurement of power and supply to the consumers being in the State of West Bengal and the generation project being situated in the State of Rajasthan and therefore, the Petitioner has approached this Commission for the adoption of tariff in terms of the Act and the decision of the Hon'ble Supreme Court in the case of Energy Watchdog vs. Central Electricity Regulatory Commission and Ors. [(2017) 14 SCC 80].

30. In light of the aforesaid discussion, it emerges that the selection of the successful bidder has been made, and the tariff of the Solar Power Project has been discovered by the Petitioner, CESC, through a transparent process of competitive bidding and in accordance with the Guidelines issued by the Ministry of Power, Government of India (read with approved deviation by the Government of the West Bengal vide communication dated 28.6.2024).

31. Therefore, in terms of Section 63 of the Act, the Commission adopts the individual tariff for the Solar Power Project, as agreed to by the following successful bidder and for which the PPA has been entered into by CESC Ltd., which shall remain valid throughout the period covered in the PPA as under:



S. No.	Name of the Successful Bidder	Name of the Project Company and PPA details	Allocated Capacity (MW)	Applicable Tariff
1.	Purvah Green Power Private Limited	HRP Green Power Private Limited PPA dated 3.10.2024	Towards initial allocated capacity: 150 MW	Rs. 2.69/kWh (Rupees Two and Paisa Sixty-Nine only)
Towards allocation of power under Green Shoe option Capacity: 150 MW			Rs. 2.69/kWh (Rupees Two and Paisa Sixty-Nine only)	
	Total		300 MW	

32. Prayer (a) of the Petitioner is answered in terms of paragraph 31 above.

33. Petition No. 365/AT/2024 is disposed of in terms of the above.

SD/-
(Harish Dudani)
Member

SD/-
(Ramesh Babu V.)
Member

SD/-
(Jishnu Barua)
Chairperson

