



केन्द्रीय विद्युत विनियामक आयोग
CENTRAL ELECTRICITY REGULATORY COMMISSION



No. ENGG-21/1/2019-CERC

Dated: 22nd June, 2020

Subject: Development of transmission capacity in an efficient and economical manner under TBCB route.

Dear Sir,

1. In pursuance of the provisions under Section 63 of the Electricity Act, 2003 and the National Electricity Policy, the Ministry of Power, Government of India has notified the bidding Guidelines for procurement of transmission services for transmission of electricity through tariff based competitive bidding (TBCB). The Guidelines stipulate, inter alia, the mechanisms to select Transmission Service Provider (TSP) for new transmission elements. TSP is responsible to build, own, maintain and operate the specified transmission elements. Subsequent to selection as TSP through TBCB, the selected bidder enters into a Transmission Service Agreement (TSA) with the beneficiaries/ long-term customers for the said transmission elements. The selected bidder is also granted transmission license by the Commission.

2. Disputes, if any, arising out of the TSA including the transmission charges, are subject to the jurisdiction of the Appropriate Commission under the provisions of the Electricity Act, 2003 and the TSA.

3. Several transmission projects have been awarded through TBCB route. At the same time, several petitions have also been filed before the Commission seeking adjudication of disputes by invoking provisions of TSA on account of change in law and/or force majeure on grounds such as

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requirement of statutory clearances like forest clearance which was not envisaged in the Survey Reports supplied by the Bid Process Coordinator (BPC) and delay in providing project construction inputs like location of gantry co-ordinates by CTU leading to re-routing of transmission line or increase in length of transmission line resulting in time over run with consequential financial implications.

4. The Commission has closely examined the issues raised and submissions made during the adjudication of disputes in various petitions. The Commission is of the view that appropriate modifications in the Standard Bidding Guidelines of TBCB projects, if carried out, could avoid many of such litigations and result in smooth execution of the transmission projects. The suggested modifications to SBD are detailed in following paragraphs.

4.1 Survey Report

4.1.1 The Bid Process Coordinator (BPC) makes available the Survey Report along with the Request for Proposals (RFP) to the interested bidders which provides three alternate routes based on preliminary survey carried out by the BPC, specifically indicating whether the route involves forest clearance or not. However, at the same time, the RFP also stipulates that it is the responsibility of the bidder to carry out the survey for finalizing the route for a transmission line.

4.1.2 Some transmission licensees have approached this Commission submitting that though the Survey Report enclosed with the RFP documents by the BPC had indicated no forest areas in the route of the transmission line, however, during the detailed survey carried out by the transmission licensee, forest areas in the route of transmission line were encountered, requiring forest clearances. Such unexpected requirement of forest clearance have often led to time overrun and entailed additional expenditure for which the transmission licensees have sought compensation under “change in law” or extension of SCOD under “force majeure” clause of TSA.

4.1.3 Therefore, the Survey Report of the BPC may not form part of the RFP and bidders may submit bids based on their assessment of the possible alignment of the proposed transmission line, considering optimal route between the specified substations/end coordinates.

4.2 **Scope and end coordinates**

4.2.1 In many TBCB projects, the end coordinates for a transmission line are finalized after award of the associated substation where the transmission line terminates.

4.2.2 Some transmission licensees have approached this Commission claiming time overrun/ additional cost due to delay in finalization of end coordinates or variation in the end coordinates as provided by BPC in the Survey Report compared with the actual location. Non-fixation of end coordinates leads to uncertainty, increase or decrease in line length and re-routing of transmission lines with cost implications. Further, it adds to delay in implementation of associated transmission lines, leading to mismatch between completion of the transmission line and associated upstream/ downstream transmission system or the generating station.

4.2.3 Therefore,

- (i) In case the proposed transmission line in the bid is to be terminated at existing substation(s), the end coordinates may be fixed upfront before award.
- (ii) In case of new substation where coordinates are not fixed before award, bidding may be made in packages containing both transmission line and sub-station so that mismatching is avoided and both transmission line and sub-station are executed and put to use together. For example, if the scope of the construction comprises of a substation and associated transmission line, both the substation and the transmission line may be included in the same package.
- (iii) If from a new substation more than one transmission line is emanating, the land for the sub-station may be identified and

finalized before awarding the package, as any change in the location of the substation leads to change in scope of all the transmission lines after award of the bid.

4.3 Purpose of Project

It is observed that in a few cases, dedicated transmission line had been bid out under TBCB route. In such cases, Transmission Agreement pursuant to Connectivity sought by such generator was signed by the generating station with CTU, but the TSA was signed by the distribution companies of the Region. This led to disputes regarding payment liability of generating station vis-a-vis the concerned distribution companies. Therefore, nature of the transmission elements i.e. whether it is a dedicated transmission line or system strengthening line or Associated Transmission System, may be clearly specified in the bidding document to avoid litigations at a later stage.

4.4 Delay of Project

4.4.1 Under the current provisions of SBD, if a transmission project gets delayed due to any reason, the transmission licensee pays following penalties for delay, if such delay is not condoned:

- (i) Liquidated damages for the period of delay @3.33% of Monthly Transmission Charges for each day of delay up to sixty (60) days and @5% of the Monthly Transmission Charges, beyond delay of 60 days.
- (ii) Forgoing tariff for the period of delay. For example, if the useful life of the project is 35 years and it gets delayed by 3 years, it will get tariff only for 32 years starting from the 4th year.

4.4.2 In addition, as per the Regulations and Orders of the Commission, if due to delay of a transmission project, transmission system of other transmission licensee is prevented from getting charged, the transmission licensee whose project is delayed has to compensate the other transmission licensee by paying transmission charges. Similarly, if due to

delay of a transmission project of a transmission licensee, a generating station gets stranded, the transmission licensee whose project is delayed has to compensate the generating station by paying transmission charges. Such compensation is payable even if the delay has been condoned by the Commission for such transmission project.

4.4.3 Thus, in case of delay, the transmission licensee not only pays penalties but also compensation to the affected parties. Bidders normally would factor in such costs in their bids to cover the risks, which leads to increase in bid price.

4.4.4 Therefore, for delay on the part of the transmission licensee in completion of its transmission elements, in addition to compensation to stranded transmission licensee or generating station on account of such delay, penalty may only be limited to Liquidated damages. Therefore, the transmission licensee may be allowed tariff for the entire contracted period of the project.

4.5 Foreclosure

4.5.1 The Commission has observed that in many cases, though the associated generation project is abandoned, the construction of the transmission system continues, gets completed and remains stranded, in the absence of any alternate user of the said transmission system.

4.5.2 Therefore, in the bidding documents, a provision may be made for foreclosure of the project with appropriate pre-determined compensation formula. If after award of the transmission system through TBCB route, CTU observes that transmission system is not required on account of abandoning or inordinate delay in execution of the associated generating station, such a provision can enable CTU to foreclose the contract for the transmission project.

4.6 Quality and Completion

4.6.1 The Commission has been emphasizing on the quality aspect of the TBCB transmission projects. While adopting tariff for TBCB transmission project, CERC in various Orders has given following directions:

"We consider it necessary to request CEA to devise a mechanism for random inspection of the project every three months to ensure that the project is not only being executed as per the schedule, but the quality of equipment and workmanship of the project conforms to the Technical Standards and Grid Standards notified by CEA and IS Specifications."

4.6.2 In this regard, for effective quality verification and inspection of TBCB transmission projects, a Committee consisting of representatives of CEA, lead LTTC and CTU may be formed. Further, third party inspection agency may be engaged by BPC or CTU for carrying out quality inspection as per IS/CEA Standards and best practices.

4.7 Deemed COD

4.7.1 The Commission has observed that in case of non-commissioning of upstream/ downstream system, the transmission licensee, while declaring deemed COD under provisions of TSA, submits energization certificate issued by CEA under Regulation 43 of the Central Electricity Authority (Measures relating to safety and electric supply) Regulations 2010, to demonstrate completeness of the system. Since such asset does not carry power, in some cases, stakeholders have alleged that despite the asset not being ready for carrying power, deemed COD has been claimed and transmission tariff is being charged.

4.7.2 Therefore, the Committee consisting of representatives of CEA, CTU and Lead LTTCs formed for quality verification may also be authorised to certify the completeness of transmission system, where any deemed COD has been claimed under provisions of TSA.

4.8 Mismatch with upstream and downstream transmission systems

4.8.1 Due to various uncertainties involved with execution of transmission projects such as issues of ROW, land acquisition and forest clearance, mismatch with upstream and downstream transmission system cannot be fully avoided.

4.8.2 Therefore, a suitable provision in the bidding documents may be incorporated providing for a window of three months for declaration of deemed COD. If the transmission licensee under TBCB route is ready to declare COD but downstream/ upstream assets are not ready for inter-connection, the transmission licensee would be free to declare the deemed COD after three months as per the provisions of TSA.

4.9 Poor performance of a transmission licensee

4.9.1 The transmission projects are undertaken through creation of SPV by BPC that is transferred to the company that is declared the successful bidder. Such SPV is the one that gets transmission license for execution of the transmission project. The Commission has observed that there are instances where the performance of a transmission licensee has been poor in executing the awarded project. The bidding documents provide that transmission license can be cancelled in such cases. However, cancellation of transmission license is a time-taking process and during the process, it is possible that such transmission licensee may emerge as successful bidder for another transmission project.

4.9.2 Therefore, promoter of such SPV (transmission licensee) whose performance has been poor may not be allowed to participate in new bids, till its performance becomes satisfactory. For this purpose, a Quarterly Performance Index for each TBCB project may be specified and if the Quarterly Performance Index in respect of a TBCB project of any transmission licensee remains poor for 4 (four) continuous quarters, then the promoter of that SPV may be temporarily debarred from participating from bidding for new transmission projects.

4.10 Bidding as a project instead of SPV

4.10.1 Currently, Special Purpose Vehicle (SPV) is formed by BPC for each transmission project which is transferred to the successful bidder. It is observed that many of the successful bidders have been awarded several transmission projects at different points of time and after acquisition of the SPVs, the SPVs continue to be separate companies and separate

transmission licensees. Separate companies for each of the awarded transmission project leads to coordination and operational problems, as the system operator POSOCO is required to coordinate with each of these companies individually for grid operation.

4.10.2 Therefore, instead of forming SPV for each project, the option of bidding as a project may be explored, as is being done for National Highways and also by SECI, so that formation of separate company for each transmission project is not required and a single company can have multiple transmission projects.

4.11 Fees for Bid Process Coordinator

4.11.1 As per prevailing provisions notified by MoP, consultancy charges of 1% of total estimated project cost subject to a maximum of Rs.15 crore is charged by Bid Process Coordinator for each bid carried out by it. In addition, BPC charges incidental expenditure incurred by it. It is observed that fees of BPC is high keeping in view the responsibilities assigned to BPC and this adds to the cost of the transmission project. Since in a competitively bid project, project cost is not known, the fees may be restricted to 5% of quoted tariff for the first year or Rs. 7 crore, whichever is lower. Further, BPC may not be allowed to claim any incidental expenditure over and above the fees.

5. In light of above, the Commission, in exercise of powers under Section 79(2) of the Electricity Act, 2003, advises the Ministry of Power as follows.

5.1 The Survey Report of the BPC may not form part of the RFP and bidders may submit bid based on their assessment of the possible alignment of the proposed transmission line, considering optimal route between the specified substations/ end coordinates.

5.2 (i) In case the proposed transmission line in the bid is to be terminated at an existing substation, the end coordinates may be fixed upfront before award.

(ii) In case of new substation where coordinates are not fixed before award, bidding may be made in packages containing both transmission line and sub-station so that mismatching is avoided and both transmission line and sub-station are executed and put to use together.

(iii) If from a new substation more than one transmission line is emanating, the land for the sub-station may be identified and finalized before awarding the package.

5.3 The nature of the transmission elements i.e. whether purpose of project viz dedicated transmission line or system strengthening line or Associated Transmission System may be clearly specified in the bidding document to avoid litigations at a later stage.

5.4 For delay on the part of the transmission licensee in completion of its transmission elements, in addition to compensation to stranded transmission licensee or generating station on account of such delay, penalty may only be limited to Liquidated damages. The transmission licensee may be allowed tariff for the entire contracted period of the transmission project.

5.5 In the bidding documents, a provision may be made for foreclosure of the project with appropriate pre-determined compensation formula.

5.6 For effective quality verification and inspection of TBCB transmission projects, a Committee of CEA, lead LTTC and CTU may be formed. Further, third party inspection agency may be engaged by BPC or CTU for carrying out quality inspection as per IS/CEA Standards and best practices.

5.7 The Committee consisting of representatives of CEA, CTU and lead LTTCs formed for quality verification may also be authorised to certify the completeness of transmission system, where deemed COD has been claimed under provisions of TSA.

5.8 A suitable provision in the bidding documents may be incorporated providing for a window of three months for declaration of deemed COD. If

the transmission licensee under TBCB route is ready to declare COD but downstream/ upstream assets are not ready for inter-connection, the TBCB transmission licensee would be free to declare the deemed COD after three months as per the provisions of TSA.

5.9 Promoter of SPV (transmission licensee) whose performance has been poor, may not be allowed to participate in new bids, till its performance becomes satisfactory. For this purpose, a Quarterly Performance Index for each TBCB project should be specified and if the Quarterly Performance Index in respect of TBCB project of any transmission licensee remains poor for 4 (four) continuous quarters, then the promoter of that SPV may be temporarily debarred from participating from bidding for new transmission projects.

5.10 Instead of forming SPV for each project, the option of bidding as a project, as being done for National Highways and also by SECI may be explored, so that formation of separate company for each transmission project is not required and a single company can have multiple transmission projects.

5.11 Fees of Bid Process Coordinator may be restricted to 5% of quoted tariff for first year or Rs. 7 crore, whichever is lower. BPC may not be allowed to claim any incidental expenditure over and above these fees.

6. This issues with the approval of the Commission.

With regards,

Yours Sincerely,



22/06/2020

(Sanoj Kumar Jha)
Secretary

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