

उपयुक्त के अलावा, सफल बोलीदाता को परियोजना की स्थिति की नियमित निगरानी के लिए, खरीददार(रों) द्वारा अपेक्षित जानकारी भी प्रस्तुत करनी होगी। खरीददार परियोजना की नियमित प्रगति सुनिश्चित करने के लिए एक मानक निगरानी टेम्पलेट/मापदंड विकसित कर सकते हैं।

19. दिशानिर्देशों में परिभाषित प्रक्रिया से विचलन

यदि खरीददार/मध्यस्थ खरीददार के लिए इन दिशानिर्देशों से/अथवा एसबीडी से विचलन आवश्यक हो जाता है, तो यह बोली प्रक्रिया की शुरुआत होने से पूर्व ही उपयुक्त सरकार द्वारा अनुमोदन के अध्यक्षीन होगा। उपयुक्त सरकार, ऐसी याचिका दायर करने के 60(साठ) दिनों के यथोचित समय के भीतर बोली दस्तावेजों को अनुमोदित करेगा या उनमें संशोधन की जरूरत बताएगा।

20. विवाद समाधान

ऐसी स्थिति में, जब सीईआरसी उपयुक्त आयोग है, तो टैरिफ में बदलाव का दावा करने या कोई टैरिफ निर्धारित करने या किसी टैरिफ संबंधी मामले या ऐसे मामले, जिनसे आंशिक रूप से या पूर्ण रूप से टैरिफ में बदलाव हो सकते हैं, के संबंध में विवाद होने पर, सीईआरसी द्वारा फैसला किया जाएगा। अन्य सभी विवादों का समाधान सरकार द्वारा स्थापित माध्यम विवाद निवारण समिति द्वारा किया जाएगा, ऐसा न होने पर भारतीय मध्यस्थता एवं समाधान अधिनियम, 1996 के अंतर्गत मध्यस्थता द्वारा किया जाएगा। यदि एसईआरसी/जेईआरसी उपयुक्त आयोग हो, तो सभी विवादों पर एसईआरसी/जेईआरसी द्वारा निर्णय किया जाएगा अथवा एसईआरसी/जेईआरसी द्वारा मध्यस्थता के लिए भेजा जाएगा।

21. दिशानिर्देशों के बारे में स्पष्टीकरण और संशोधन

यदि इन दिशानिर्देशों के प्रावधानों को लागू करने में या दिशानिर्देशों की व्याख्या में या दिशानिर्देशों के संशोधन में किसी प्रकार की परेशानी उत्पन्न होती है, तो विद्युत मंत्रालय नवीन एवं नवीकरणीय ऊर्जा मंत्रालय के परामर्श से ऐसा करने के लिए अधिकार प्राप्त है।

22. आईएसटीएस प्रभार और हानियां

विद्युत के पारेषण के संबंध में आईएसटीएस प्रभार और हानियां, जिसमें पवन विद्युत के लिए छूट सम्मिलित है, मौजूदा वर्तमान नियमों और विनियमों के अनुसार होंगी।

हेमन्त कुमार पाण्डेय, मुख्य अभियंता

MINISTRY OF POWER

RESOLUTION

New Delhi, the 21st August 2023

Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects.

No. 27/03/2023-RCM.—1. BACKGROUND

- 1.1. It has been established that combining different sources of renewable energy reduces their individual variability and gives better output. It also results in more efficient utilization of transmission infrastructure and land resource. It is common knowledge that wind is better during morning and evening or night, complementing solar energy which peaks during daytime. Hybrid projects backed by storage facility can further enhance the quality of RE power.
- 1.2. MNRE issued Wind-Solar Hybrid Policy on 14.05.2018 (and issued amendment on 13.08.2018) with the objective to provide a framework for promotion of large grid connected wind-solar PV hybrid system for optimal and efficient utilization of transmission infrastructure and land, reducing the variability in renewable power generation and achieving better grid stability.
- 1.3. Section 63 of Electricity Act, 2003 promotes competition in the electricity sector and provides for adoption of the tariff by the Appropriate Commission if the same has been determined through transparent process of

bidding in accordance with the guidelines issued by the Central Government. The National Tariff Policy notified on 28 January 2016 also encourages the procurement of renewable power through competitive bidding to discover market-based tariff.

2. OBJECTIVES OF GUIDELINES

2.1. The specific objectives of these Guidelines are as follows:

- a. To promote competitive procurement of electricity from grid connected wind solar hybrid power projects (hereafter termed as 'Hybrid Power Project'), by distribution licensees, to protect consumer interests;
- b. To facilitate renewable capacity addition and fulfilment of Renewable Purchase Obligation (RPO) requirement of DISCOMs;
- c. To facilitate transparency and fairness in procurement processes / and to provide for a standardised framework for an Intermediary Procurer as an Aggregator/Trader for the inter-state sale-purchase of long-term power at competitive prices in consumer interest; and
- d. To provide a risk-sharing framework between various stakeholders and ensure reasonable returns to the investors involved in the wind solar hybrid power procurement, thereby encouraging further investments, enhanced bankability of the Projects and profitability for the investors.

3. APPLICABILITY OF GUIDELINES

- 3.1. These Guidelines are being issued under the provisions of Section 63 of the Electricity Act, 2003 for long-term procurement of electricity through competitive bidding process, by Procurer(s), from Hybrid Power Projects having (a) bid capacity of 10 MW and above for projects connected to intra-state transmission system; and (b) bid capacity of 50 MW and above for projects connected to inter-state transmission system, subject to the condition that the rated power capacity of one resource (wind or solar) shall be at least 33% of the total contracted capacity.
- 3.2. The solar and wind projects of the hybrid project may be located at same or different locations.
- 3.3. Storage may be added to the hybrid power project:
 - a. to reduce the variability of output power from wind solar hybrid project;
 - b. providing higher energy output for a given capacity (bid/ sanctioned capacity) at delivery point, by installing additional capacity of wind and solar power in a wind solar hybrid project;
 - c. to ensure availability of firm power for a particular period.
- 3.4. The provisions of these Guidelines shall be binding on the Procurer, Authorised Representative and Intermediary Procurer. The process to be adopted in event of any deviation proposed from these Guidelines is specified in Clause 19 of these Guidelines.
- 3.5. The power procured from the project may be used for fulfilment of RPO in the proportion of rated capacity of solar and wind power in the plant respectively.
- 3.6. Principles outlined in these Guidelines may be suitably detailed in the Standard Bidding Documents [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement].
- 3.7. Upon notification of these Guidelines in the Official Gazette, the erstwhile Guidelines notified vide No. 238/78/2017-Wind dated 14.10.2020 and amendment thereto, shall not be applicable for bids issued subsequent to issuance of these Guidelines. However, the projects already awarded/ under implementation/ commissioned under the erstwhile Bidding Guidelines, will continue to be governed by those Guidelines and will not be covered under these Guidelines. In case there are any ongoing bids wherein the last date of bid submission is after the date of notification of these Guidelines, then the bid documents in respect of such bids shall be appropriately modified to bring them in alignment with these Guidelines.

4. EXPLANATION / DEFINITION:

- a. **Procurer(s):** The term 'Procurer(s)', as the context may require, shall mean the distribution licensee(s), or their Authorized Representative, or an Intermediary procurer.
- b. **Authorized Representative of the Procurer(s):** In cases, where the Power Purchase Agreement (PPA) signing agency and the agency carrying out the tendering / bidding process are different, the agency carrying out the tendering / bidding process shall be deemed to be the Authorized Representative of the 'Procurer' and shall, on behalf of the Procurer, be responsible for fulfilling all the obligations imposed on the 'Procurer' during the bidding phase, in accordance with these Guidelines.

c. Intermediary Procurer

- i. In some cases, an intermediary, as designated by Ministry of New and Renewable Energy, Government of India, or a State Government, may be tasked to aggregate the power purchased from different generators and sell it to the distribution licensee(s) / consuming entities / open access consumers. In such cases, the distribution licensee(s) / consuming entities / open access consumers shall be the “End Procurer” and the intermediary shall be “Intermediary Procurer” for the purposes of these Guidelines.
 - ii. The Intermediary Procurer shall enter into a Power Purchase Agreement (PPA) with the Hybrid Power Generator(s) and also enter into a Power Sale Agreement (PSA) with the End Procurer. The PSA shall contain the relevant provisions of the PPA on a back-to-back basis. Trading margin of Rs. 0.07 / kWh shall be payable by the End Procurer to the Intermediary Procurer.
 - iii. As long as the Intermediary Procurer follows these Guidelines for procurement of hybrid power, the End Procurer shall be deemed to have followed these Guidelines for procurement of hybrid power.
- d. **‘Hybrid Power Generator (HPG)/ Generator’:** The term ‘Hybrid Power Generator/ Generator’, wherever used in these Guidelines, shall refer to a generator and supplier of electricity generated through a Wind Solar Hybrid power generating station.
- e. **Scheduled Commencement of Supply Date (SCSD):** Scheduled Commencement of Supply Date (SCSD) in relation to the contracted capacity or the part of the contracted capacity shall mean the date(s) corresponding to the date of commencement of supply quoted in the RfS (Request for Selection).

5. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

The Procurer shall meet the following conditions:

5.1. Bid Documentation:

- a) The Procurer shall prepare the bid documents in accordance with these Guidelines.

Any deviations from these Guidelines and/or Standard Bidding Documents (SBDs) in the draft RfS, draft PPA, draft PSA (if applicable) need to be approved by the Government in accordance with the process described in Clause 19 of these Guidelines.

However, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines.

5.2. Arrangements related to Commencement of Supply:

The RfS may specify additional milestones for the project with respect to land acquisition, connectivity etc. as well as regular reporting requirements by the HPG and shall specify penalties with respect to non-compliance with such milestones/requirements. Obtaining all clearances, permits, licenses including arrangement of land and connectivity to the Grid and access (if applicable) prior to scheduled date of commencement of supply of power shall be the responsibility of the HPG and the Procurer shall not be responsible in case of delay in obtaining such clearances, permits, licenses etc.

6. BID STRUCTURE

- 6.1. **Bid Size:** The Procurer will invite the bids in Power Capacity (MW) terms. A bidder is allowed to bid for a minimum bid capacity as per Clause 3.1 of the Guidelines. The Procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its Affiliates¹.
- 6.2. **Bidding Parameters:**
- 6.2.1. For procurement of wind solar hybrid power, the tariff quoted by the bidder shall be the bidding parameter. The tariff quoted shall be fixed tariff in Rs./kWh for PPA period.
 - 6.2.2. The capacity allocation shall be on the basis of Bucket filling i.e. capacity quoted by least quoted tariff bidder (called the L1 bidder) at the rates quoted (L1 rates) shall be allocated first, then the capacity quoted by the next lowest bidder (called the L2 bidder) at the rates quoted (called the L2 rates) may be allocated and so on.

¹**Affiliate** in relation to a Company shall mean a person who controls, is controlled by, or is under the common control with such Company. The expression ‘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.

However, the allocation will only be made to the bidders whose bid falls within a pre-defined “Range” from the L1 tariff, as stipulated in the RfS. Thus, after arranging the bidders in the ascending order of tariff, the Project capacities will be awarded only to those bidders whose final price bids are within a range of “L1+x%”, in terms of Rs/kWh; while the value of “x” generally be two (2) to five (5) and shall be fixed in the RfS.”

- 6.2.3. The procurer may also opt for reverse auction for final selection of bidders, in such a case, this will be specifically mentioned in the notice inviting bids and bid document. The procurer may disclose in the RfS, the prevailing incentives available to the HPGs.
- 6.2.4. A maximum of 50 percent of total capacity as specified in RfS can be allocated to a single bidder.

7. POWER PURCHASE AGREEMENT

The draft PPA proposed to be entered into with the successful bidder and draft PSA shall be issued along with the RfS. Standard provisions to be incorporated as part of the PPA shall include *inter alia* the following, which, unless otherwise specified herein, shall be provided for, on a back-to-back basis in the PSA:

- 7.1. **PPA Period:** The PPA period shall generally be for a period of 20 (twenty) years from the date of the SCSD or from the rescheduled date of commencement of supply to the extent of extension given by the Procurer on the grounds which are beyond control of the HPG. The PPA may, however, also be fixed for a longer period such as 25 (twenty-five) years. The duration of the PPA must be mentioned upfront in the RfS document. The developers shall be free to operate their plants after the expiry of the PPA period. The developer may upgrade and re-power their plants during the PPA period at its own risk and cost; and participate in subsequent bids to the extent of their untied capacity. Developers who have already installed wind solar hybrid power plants or are in the process of constructing such plants and have untied capacity may also participate in the bid. In such case, they will be given the benefit of a longer period of PPA, commensurate to the duration between the actual date of commencement of supply of power and SCSD.
- 7.2. **Quantum of Power:** The procurement of power will be in power (MW) terms.
- 7.2.1. Procurement in Power Terms (MW):**
- In case of procurement in power (MW) terms, the range of Capacity Utilisation Factor (CUF) will be indicated in the bidding documents. Calculation of CUF will be on yearly basis. In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the HPG will be liable to pay to the Procurer, penalty for the shortfall in availability below such contracted CUF level. The amount of such penalty will be equal to one and a half times of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA.
 - In case of availability of energy more than the maximum annual CUF specified, HPG will be free to sell it to any other entity provided first right of refusal will vest with the Procurer(s). The Procurer(s) shall provide refusal within 15 days from the receipts of the request, beyond which it would be considered as deemed refusal. In case the Procurer purchases the excess generation, the same may be done at the PPA tariff, and provision to this effect shall be clearly indicated in the RfS document.
 - The HPG may also sell the power which was offered on day ahead basis to the procurer(s) (within maximum CUF) but not scheduled by the Procurer(s), to any third party or power exchange without requiring NOC from the Procurer(s).
- 7.2.2. The penalty for non-performance shall be as specified in the RfS. The scheduling and its punching thereof at different Regional Load Despatch Centres (RLDCs) / State Load Despatch Centres (SLDCs) (including the injecting, intervening and buyer SLDCs / RLDCs) shall be the responsibility of HPG only.
- 7.2.3. **Deviation Settlement Mechanism (DSM):** For deviations from schedule, the DSM (Deviation Settlement Mechanism) shall be applicable as per the prevailing regulations. The DSM charges at the generator ends shall be settled by the HPG.
- 7.3. **Payment Security Mechanism (PSM)**
- Adequate payment security shall be provided as per 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 coverage from the fund the developer will undertake to pay PSM charges at the rate of 2 paise per unit.
- 7.4. **Change in Law**
- The provisions for Change in Law shall be in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by Ministry of Power vide notification dated 22nd October 2021 including amendments and clarification thereof issued from time to time.

7.5. Force Majeure

The PPA shall contain provisions with regard to force majeure definitions, exclusions, applicability, and available relief on account of force majeure, as per the industry standards. The HPG shall intimate the Procurer about the occurrence of force majeure within 15 (fifteen) days of the start of the force majeure and the Procurer shall respond on his claim within 15 days of the receipt of the intimation.

7.6. Generation Compensation for Off-take Constraints: If the Procurer does not off-take power scheduled by HPG, the penalty shall be in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021, as amended from time to time.

7.6.1. Offtake constraints due to Grid Unavailability:

- A DURING THE OPERATION OF THE PLANT, THERE CAN BE SOME PERIODS WHERE THE PLANT CAN GENERATE POWER BUT DUE TO TEMPORARY TRANSMISSION UNAVAILABILITY THE POWER IS NOT EVACUATED, FOR REASONS NOT ATTRIBUTABLE TO THE HPG. IN SUCH CASES THE GENERATION COMPENSATION SHALL BE ADDRESSED BY THE PROCURER IN FOLLOWING MANNER:

Duration of Grid unavailability	Provision for Generation Compensation
Grid unavailability in a contract year as beyond 50 hours in a Contract Year as defined in the PPA:	<p>Generation Compensation = $((\text{Tariff} \times \text{RE power (MW) offered but not scheduled by Procurer})) \times 1000 \times \text{No. of hours of grid unavailability}$.</p> <p><i>However, in the case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</i></p>

7.6.2. Payment in case of reduced offtake:

- B IN CASE THE PLANT IS AVAILABLE TO SUPPLY POWER BUT THE OFF TAKE OF POWER IS NOT DONE BY THE PROCURER, INCLUDING NON-DISPATCH OF POWER DUE TO NON-COMPLIANCE WITH “ELECTRICITY (LATE PAYMENT SURCHARGE AND RELATED MATTERS) RULES, 2022 NOTIFIED BY THE MINISTRY OF POWER VIDE GAZETTE NOTIFICATION DATED 3RD JUNE 2022” AND ANY CLARIFICATIONS OR AMENDMENT THERETO, CONSIDERING THE PRINCIPLE OF ‘MUST RUN’ STATUS FOR RE POWER, THE PROCURER SHALL PAY TO THE HPG, CORRESPONDING TO THE REDUCED OFF TAKE, IN TERMS OF FOLLOWING MANNER:

Duration of Reduced Offtake	Provision for Generation Compensation
Reduced off-take beyond 50 hours in a year, as defined in the PPA	<p>Generation Compensation = $((\text{Tariff} \times \text{RE power (MW) offered but not scheduled by Procurer})) \times 1000 \times \text{No. of hours of Reduced Offtake}$.</p> <p><i>However, in the case of third-party sale or sale in the power exchange, as price taker, the 95% of the amount realized, after deducting expenses, shall be adjusted against the Generation compensation payable, on monthly basis.</i></p>

7.6.3. For claiming compensation, the HPG must sell their power in the power exchange as a price taker. Thus, the compensation would be limited to the difference of the actual generation up to declared capacity subject to a maximum of up to the contracted capacity and the quantum of power scheduled by the procurer.

7.7. Event of Default:

- For Delay in commencement of supply of power beyond six months from SCSD, the generator event of default shall be construed to have occurred and consequences shall be in accordance with Clause 15.5.
- In the event the Generator fails to maintain energy supply corresponding to the minimum CUF as declared in the PPA, the Generator shall be in default and the PPA shall be liable to be terminated. Further, the Generator shall be liable to pay to the Procurer, damages, equivalent to 24 (twenty-four) months, or balance PPA period whichever is less, of tariff for its contracted capacity with the stipulated minimum CUF.

- c. In the event that the Generator assigns or novates any of its rights or obligations contrary to the terms of the PPA, or repudiates the PPA, or commits any other acts or omissions as laid down in the PPA and is also unable to cure any of the aforesaid within the cure period, as may be provided in the PPA, the Generator shall pay to the Procurer, damages, equivalent to 24 (twenty four) months, or balance PPA period whichever is less, of tariff for its contracted capacity with the stipulated CUF. The Procurer shall have the right to recover the said damages by way of forfeiture of bank guarantee, if any, without prejudice to resorting to any other legal course or remedy.
- d. In addition to the levy of damages as aforesaid, in the event of a default by the Generator, the lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution provisions provided in the PPA and in concurrence with the Procurers. However, in the event the lenders are unable to substitute the defaulting Generator within the stipulated period, the Procurer may terminate the PPA.
- e. If the Procurer / Intermediary procurer is in default on account of reasons including *inter alia* failure in timely payment of the dues, in accordance with the RfS or repudiation of the PPA, the Generator may terminate the PPA and at its discretion. The defaulting Procurer shall pay to the Generator, damages, equivalent to 24 (twenty-four) months, or balance PPA period whichever is less, of charges for its contracted capacity with the stipulated CUF.

8. BIDDING PROCESS

- 8.1. Procurer/intermediary 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. The procurer may also opt for e-reverse auction for final selection of bidders, in such a case, this will be specifically mentioned in the notice inviting bids and bid document. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.
- 8.2. Procurer(s) shall invite the bidders to participate in the RfS for installation of Hybrid Power Project(s) in terms of these Guidelines.
- 8.3. Developers who have already set up capacity or who have spare untied capacity may also participate in the bid.
- 8.4. The bidding documents including the RfS, draft PPA and draft PSA (if applicable) shall be prepared by Procurer(s) in consonance with these Guidelines and the SBDs, if any.
- 8.5. Procurer(s) shall publish the RfS notice in at least two national newspapers or its own website, to accord wide publicity.
- 8.6. Procurer(s) shall provide opportunity for pre-bid conference to the prospective bidders and shall provide written interpretation of the bid documents to any bidder which shall also be made available to all other bidders. All the concerned parties shall rely solely on the written communication. Any clarification or revision to the bidding documents shall be uploaded on the website of Procurer(s) for adequate information. In the event of the issuance of any revision or amendment of the bidding documents, the bidders shall be provided a period of at least 7 (seven) days therefrom, for submission of bids.

9. REQUEST FOR SELECTION (RFS) DOCUMENT

The standard provisions to be provided by the Procurer in the RfS shall include the following:

- 9.1. **Bid Responsiveness:** The bid shall be evaluated only if it is responsive and satisfies conditions including inter-alia ~
 - a. bidder or any of its Affiliates is not a wilful defaulter to any lender.
 - b. As on last date of bid submission, the Bidder & any of its Affiliate including any Consortium Member & any of its Affiliate, their directors should not have been barred by any government agency or authority in India, the government of the jurisdiction of the Bidder or Members where they are incorporated or the jurisdiction of their principal place of business, any international financial institution such as the World Bank Group, Asian Development Bank, African Development Bank, Inter-American Development Bank, Asian Infrastructure Investment Bank etc or the United Nations or any of its agencies.
- 9.2. **Qualification requirements to be met by the bidders:**

9.2.1. Technical Criteria:

The Government would like to encourage competition by way increased participation. However, in order to ensure proper implementation of the Projects, the Procurer may choose to specify Technical Criteria.

Such criteria should be set after an assessment of the number of project developers that are expected to meet the criteria so that an adequate level of competition is achieved.

9.2.2. Financial Criteria:

a. Networth:

- i. Procurer(s) shall specify financial criteria in the form of networth as a part of the qualification requirement. The net-worth requirement should be at least 20% of the Estimated Capital Cost for project for the year in which bids are invited or any other criteria specified in the RfS.
- ii. The net worth to be considered for the above purpose will be the cumulative net-worth of the bidding company or consortium, together with the net-worth of those Affiliates of the bidder(s) that undertake to contribute the required equity funding and performance bank guarantees in case the bidder(s) fail to do so in accordance with the RfS document.
- iii. It is clarified that the net-worth to be considered for this clause will be the total net-worth as calculated in accordance with the Companies Act.

b. Liquidity: It is necessary that the bidder has sufficient cash flow/ internal accruals to manage the fund requirements for the project. Accordingly, Procurer(s) may also stipulate suitable parameters such as annual turnover, internal resource generation, bidding capacity, etc.

9.3. **Quantum of the Earnest Money Deposit (EMD):** Procurer(s) will specify the quantum of the Earnest Money Deposit (EMD), which shall not be less than two percent of the estimated capital cost of the hybrid power project or any other criteria specified in the RfS, in the form of a bank guarantee / letter of undertaking to pay, to be furnished by the bidders. Forfeiture of EMD or debaring etc., as defined in these Guidelines, shall be undertaken in the event of failure of the HPG to execute the PPA within the stipulated time period.

9.4. **Compliance of Laws by foreign bidders:** In case a Foreign Company is selected as the successful bidder, it shall comply with all the laws and provisions related to Foreign Direct Investment (FDI) in India.

10. BID SUBMISSION AND EVALUATION

- 10.1. Formation of consortium by bidders shall be permitted, in which case the consortium shall identify a lead member which shall be the contact point for all correspondences during the bidding process. Procurer(s) may specify technical and financial criteria, and lock in requirements for the lead member of the consortium.
- 10.2. Procurer(s) shall constitute 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.
- 10.3. The bidders shall be required to submit separate technical and price bids. Bidders shall also be required to furnish necessary bid-guarantee in the form of an EMD along with the bids.
- 10.4. 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 shall be considered for further evaluation on the price bids.
- 10.5. 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 bidding, and the Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.
- 10.6. The price bid shall be rejected, if it contains any deviation from the bid conditions. No clarifications shall normally be requested from bidders at this stage.
- 10.7. The detailed procedure for evaluation of the bid and selection of the bidder shall be provided for in the RfS.

11. INDICATIVE TIMETABLE FOR BID PROCESS

11.1. In the bidding process, a minimum period of 22 (twenty-two) days shall be allowed between the issuance of RfS documents and the last date of bid submission. The indicative timetable for the bidding process is as below.

Tentative Timetable for Bid Process

Sl. No.	Event	Time from Zero date
1.	Date of issue of Request for Selection (RfS) document, Project specific draft Power Purchase Agreements and other draft Project Agreements, and the Power Sale Agreement (PSA), if applicable	Zero date

2.	Bid clarification, conferences, opening of online Data Room to share all Project specific details including site, if specified by Procurer etc., and revision of RfS document	**
3.	RfS bid submission	22 days
4.	Evaluation of technical bids	64 days
5.	Evaluation of financial bids and conduction of e-Reverse Auction	99 days
6.	Issuance of Letter of Award (LoA)	110 days
7.	Signing of PPA and the PSA (if applicable)	140 days

** In case of any change in RfS document, the Intermediary Procurer shall provide the bidders additional time in accordance with clause 8.6 of these Guidelines.

Note: It is clarified that if the Procurer gives extended time for any of the events in the bidding process, on account of delay in achieving the activities required to be completed before the event, such extension of time shall not in any way be construed as deviation from these Guidelines.

12. CONTRACT AWARD AND CONCLUSION

- 12.1. The PPA shall be signed with the successful Bidder/ Project Company or an SPV formed by the successful Bidder.
- 12.2. The procurer shall constitute a committee for evaluation of the RfS bids. After the conclusion of bidding process, the Evaluation Committee constituted for 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 to the provisions of the RfS document. The evaluation authority should satisfy itself that the price of the selected offer is reasonable and consistent with the requirement. The evaluation committee shall have the right to reject all price bids if the rates quoted are not aligned to the prevailing market prices.
- 12.3. For the purpose of transparency, Procurer(s) shall, after the execution of the PPA, publicly disclose the name(s) of the successful Bidder(s) and the tariff quoted by them together with breakup into components, if any. The public disclosure shall be made by posting the requisite details on Procurer's website for at least 30 (thirty) days.
- 12.4. Subject to provisions of the Act, the distribution licensee or the Intermediary Procurer, as the case may be, shall approach the Appropriate Commission for adoption of tariffs by the Appropriate Commission in terms of Section 63 of the Act within 15 (fifteen) days of the discovery of the tariffs in the transparent competitive bidding process conducted in accordance with these Guidelines.
- 12.5. Subsequent to the distribution licensee or Intermediary Procurer, as the case may be, approaching the Appropriate Commission for adoption of tariffs under Section 63 of the Act, in case, the Appropriate Commission does not decide upon the same within sixty days of such submission or within 120 (one hundred and twenty) days from the date of Power Sale Agreement (PSA), whichever is more, the Procurer(s) shall grant appropriate extension of time in SCSD to the generators, corresponding to the delay [beyond 60 (sixty) days of submission or 120 (one hundred and twenty) days of PSA whichever is more] in adoption / approval by the Appropriate Commission till the date of adoption/ approval by the Appropriate Commission.

13. BANK GUARANTEES/ PAYMENT ON ORDER INSTRUMENTS / LETTERS OF UNDERTAKING

The HPG shall provide the following bank guarantees/ letters of undertaking to pay to the Procurer in terms of the RfS:

- 13.1. **Earnest Money Deposit (EMD)** as per Clause 9.3 to be submitted along with response to RfS in the form of:
- Bank Guarantee(s);
- OR
- "Payment on Order instrument" / Letter of Undertaking, to pay in case of default of HPG in terms of tender condition, from Indian Renewable Energy Development Agency (IREDA)/ Power Finance Corporation Limited (PFC)/ REC Limited (REC).

"Payment on Order instrument" means Letter of Undertaking from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC) [the three non-banking financial institutions under Ministry of New & Renewable Energy (MNRE) / Ministry of Power (MoP)], to pay in case situation of default of generator in terms of tender conditions/Power Purchase Agreement (PPA) arises. Such Letter(s) will have same effect as that of a Bank Guarantee issued by any public sector bank. Such "Payment on Order instrument" would have terms and conditions similar to that of any Bank Guarantee given by any public sector bank and would promise to pay the Procurer on demand within stipulated time. Generators can seek such Letters(s) by offering due security to the above mentioned three non-banking financial institutions mentioned above (IREDA, PFC & REC). Procurer(s) shall not accept the instrument of 'Letter of Undertaking' as described above or in any other form, from any other non-banking financial institutions or bank, except IREDA, PFC & REC.

- 13.2. **Performance Bank Guarantee (PBG)** to be fixed by the Procurer, but not to be less than 5% (five per cent) of the Estimated Capital Cost for Hybrid Power Project for the financial year in which the bids are invited, or any other criteria specified in the RfS, to be submitted at the time of signing of the PPA, in the form of:
- Bank Guarantee(s);
 - OR
 - "Payment on Order instrument" / Letter of Undertaking, to pay in case of default of HPG in terms of tender condition, from Indian Renewable Energy Development Agency (IREDA)/ Power Finance Corporation Limited (PFC)/ REC Limited (REC).
- 13.3. In addition to the other remedies, this PBG (or alternatives provided thereto as per these Guidelines) can be encashed to recover any damages/dues of the generator in terms of the PPA. It is hereby clarified that the damages/dues recovered by the Intermediary Procurer by encashing the PBG, upon the default of the generator under the PPA, shall be credited to the Payment Security Fund to be maintained by the Intermediary Procurer under clause 7.3 of these Guidelines. PBG (or alternatives provided thereto as per these Guidelines) shall be returned to the generator within 45 days of the SCSD the project. In case of commencement of supply of power from part capacity of the project, PBG corresponding to such part capacity should be released within 45 days.
- 13.4. Procurer(s) may release the Bank Guarantees submitted by a generator as 'Performance Bank Guarantee (PBG)', if the generator is able to replace the same with "Payment on Order instrument" / Letter(s) of Undertaking to pay in case situation of default of generator in terms of Power Purchase Agreement (PPA) arises, from Indian Renewable Energy Development Agency Limited (IREDA) or Power Finance Corporation Limited (PFC) or REC Limited (REC). Generators can seek such Letters(s) by offering due security to the above mentioned three nonbanking financial institutions (IREDA, PFC & REC) for seeking replacement of their Bank Guarantees already pledged with the implementing agencies.

14. SHAREHOLDING BY THE PROMOTER

- 14.1. The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% at any time prior to 1 (one) year from the SCSD, except with the prior approval of the Procurer. In the event the successful bidder 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 from the SCSD, except with the prior approval of the Procurer. However, in case the successful bidder shall be itself executing the PPA, then it shall ensure that its promoters shall not cede control² till 1 (one) year from the SCSD, except with the prior approval of the Procurer. In this case it shall also be essential that the successful bidder shall provide the information about its promoters and their shareholding to the Procurer before signing of the PPA with Procurer.
- 14.2. Any change in the shareholding after the expiry of 1 (one) year from the SCSD can be undertaken under intimation to Procurer.
- 14.3. In the event the HPG is in default to the lender(s), lenders shall be entitled to undertake 'Substitution of Promoter' in concurrence with the Procurers.

15. COMMENCEMENT OF SUPPLY OF POWER

- 15.1. The Power Purchase Agreement between the Hybrid Power Project and Procurer / Intermediate procurer shall clearly indicate the SCSD and quantum of supply.

²'Control' shall mean the ownership, directly or indirectly, of more than 50 per cent of the voting shares of such Company, or right to appoint majority Directors to the Board of Directors.

15.2. Commencement of Supply Schedule:

- a. The developer/ HPG shall generally commence supply of power, within a period of:
 - i. 24 (twenty-four) months from the date of execution of the Power Purchase Agreement, where the quantum allotted to the Developer/ HPG is not more than 1,000 MW;
 - ii. 30 (thirty) months from the date of execution of the Power Purchase Agreement, where the quantum allotted to the Developer/ HPG is more than 1,000 MW.
- b. However, if for some reason, the SCSD period needs to be kept shorter or longer than that provided in these Guidelines, the Procurer can do the same.
- c. It is presumed that in terms of Clause 12.5 of these Guidelines, the tariff will be adopted by the Appropriate Commission within 60 days of such submission or within 120 days from the date of Power Sale Agreement (PSA), whichever is more. However, notwithstanding anything contained in these Guidelines, any delay in adoption of tariff by the Appropriate Commission, beyond 60 days of submission or 120 days of PSA whichever is more, shall entail a corresponding extension in SCSD.

15.3. Part Commencement of Supply of Power: Part Commencement of supply of from the Project shall be accepted by Procurer subject to the condition that the minimum capacity for acceptance of commencement of supply of power shall be 50% of Project Capacity or 50 MW, whichever is lower, without prejudice to the imposition of penalty, in terms of the PPA on the part which has not yet commenced supply of power. However, in case of inter-state project, minimum capacity for acceptance of commencement of supply of power shall be at least 50 MW. The projects can further commence supply of power in parts of at least 10 MW capacity; with last part as the balance capacity. However, the SCSD will not get altered due to part commencement of supply of power. Irrespective of dates of part or full commencement of supply of power, the PPA will remain in force for the period specified in the bid.

15.4. Early Commencement of Supply of Power: In case of multiple project components and if one or more such component (wind or solar) is ready for injection of power into the grid, but the remaining component is unable to commence supply of power, the Generator will be allowed to commence supply of power from such component which is ready outside the ambit of PPA, with first right of refusal for such power being vested with the End Procurer. Subsequent to refusal of such power by the End Procurer, the right of refusal shall vest with the Intermediary Procurer. In case the Procurer/ Intermediary Procurer decides to buy such discrete component(s) power outside the PPA, such power shall be purchased at up to 75% of the PPA Tariff for the applicable Contract Year or specific provisions in this regard will be stipulated in the tender documents.

15.5. Delay in Commencement of Supply of Power: Delay in commencement of supply of power, beyond the SCSD shall involve penalties on the HPG, as detailed below:

- a. For Delay in commencement of supply of power up to 6 (six) months from SCSD, encashment of Performance Bank Guarantee (PBG), or alternate instruments, on per day basis and proportionate to the capacity that has not commenced supply of power.
- b. For Delay in commencement of supply of power beyond six months from SCSD:
 - i. The contracted capacity shall stand reduced to the project capacity that has commenced supply of power within the period of SCSD plus 6 (six) months. The PPA for the balance contracted capacity that has not commenced supply of power shall stand terminated.
 - ii. The HPG shall be debarred from participating in bids issued by any procurer, or any intermediary procurer for the following period:
 - a. For one year, in case of first default
 - b. For not less than 2 years, and not more than 3 years for second and any subsequent defaults

16. TRANSMISSION CONNECTIVITY

16.1. The responsibility of getting Transmission Connectivity to ISTS network under GNA regulation will lie with the Generator and shall be at the cost of Generator.

16.2. The Metering Points, which are the points at which energy supplied to the Procurer shall be measured, shall be the low voltage side of the CTU / STU substation at which power is injected in the transmission system of CTU / STU. All expenses including wheeling charges and losses between the Project and the Metering Point shall be paid by the Generators without any reimbursement by the Procurer. All expenses including transmission / wheeling charges (if any) and losses in relation to the transmission and distribution beyond the Metering Point shall be borne by the Procurer(s) as per the regulation notified by the Appropriate Commission from time to time.

17. ROLE OF STATE NODAL AGENCIES

The State Nodal Agencies appointed by respective State Governments will provide necessary support to facilitate the required approvals and sanctions in a time bound manner so as to achieve commencement of supply of power from the projects within the scheduled timeline. This may include facilitation in the following areas:

- Coordination among various State and Central agencies for speedy implementation of projects.
- Support during commencement of supply of power from the projects.
- Carry out the site survey and issuance of elevation certificate for attainment of No Objection Certificate (NoC) from the Ministry of Defence.

18. PERFORMANCE MONITORING

All Hybrid Power Projects shall install necessary equipment to continuously measure wind and solar resource data and other weather parameters and electrical parameters. They are required to submit this data through online portal to Procurer(s), National Institute of Wind Energy (NIWE), National Institute of Solar Energy (NISE) and/ or other designated agency for monitoring the performance for the entire life of the project.

In addition to the above, the Successful Bidder shall also submit information, as required by Procurer(s), for regular monitoring of status of the project. Procurer(s) may develop a standard monitoring template /parameter for capturing regular progress of the project.

19. DEVIATION FROM PROCESS DEFINED IN THE GUIDELINES

In case it becomes imperative for the Procurer/intermediate 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.

20. DISPUTE RESOLUTION

In the event CERC is the Appropriate Commission, any dispute arises claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, such dispute shall be adjudicated by the CERC. All other disputes shall be resolved by arbitration Dispute Resolution Committee set up by the Government, failing which by arbitration under the Indian Arbitration and Conciliation Act, 1996. In the event SERC / JERC is the Appropriate Commission, then all disputes shall be adjudicated by the SERC / JERC or shall be referred for arbitration by the SERC / JERC.

21. CLARIFICATION AND MODIFICATION TO GUIDELINES

If any difficulty arises in giving effect to any provision of these Guidelines or interpretation of the Guidelines or modification to the Guidelines, the Ministry of Power is empowered to do the same in consultation with the Ministry of New & Renewable Energy.

22. ISTS CHARGES AND LOSSES

ISTS charges and losses on transmission of power, including waiver for wind power, shall be as per extant rules and regulations.

HEMANT KUMAR PANDEY, Chief Engineer