

# **Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Waste to Energy Projects**

## **1. INTRODUCTION**

### **1.1. Background**

**1.1.1** India's urban centres grapple with a significant waste management challenge. In 2021-22, they generated approximately 70 million tonnes of municipal solid waste (MSW), amounting to roughly 1.7 lakh tonnes per day. This figure is projected to surge dramatically in the coming decades, driven by factors like rising incomes and rapid urbanisation. To mitigate this issue, the development of robust waste processing and recycling infrastructure must be prioritised. A suitable waste processing alternative is generation of electricity from waste in Waste to Energy (WTE) Plants.

**1.1.2** Procurement of power from WTE Project can be undertaken either under Section 62 or under Section 63 of the Electricity Act, 2003 (Act).

**1.1.3** These Guidelines are being issued under section 63 of the Act to enable procurement of power by Procurers from Waste to Energy ('WTE') power projects, through tariff based competitive bidding. By facilitating WTE power generation, these guidelines will contribute to cleaner waste management practices and empower the Municipal Corporations/Urban Local Bodies and State Government nominated agencies across the country to conduct fair and competitive bidding for WTE power procurement.

## **2. SCOPE OF THE GUIDELINES**

### **2.1 Applicability of Guidelines**

(a) The projects already awarded/ under implementation/ commissioned will not be covered under these Guidelines. In case there are any ongoing bids wherein the last date of bid submission is after 90 days of the date of notification of these Guidelines, then the tender documents in respect of such bids shall be appropriately modified to bring them in alignment with these Guidelines.

(b) These Guidelines are technology agnostic and may be based on any of the commercially proven technologies approved by the Ministry of Housing and Urban Affairs (MoHUA) and uses MSW-derived fuel (RDF-WtE grade/ segregated combustible fraction, non-recyclable dry waste) as input fuel. The feedstock preparation involves mandatory segregation and suitable pre-processing, which is required based on the technology employed.

**2.2** Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer and the Implementing Agency and the same needs to be strictly followed for such bidding to be eligible under section 63 of the Electricity Act. However, if it becomes imperative to deviate

from the provisions of these Guidelines, the process to be adopted is specified in Clause 16 of these Guidelines.

**2.3** Principles outlined in these Guidelines may be suitably expanded and made exhaustive in the Standard Bidding Documents [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement].

## **2.4 Definitions**

- (a) **“Act”** shall mean the Electricity Act, 2003, including subsequent amendments and clarifications issued thereof.
- (b) **“Affiliate” or “Associate”** in relation to a Company shall mean a person who controls, is controlled by, or is under the common control with such Company.
- (c) **“Appropriate Commission”** shall have the same meaning as defined in the Act.
- (d) **“Assured Quantity”** shall mean the minimum quantity of MSW that the Municipal Corporation has to deliver at the Project Site on a monthly average basis measured in Tonnes Per Day (TPD);
- (e) **“Bid”** shall mean the Qualification Application submitted by the Bidder, Technical Proposal and Financial Offer submitted by the Bidder.
- (f) **“Bidder”** shall mean bidding Company or a Bidding Consortium submitting the Bid.
- (g) **“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.
- (h) **“Concession Agreement”** means the agreement to be signed by the Implementing Agency and the WtE developer for development of WtE power project by using the waste arranged by the Implementing Agency.
- (i) **Implementing Agency** means Urban Local Body (ULB) or a State Government nominated agency planning to engage the services of a WtE developer to plan, build, own and operate one or more WtE projects involving the processing of wastes from one or multiple pre-defined areas mapped to each of the WtE projects. In case of multiple ULBs pooling waste, the larger waste contributor or the ULB providing land for WtE project development may be the Implementing Agency for these guidelines. The Implementing Agency shall be deemed to be the authorized representative of the distribution licensees planning to procure power from WtE projects.

- (j) **“Integrated”** Solid Waste Management project encompasses the entire spectrum of waste management activities, including collection, transportation, and processing, all integrated within a single project to effectively manage a city's solid waste. This approach typically involves a competitive bidding process to select a single operator responsible for undertaking all these activities as per the terms and conditions outlined in the Request for Proposal (RFP) and the subsequent concession agreement.

**“Non-Integrated”** or **“Standalone”** means a Waste to Energy (WtE) project approach involving only final processing for end-of-life treatment of Municipal Solid Waste (MSW) that has been pre-segregated by the Implementing Agency, together with resource and energy recovery. Final processing/thermal treatment (including incineration) shall be permitted exclusively for non-recyclable combustible fractions post-segregation. This approach mandates comprehensive leachate treatment and disposal of residual matter (ash, process rejects) in an engineered SLF, strictly adhering to the standards defined in the Solid Waste Management Rules 2016.

- (k) **“Power Purchase Agreement”** means the agreement signed between the WtE developer and the procurer for purchase of power generated by WtE developer.
- (l) **“Procurer”** shall, as the context may require, shall mean distribution licensee(s) or end consumers in some cases.
- (m) **“Request for Selection”** or “RfS” or “tender” or “bid” Document shall mean the tender documents issued by the Bid Inviting Agency, including Power Purchase and Power Sale Agreements as applicable, for procurement of power through a competitive bidding process under these Guidelines.
- (n) **“Transportation”** means conveyance of solid waste, either treated, partly treated or untreated from a location to another location in an environmentally sound manner through specially designed and covered transport system so as to prevent the foul odour, littering and unsightly conditions.
- (o) **“Tipping fee”** means a fee or support price determined by the local authorities or any state agency authorised by the State government to be paid to the concessionaire or WtE operator or generator of waste processing facility or for disposal of residual solid waste at the landfill.
- (p) **“Urban Local body (ULB) or Local Body”** means and includes the municipal corporation, nagar nigam, municipal council, nagar-palika, nagar-palika parishad, municipal board, nagar-panchayat, town panchayat, census towns, notified areas and notified industrial townships with whatever name they are called in different States and Union Territories in India.
- (q) **“Viability Gap Funding”** means a grant, one-time or deferred, provided to support infrastructure projects that are economically justified but fall short of financial viability.

- (r) **“WTE Generator”** shall mean the entity owning the WTE Power Generation facility for supply of power under these guidelines.

**2.5** Words or expressions used and not defined in these guidelines shall have the meaning assigned to them in the Act, or the Rules or other Regulations or Policies framed thereunder.

### **3. Roles and Responsibilities of various stakeholders**

#### **(a) Implementing Agency**

The roles and responsibilities of such an Implementing Agency are as under:

##### **(i) Planning**

- a. Form an SPV (Special Purpose Vehicle) for the Project, if required.
- b. Prepare a pre-feasibility report and environmental assessment report for reference to the bidders about expected outcomes from the project.
- c. Develop a robust contractual framework pertaining to collection, segregation, and transportation of waste.
- d. Identify appropriate, un-encumbered land parcel/s with clear title for the purposes of development of the WTE project and necessary engineered Sanitary Landfills (SLF) for compliant disposal of process rejects (bottom ash, fly ash, and non-processables). This engineered SLF must be clearly integrated into the overall project plan, ensuring guaranteed capacity and linkage for the duration of the Concession Period.
- e. Secure all necessary permits and clearances required for conduct of the bidding process.
- f. Develop bid documents and agreement or modify /adopt model agreement (Concession Agreement (CA), Land Lease Agreement (LLA) and Power Purchase Agreement (PPA), in accordance with the provisions of these guidelines.
- g. Identify appropriate nearby source of water and energy evacuation facility and arrange right of way.

**(ii) Bid Process**

- a. Intimate the Appropriate Commission about initiation of the bidding process. In case of any deviation from these guidelines, apply for approval of bidding process and bid documents.
- b. Undertake bid process for selection of WTE developer in a transparent and time-bound manner.
- c. Apply for adoption of tariff by the Appropriate Commission.

**(iii) Project Execution and Operation**

- a. Execute the Concession Agreement to ensure that the terms are abided by both parties.
- b. Execute Land Lease Agreement and arrange to provide possession of and access to land free of encumbrances for project site as well as for the integrated, engineered Sanitary Landfill (SLF) for compliant disposal of residue, leachate, and process rejects.
- c. Ensure that facilities for quantifying the incoming waste and process residuals, specifically computerized weighbridges, are operational at the facility site prior to the commencement of supply date (SCSD) to ensure the Tipping Fee linkage to measured quantities is operational.
- d. Facilitate the procurement of all necessary permits, approvals, and clearances.
- e. Facilitate the execution of Power Purchase Agreement with respective distribution licensee/procurer.
- f. Facilitate construction of the WTE project by transfer of land parcels identified.
- g. In case of non-integrated project, ensure efficient delivery of assured quality and quantity of MSW-derived fuel (segregated, compliant feedstock) to the WTE project adhering to the terms of the Concession Agreement or Solid Waste Management (SWM) Rules.

The Implementing Agency shall abide by relevant rules, guidelines, statutory requirements, etc as may be applicable.

**(b) WTE Developer /Generator**

The roles and responsibilities of the WTE Developer are:

- (i) Abide by the conditions of all the Contracts and Agreements entered into as part of the bidding process and ensure compliance to conditions precedents.
- (ii) Secure all necessary permits, approvals and clearances in coordination with the facilitation being offered by the ULB.
- (iii) Ensure that the building plans for the projects facilities at site are duly and expeditiously approved by the concerned authority under relevant Acts/Building by-laws/other relevant bylaws or regulation.
- (iv) Execute the implementation of the WTE project in a timely manner while adhering to all standards and procedures as developed and/or followed in the bidding process.
- (v) Ensure operation of the WTE project with the desired level of performance as bound by the various contracts, agreements, rules, and protocols being followed.

The Developer shall abide by relevant rules, guidelines, statutory requirements, etc. including Solid Waste Management Rules 2016, Swachh Bharat Mission Urban 2.0 Guidelines, etc. as may be applicable.

**(c) Procurer (Distribution Licensee)**

The roles and responsibilities of Procurer are:

- (i) Enter into a PPA with WTE developer for the electrical energy generated from the WTE project at a tariff determined under competitive bidding process.
- (ii) Facilitate evacuation arrangement in co-ordination with transmission licensee as the case may be to match the project commissioning timelines.
- (iii) Facilitate actual offtake of energy up to 120% of the rated capacity through necessary scheduling and despatch arrangements in coordination with the Load Despatch Centre.
- (iv) Provide payment security arrangements as per terms of PPA.
- (v) Timely payment of monies against the invoices raised by the WTE developer.

In such cases, as long as the Implementing Agency has followed these Guidelines for procurement of WTE power, the Procurer shall be deemed to have followed these Guidelines for procurement of WTE power.

#### **(d) Intermediary/Intermediary Procurer**

In some cases, an intermediary, as designated by the Ministry of New and Renewable Energy, Government of India, or a State Government, may be tasked to aggregate the power purchased from different WtE generator and sell it to the distribution licensees licensee(s). In such cases, the distribution licensees shall be the “End Procurer” and the intermediary shall be “Intermediary Procurer” for the purpose of these Guidelines.

The Intermediary Procurer shall enter into a PPA with the WtE power generator 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. The trading margin, as notified by the Appropriate Commission, shall be payable by the End Procurer to the Intermediary Procurer.

In such cases, as long as the Intermediary Procurer has followed these Guidelines for procurement of WtE power, the End Procurer shall be deemed to have followed these Guidelines for procurement of WtE power. The power procurement for Distribution licensees in some States is centralized through a holding company or another government agency. Such companies/ agencies will be considered as Procurer and not as Intermediary Procurer for the purpose of these guidelines.

### **4. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS**

#### **4.1 Conditions to be met by the Implementing Agency**

The Implementing Agency shall meet the following conditions:

##### **4.1.1 Bid Documentation**

- (a) Prepare the bid documents in accordance with these Guidelines.
- (b) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS, and draft PPA, from these Guidelines and/ or SBDs, in accordance with the process described in Clause 16 of these Guidelines. However, only for purpose of clarity, if the Implementing Agency while preparing the draft RfS, and draft PPA provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.

##### **4.1.2 Pre-Feasibility Report:**

The RfS must include the pre-feasibility report. A project pre-feasibility report shall be prepared by the Implementing Agency which serves as the guide for

the contours of the project. The report shall inter alia include the following information/components:

- (i) Geographical coverage of the waste generation and collection.
- (ii) Estimated rate of waste collection, expressed in terms of metric tonnes per day (TPD), with resolution on daily, monthly and yearly basis over the concession period.
- (iii) Estimated nature and calorific value of the waste with expected operating ranges.
- (iv) Estimated capacity of the WTE plant expressed in terms of TPD, detailed projections of the quantity and nature of residual waste (ash and process rejects) requiring compliant disposal in an engineered SLF and the expected power generation with resolution on daily, monthly and yearly basis.
- (v) The area and location of the site/s identified for the WTE plant and scientific landfills.
- (vi) The cost, if any for delivery of waste to the WTE premises.
- (vii) Legal and regulatory requirements to be followed by the developer
- (viii) Responsibilities for management of residual waste after electricity generation to be clearly specified including the detailed methodology and location for the treatment and disposal of leachate and ash/process rejects in the integrated engineered SLF
- (ix) The estimated operational expenditure (Opex) and expected operational revenues (from power, compost, recyclables, etc.). The Tipping Fee, complemented by Viability Gap Funding (VGF) where applicable, shall be structured to bridge the estimated 30–50% gap between the total Opex and project revenues to ensure financial sustainability under the competitive bidding (PPP) framework.

#### **4.1.3 Concession Agreement**

The Concession Agreement shall be enclosed in the Bidding Documents which shall be signed between the Implementing Agency and the WTE developer may inter-alia include the following provisions:

- (i) Definition of the Concession Area and its profile in terms of the geographical area covered, the zoning of areas, sources of waste generation and its mix, segregation method and collection centres;
- (ii) Norms for waste collection and segregation presently being followed;

- (iii) Scope of work for the WTE developer proposed under bidding process. The overall scope will be dependent on the approach to the WTE project development – whether integrated or non-integrated, being followed.
- (iv) Clear demarcation of roles and responsibilities between WTE developer and Implementing Agency or ULB over the Concession Period.
- (v) In case of non-Integrated/standalone approach of project development, information pertaining to the collection, segregation, pre-processing and delivery of the MSW at the premises of the WTE project including specific details of minimum assured quantity of waste and calorific values with suitable ranges of operation. Further, if development of any landfill, etc. for disposal of process rejects by WTE developer is required, the same shall be mentioned.
- (vi) Terms and conditions of payment of tipping fee expressed in terms of INR/MT by the ULBs to the WTE developer for processing the MSW, if applicable. This payment shall be strictly linked to the quantity of compliant, segregated MSW-derived fuel/non-recyclable fraction accepted and processed by the WTE developer.
- (vii) Details of VGF, amount and its disbursement schedule. VGF shall align with the financial viability gap established in the Pre-Feasibility Report (or DPR), ensuring the combined revenue stream (Tariff + Tipping Fee + VGF) enables sustained project operation and mandatory environmental compliance.
- (viii) Penalties on Concessionaire for deviations from expected quantum of MSW processed.
- (ix) Penalties on ULB for deficiencies in minimum supply of MSW, in case of non-Integrated approach of project development, along with Concessionaire's Right to Reject poor quality of MSW, as per Concession Agreement.
- (x) Delivery of the Residual Inert Matter including bottom ash, fly ash, and process rejects, in accordance with the requirements of this Agreement and terms and conditions thereof mandating disposal exclusively at the designated, integrated engineered SLF and adhering strictly to environmental compliance standards.
- (xi) Specify other matters such as applicable land lease cost, tipping fees payable, event of default and consequences thereof, change in law, performance guarantees, etc.

- (xii) The Concession Agreement shall specify the construction period, and the concession period. Milestone based monitoring and penalty provisions may be specified.

Penalty based on WTE plant non-availability may be specified. However, there shall be no penalty on account of non-availability of 'waste' or operational or logistic constraint in relation to fuel handling as may be certified by the Implementing Agency.

- (xiii) Provisions to take care of delay in executing CA, delay in providing encumbrance free land.
- (xiv) Provision related to engaging Independent Engineer.
- (xv) LLA and PPA shall be co-terminus to CA.

## **4.2 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 Generator and shall specify penalties with respect to non-compliance of the Scheduled Commencement of Supply Date (SCSD). 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 WTE developer, unless specifically stated otherwise and the Implementing Agency shall facilitate in obtaining such clearances, permits, licenses, etc.

## **5 TARIFF**

**5.1** The bidding parameter to be quoted by the bidders for supply of Electricity from Waste would be

- (i) A single levelized tariff in INR per kWh (with year wise breakup) (the "Tariff") with pre-specified Viability Gap Funding (VGF), if any, or
- (ii) quantum of VGF support required by the bidder for a pre-specified fixed Tariff

**5.2** The Tariff shall be at the Delivery Point which shall be interconnection point as specified in the bid document / CA /PPA. All charges and losses till the delivery point shall be borne by the WTE Developer.

## **6 BID STRUCTURE**

**6.1 Bids in Power Terms:** The Implementing Agency shall invite the bids in Power Capacity (MW) terms, specifying the total quantum to be contracted by the procurer.

## 6.2 Bid submission and evaluation:

- (a) Formation of consortium by the 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. The Implementing Agency may specify technical and financial criteria, and lock in requirements for the lead member of the consortium.
- (b) The Implementing Agency 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.
- (c) The bidders shall be required to submit separate technical and price bids, single stage, two envelopes. The bidders shall also be required to furnish necessary bid-guarantee in the form of an Earnest Money Deposit (EMD) along with the bids.
- (d) 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.
- (e) To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after two attempts of bidding, and the Implementing Agency still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.
- (f) The price bid shall be rejected, if it contains any deviation from the tender conditions. No clarifications shall normally be requested from bidders at price bid stage.
- (g) The detailed procedure for evaluation of the bid and selection of the bidder shall be provided for in the RfS document.

## 7 POWER PURCHASE AGREEMENT

The draft PPA proposed to be entered into with the successful bidder and the Procurers shall be issued along with the RfS. Standard provisions to be incorporated as part of this PPA shall include inter alia the following:

**7.1 PPA Period:** The PPA period shall be for a period not less than 20 (twenty) years from the Scheduled Commencement of Supply Date (SCSD) or from the rescheduled date of commencement of supply to the extent of extension given by the Implementation Agency on the grounds which are beyond control of the WTE developer. The duration of the PPA must be mentioned upfront in the RfS document and shall be coterminous with the Concession Agreement.

### 7.2 Power Procurement

- (a) The procurement of power shall be in power (MW) terms. The range of Plant Load Factor (PLF) will be indicated in the bidding documents, subject to availability of assured quantity and quality of MSW. Calculation of PLF will be on yearly basis.

- (b) In case the energy available is more than the quantum corresponding to maximum PLF specified, the Procurer shall purchase the excess generation and applicable tariff for such excess generation shall be clearly indicated in the PPA.
- (c) 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 Generator only.
- (d) Penalties on WtE, either due to delay in SCSD or non-availability of plant, shall be applicable as specified in the Concession Agreement. A part of such penalty shall be passed on to the Procurers as per provisions of the PPA.
- (e) **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 end shall be settled by the WTE Developer.

### **7.3 Payment Security Mechanism (PSM)**

Adequate payment security shall be provided to WtE developer by the Procurers as per Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 including amendments and clarification, if any, thereof, issued from time to time.

### **7.4 Force Majeure**

**7.4.1** 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 Generator 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.

**7.4.2 Must Consume:** Once the WTE has declared availability the entire power to be consumed by Procurers on Must Consume basis.

### **7.5 Event of default**

- (a) 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 13.3, unless it is attributed to the Force Majeure event, Implementing Agency (ULB) or Procurer.
- (b) The lenders shall be entitled to exercise their rights of substitution, in accordance with the substitution provisions provided in the CA or PPA and in concurrence with the Implementing Agency and 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.

- (c) If the Procurer is in default on account of reasons including inter alia failure in timely payment of the dues, in accordance with the RfS, and the provisions of the LPS Rules shall apply.
- (d) In the event the Generator fails to maintain availability as specified in **Concession Agreement**, the Generator shall be liable for penalty to be provided in the Concession Agreement.

## **7.6 CHANGE IN LAW/ REGULATION**

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 22<sup>nd</sup> October 2021 including amendments and clarification thereof issued from time to time.

## **8 BIDDING PROCESS**

- 8.1** The Implementing Agency 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
- 8.2** The bidding documents including the RfS, Concession Agreement and the draft PPA shall be prepared by the Implementing Agency in consonance with these Guidelines and SBDs, if any.
- 8.3** The Implementing Agency shall publish the RfS notice in at least two national newspapers and its own website to accord wide publicity.
- 8.4** The Implementing Agency shall provide opportunity for pre-bid conference to the prospective bidders and shall provide written interpretation of the tender documents to any bidder which shall also be made available to all other bidders. All the concerned parties shall rely solely on written communication. Any clarification or revision to the bidding documents shall be uploaded on the website of the Implementing Agency for adequate information. In the event of the issuance of any revision or amendment of the bidding documents, the bidders shall be provided as period of at least 7 (days) therefrom, for submission of bids.
- 8.5** The Implementing Agency shall constitute a committee for evaluation of the RfS bids. The bid evaluation committee may include a representative from the Procurer.
- 8.6** 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.

## **9 REQUEST FOR SELECTION (RFS) DOCUMENT**

The standard provisions to be provided by the Implementing Agency in the RfS document shall include the following and may be suitably expanded:

### **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) 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 of the United Nations or any its agencies

### **9.2 Qualification requirements to be met by the bidders**

#### **9.2.1 Technical Criteria**

In order to ensure proper implementation of the Projects, the Implementing Agency may choose to specify Technical Criteria, e.g. experience in development of similar specialized projects. 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) Net-Worth**

- (i) The Implementing Agency shall specify financial criteria in the form of net worth as a part of the qualification requirement. The net-worth requirement should be at least 30% (thirty per cent) of the estimated project cost as per the Pre-Feasibility report prepared by the Implementing Agency 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 and/or Associates 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, 2013.

**(b) Liquidity**

It is necessary that the bidder has sufficient cash flow/internal accruals to manage the fund requirement for the Project. Accordingly, the Implementing Agency may also stipulate parameters such as annual turnover, internal resource generation, bidding capacity, etc

**9.3 Compliance of FDI 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 in India.

**10 INDICATIVE TIMETABLE FOR BID PROCESS**

**10.1** In the bidding process, a minimum period of 45 (forty-five) days shall be allowed between the issuance of RfS document and the last date of bid submission. The indicative timetable for the bidding process is indicated below:

Indicative Timetable for Bid Process:

Sl.No	Event	Elapsed Time
1	Date of issue of Request for Selection (RfS) document, Concession Agreement, Pre-Feasibility Report, Project specific draft Power Purchase Agreements and other draft Project Agreements.	Zero Date
2	Bid clarification, conferences, opening of online Data Room to share all Project specific details including site, if specified by Implementing Agency etc. & revision of RfS document.	30 days from Zero Date

3	RfS Bid submission after issuance of clarification on pre bid queries.	45 days from Zero Date
4	Evaluation of technical and financial bids and conduct of e-Reverse Auction, if applicable.	60 days from Zero Date
5	Issuance of Letter of Award (LoA).	90 days from Zero Date
6	Signing of concession agreement, LLA and PPA, after adoption of tariff by appropriate commission.	180 days from Zero Date
7	Financial Closure of the project with the lender.	180 days from acceptance of LoA by the successful bidder

*\*\* In case of any change in RfS document the Implementing Agency shall provide the bidders additional time in accordance with Clause 7.3 of these Guidelines*

*Note: It is clarified that if the Implementing Agency 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, or any other reason, such extension of time shall not in any way be construed as deviation from these Guidelines.*

## **11 CONTRACT AWARD AND CONCLUSION**

- 11.1** The Concession Agreement shall be signed with the successful bidder and the Implementing Agency. The PPA shall be signed by the successful bidder/project company or an SPV formed by the successful bidder with the Procurer(s).
- 11.2** For the purpose of transparency, the Implementing Agency 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 the website of the Implementing Agency for at least 30 (thirty) days.
- 11.3** Subject to provisions of the Act, the Implementing Agency shall approach the Appropriate Commission for adoption of tariffs discovered, in terms of Section 63 of the Act, within 30 (Thirty) days of the discovery of the tariffs, in the

transparent competitive bidding process conducted in accordance with these Guidelines.

- 11.4** Subsequent to the Implementing Agency 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 60 (sixty) days of such submission, the Implementing Agency shall grant appropriate extension of time in SCSD to the generators, corresponding to the delay [beyond 60 (sixty) days of submission] in adoption/ approval by the Appropriate Commission, till the date of adoption/ approval by the Appropriate Commission.

**12 BANK GUARANTEES/ PAYMENT ON ORDER INSTRUMENTS/ LETTERS OF UNDERTAKING/ INSURANCE SURETY BONDS**

The WTE Developer / Generator shall provide the following bank guarantees/ letters of undertaking/ payment on order instruments/ Insurance Surety Bonds to pay to the **Implementing Agency** in terms of the RfS

- 12.1 Earnest Money Deposit (EMD)** as per Clause 8.3 to be submitted along with response to RfS, in the form of:

(a) Bank Guarantee(s);

**OR**

- (b) "Payment on Order instrument" / Letter of Undertaking, to pay in case of default of the RE Power Generator in terms of RfS, 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/Concession Agreement/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 Implementing Agency 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). Implementing Agency(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.*

**OR**

- (c) Insurance Surety Bond issued issued by any of the insurance companies authorized by Insurance Regulatory and Development Authority of India

## **12.2 Quantum of the Earnest Money Deposit (EMD)**

Implementing Agency shall specify the Quantum of the Earnest Money Deposit (EMD), which shall not be less than one (1) percent of the estimated capital cost of the Project, in the form of a bank guarantee/ letter of undertaking/insurance surety bond to pay/, to be furnished by the bidders. Forfeiture of EMD or debarring etc., as defined in these Guidelines, shall be undertaken in the event of failure of the WTE Developer to execute the Concession Agreement and PPA within the stipulated time period(s).

- 12.3** EMD shall be returned to unsuccessful bidders within 60 days of completion of issue of LoA.

- 12.4 Performance Guarantee (PBG)**, to be fixed by the Implementing Agency, as the case may be, but not to be less than 3% (three percent) of the estimated Project cost, 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 Concession Agreement in the form of:

- (a) Bank Guarantee(s);

**OR**

- (b) "Payment on Order instrument" / Letter of Undertaking to pay in case of default of WTE developer in terms of Concession Agreement (CA) /Power Purchase Agreement (PPA), from Indian Renewable Energy Development Agency (IREDA)/ Power Finance Corporation Limited (PFC) and REC Limited (REC);

**OR**

- (d) Insurance Surety Bond issued issued by any of the insurance companies authorized by Insurance Regulatory and Development Authority of India

- 12.5** 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 Concession Agreement. PBG (or alternatives provided thereto as per these Guidelines) shall be returned to the generator within 45 days of the SCSD of the project. In case of part commencement of supply of power, PBG corresponding to such part capacity, should be released within 45 days.

- 12.6** Implementing Agency(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 Concession Agreement 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.

### **13 SHAREHOLDING BY THE PROMOTER**

**13.1** The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the Concession Agreement shall not fall below 51% (fifty-one per cent) at any time prior to 1 (one) year from the SCSD except with the prior approval of the Implementing Agency. 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 Implementing Agency /Procurer. Further, the successful bidder shall ensure that its promoters shall not cede control of the bidding company/ consortium till 1 (one) year from the SCSD, except with the prior approval of the Implementing Agency. In this case it shall also be essential that the successful bidder shall provide the information about its promoters and their shareholding to the Implementing Agency before signing of the Concession Agreement with Implementing Agency.

**13.2** Any change in the shareholding after the expiry of 1 (one) year from the SCSD can be undertaken under intimation to Implementing Agency.

**13.3** In the event the Generator is in default to the lender(s), lenders shall be entitled to undertake “Substitution of Promoter” in concurrence with the Implementing Agency/Procurers.

[The expression ‘control’ shall mean the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Company or right to appoint majority Directors.]

### **14 COMMENCEMENT OF SUPPLY OF POWER**

**14.1** The Power Purchase Agreement between the WTE Project and Procurer/Intermediate procurer shall clearly indicate the SCSD and quantum of supply. Intermediary Procurer shall 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.

#### **14.2 Commencement of Supply Schedule**

(a) The **Developer / WTE Power Developer** shall generally commence supply of power, within a period of 30 months from the date of execution of the Power Purchase Agreement, for the quantum allotted to the Developer / WTE Power Developer

- (b) However, if for some reason, the SCSD period needs to be kept shorter or longer than that provided in these Guidelines, the Implementing Agency can do the same. Any change in SCSD period exceeding six months to be done in consultation with the Procurer.
- (c) It is presumed that in terms of Clause 10.6 of these Guidelines, the tariff will be adopted by the Appropriate Commission within 60 days of such submission. However, notwithstanding anything contained in these Guidelines, any delay in adoption of tariff by the Appropriate Commission, beyond 60 days of submission, shall entail a corresponding extension in SCSD.

### **14.3 Delay in Commencement of Supply of Power**

Delay in commencement of supply of power, beyond the SCSD shall involve penalties on the Generator, as detailed below:

- (a) For delay in commencement of supply of power up to 6 (six) months from SCSD, the WTE Generator shall be liable to pay liquidated damages for each week of delay beyond the SCSD as specified in the Concession Agreement. The Implementing Agency may recover such damages from the Performance Security
- (b) For delay in commencement of supply of power beyond six months from SCSD, the following shall be applicable, unless it is attributed to the Force Majeure event, Implementing Agency (ULB) or Procurer:-
  - i. The Concession Agreement may be terminated at the discretion of the Implementing Agency and consequently termination of PPA.

### **14.4 Early Commencement of Supply of Power**

The Waste to Energy Power Generator shall be permitted for commencement of supply of power corresponding to full as well as part contracted capacity, even prior to the SCSD. However SCSD of the plant shall be considered as the date of commencement of supply of full power corresponding to the contracted capacity. The Procurer shall off-take power from partial commissioning of the plant at the tariff specified in PPA.

## **15 TRANSMISSION CONNECTIVITY**

- 15.1** The responsibility of getting Transmission Connectivity will lie with the WTE Generator and shall be at the cost of WTE Generator. The Implementing Agency and the Procurer may facilitate in the WTE Power Evacuation and Transmission Connectivity.

**15.2** The Metering Point, which is the delivery point at which energy supplied to the Procurer shall be measured, shall be as specified in the bid document / CA /PPA. All expenses including wheeling charges and losses between the Project and the Metering Point shall be paid by the WTE Generators without any reimbursement by the Procurer. All expenses including wheeling charges and losses in relation to the transmission and distribution beyond the Metering Point shall be borne by the Procurers as per the regulation notified by the Appropriate Commission from time to time.

## **16 TECHNICAL SPECIFICATIONS**

Implementing Agencies shall promote commercially established and operational technologies as approved to minimize the technology risk and to achieve the timely commencement of supply from the Projects. The detailed technical parameters for WTE systems shall be as specified by MoHUA from time to time.

## **17 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 WTE Power shall be issued in contravention to these Guidelines. However, in case it becomes imperative for the Implementing Agency /Procurer to deviate from these Guidelines and/or the SBDs, the same shall be subject to approval by the Appropriate Commission before the initiation of bidding process itself. The Appropriate Commission shall approve or require modification to the bid documents within a reasonable time not exceeding 60 (sixty) days of filing such petition.

## **18 DISPUTE RESOLUTION**

In the event, CERC is the Appropriate Commission, any dispute that 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 the 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.

## **19 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, Ministry of

Power is empowered to do the same in consultation with Ministry of Housing and Urban Affairs.

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