

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

Petition No. 71 of 2021
Date of Order: 24.01.2022

Petition under Section 63, 86(1)(b&e) of the Electricity Act, 2003 read with PSERC (Power Purchase and Procurement process of Licensees) Regulations, 2012 and Regulation 46 of PSERC (Conduct of Business) Regulations, 2005 for adoption of tariff for 250 MW Solar Power from projects located anywhere in India and approval of power procurement in respect thereof.

In the matter of: Punjab State Power Corporation Ltd. (PSPCL),
The Mall, Patiala.

Petitioner

Present: Sh. Viswajeet Khanna, Chairperson
Ms. Anjali Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

1. PSPCL has filed the present petition seeking adoption of tariff for 250 MW Solar Power projects (located anywhere in India) selected through competitive bidding process and approval of the power procurement in respect thereof. The submissions of PSPCL are summarized as under:

- a) PSPCL is undertaking the generation and distribution of electricity in the State of Punjab and is a distribution licensee under the provisions of the Electricity Act, 2003. It is mandated to procure power from Renewable Energy Sources as per the provisions of Section 86(1)(e) of the Electricity Act, 2003 and Punjab State Electricity Regulatory Commission (Renewable Purchase

Obligation and its compliance) Regulations, 2011, as amended from time to time.

- b) Section 63 of the Electricity Act 2003 provides that Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.
- c) Section 86(1)(b) of the Electricity Act 2003 provides that the State Commission shall regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured for distribution and supply within the State.
- d) The National Tariff Policy, 2016 formulated by the Ministry of Power has provided specific guidance on purchase of power generated from renewable energy sources. Section 6.4(2) of the National Tariff Policy provides that the procurement of power from Solar PV Projects shall be done through competitive bidding process.
- e) The Ministry of Power (**MoP**), Government of India notified “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects” (hereinafter ‘**Guidelines**) vide Gazette Resolution dated 03.08.2017 (and subsequent amendments). The Guidelines have been formulated for long term procurement of solar power at a tariff to be determined through transparent process of bidding under Section 63 of the Electricity Act, 2003. Clause 3.1.1 of the said Guidelines provide for the following conditions to be met by Procurer –

*(i) Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, **except as provided in sub clause (c) below.***

(ii) Inform the Appropriate Commission about the initiation of the bidding process.

(iii) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs, in accordance with the process described in Clause 18 of these Guidelines.

i. However, till the time the SBDs are notified by the Central Government, for purpose of clarity, 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 even though such details are not provided in the Guidelines.

ii.”

f) PSPCL had prepared the Bid Documents i.e. the Request for Selection (**RfS**) and the Draft PPA in accordance with the Guidelines, along with certain deviations. Accordingly, it filed a Petition (26 of 2021) before the Commission seeking approval for the deviations in the Bidding Documents from standard bidding guidelines for procurement of 250 MW of power from grid connected Solar Power Projects (located anywhere in India) through Competitive Bidding (followed by e-reverse auction). By Order dated 22.07.2021 in Petition No. 26 of 2021, the Commission approved certain deviations sought by PSPCL.

g) PSPCL had issued the Tender (RfS No. 27/PSPCL/IPC/SOLAR/250MW/ 2021/ET-1 dated 27.04.2021) for procurement of 250 MW solar power from projects located anywhere in India on the DEEP e-bidding portal of MSTC. The requisite amendments in the tender documents as per the Commission's Order dated 22.07.2021 were carried out by issuing Corrigendum No. 4 in the tender. The financial year for the purpose of meeting financial criteria by the bidders was also amended from "FY 2020-21" to "FY 2019-20 or FY 2020-21" in the corrigendum no. 4 for better participation of the bidders.

h) The salient aspects of the RfS were as under:

- (i) The minimum project/bid capacity shall be 50 MW and bids shall be quoted only in multiples of 10 MW.
 - (ii) The tariff quoted during the bid process shall be firm and cannot be more than Rs. 2.50/kWh.
 - (iii) The successful bidder shall set up Solar PV Projects including the transmission network up to the delivery point at its own cost and in accordance to the provisions of the RfS document.
 - (iv) All approvals, permits and clearances required for setting up the Project (including connectivity and land registration) and those required from State/Central Government and local bodies shall be in the scope of the bidder. The bidders are free to locate their Solar PV Projects anywhere in India on the land to be identified and purchased/leased by the bidder.
- i) In terms of the above PSPCL proceeded with Competitive Bidding Process (by e-reverse auction) as under:

- (i) Tender was floated on DEEP e-bidding portal of MSTC (A Govt. of India Enterprise) on 01.05.2021. As per NIT, the last date for Bid submission was up to 10.06.2021. Subsequently, the last date for bid submission was extended to 09.07.2021, 03.08.2021, 01.09.2021 and finally upto 16.09.2021 by issuing Corrigendum No. 1, Corrigendum No. 2, Corrigendum No. 3 and Corrigendum No. 5 respectively;
- (ii) The date of opening of non-financial bids was on 22.09.2021. The non-financial bids (including requisite EMD, Bid Processing Fee and cost of Tender Documents) of the following five number bidders were received by the due date:
- Adani Renewable Energy Holding Fifteen Limited (for 250 MW capacity)
 - SJVN Limited (for 100 MW capacity)
 - NTPC Renewable Energy Limited (for 250 MW capacity)
 - Renew DinkarJyoti Private Limited (for 100 MW capacity)
 - TP Saurya Ltd. (for 250 MW capacity)
- The Bids submitted online on DEEP e-bidding portal as well as original documents submitted offline were opened on 22.09.2021 at 11:00 a.m.
- (iii) The Bid evaluation committee evaluated the documents submitted by the bidders and all five bidders fulfilled the requisite criteria as per provisions of the tender documents.
- (iv) Thereafter, financial bids of the bidders were opened on 26.10.2021 at 11:00 followed by e-RA from 13:00 hrs onwards.
- (v) As per final result of e-RA on DEEP e-bidding portal, M/s Renew DinkarJyoti Private Limited quoted Rs. 2.33/KWh for

100 MW (L-1) and M/s Adani Renewable Energy Holding Fifteen Limited quoted Rs. 2.34/KWh for 250 MW (L-2) and was allotted the remaining 150 MW.

j) PSPCL is placing on record the following information/ documents in regard to the Bidding/tendering process and the selection of the successful Bidders –

(i) No deviations were made in regard to the bidding guidelines (excluding normal consequential addition/deletion and the order dated 22/07/2021 passed by this Hon'ble Commission).

(ii) A copy of the Notification regarding constitution of Bid Evaluation Committee.

(iii) A copy of the conformity certificate to the effect that the Bid Evaluation Committee had conducted the bid in conformity with the provisions of the RFS document.

(iv) A copy of the RfS Document and the draft PPA, alongwith subsequent amendments/corrigendums/clarifications;

(v) A copy of the Document demonstrating publication of the RfS on the e-publishing system/newspapers.

(vi) A copy of the bid results of the present tender after e-Reverse auction.

k) The adoption of the above-mentioned tariff of Rs. 2.33/kWh and Rs. 2.34/kWh by this Commission will be consistent with the provisions of the Electricity Act, 2003, the National Electricity Policy and National Tariff Policy notified by the Central Government as well as the policies of the Government of Punjab.

- l) By way of the Notification dated 02.01.2019, this Hon'ble Commission had prescribed a Solar RPO of 8% for the FY 2022-23. The solar RPO are set to increase for the ensuing period as well. The Scheduled Commercial Operation Dates of the Projects are 18 months from the date of execution of the PPA and should be achieved in FY 2023-24 and would help PSPCL meet its RPO requirements.
- m) Further, the rate of Rs. 2.33/kWh and Rs. 2.34/kWh per unit is most competitive in the country right now. This is particularly considering that it was clarified in the bidding stage that the Basic Custom Duty would not be considered as a Change in Law. The tariff discovered for procurement of power under the present bidding process is competitive and beneficial to PSPCL as well as the consumers of PSPCL.
- n) It is also submitted that subsequent to the bid submission date, the Ministry of Finance, Central Government had issued the Notification increasing the GST rate from 5 to 12% on solar power based devices and solar power generators i.e. modules and invertors.
- o) In the above background, and in accordance with Section 63 read with Section 86(1)(b) and (e) of the Electricity Act 2003, it is respectfully prayed that this Hon'ble Commission may be pleased to:
- (i) To admit this Petition.
 - (ii) To adopt the tariff discovered in the tariff based competitive bid process for the power projects, as stated in Paragraph 10 above on the terms and conditions contained in the Tender Documents including the draft Power Purchase Agreement;

(iii) Approve the procurement of 250 MW of Solar Power by PSPCL at the tariff discovered through the competitive bid for the individual projects on the terms and conditions contained in the Tender Documents including the draft Power Purchase Agreements;

(iv) Pass any other Order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case.

2. Based on the submissions made in the petition, the same was admitted and listed for hearing on 05.01.2022. During the hearing, the Commission asked PSPCL to clarify about the difference in name of the L1 bidder given in the petition vis-à-vis indicated in the bid sheet. The learned counsel for PSPCL submitted that the same is due to typographical error and requested time to file an additional affidavit in this regard, which was allowed with directions to file the same at the earliest. After hearing the learned counsel of PSPCL, the Order was reserved.
3. PSPCL vide its affidavit dated 13.01.2022 has submitted that the name of the successful bidder is "Renew DinkarJyoti Private Limited" and has clarified as under:

"During the course of the bid submission on DEEP e-bidding portal, the bidder used the registration credentials of its immediate Parent Company i.e. "Renew Solar Private Limited" which has 100% equity holding in successful bidder i.e. "Renew DinkarJyoti Private Limited". It has been further submitted that while registering at MSTC portal, there was a typo error during creation of portfolio and therefore, the Company name was reflected as "Renee Solar Power Private Limited" instead of "Renew Solar Power Private Limited". The bidder has got the same rectified from MSTC."

PSPCL also attached a confirmation mail from MSTC forwarded by the bidder and a copy of the relationship certificate of the bidder with the parent company with the affidavit.

4. Analysis and Decision

The Commission has examined the submissions made by the petitioner PSPCL. The Commission refers to the relevant Sections of the Electricity Act and PSERC Regulations framed under the powers conferred therein for regulating the Power Purchase and Procurement process of the Licensee, which specifies as under:

The Electricity Act, 2003

“63. Determination of tariff by bidding process:

Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

86. Functions of State Commission:

(1) The State Commission shall discharge the following functions, namely: -

.....

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

.....

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources...

181. Powers of State Commissions to make regulations:

- (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.
- (2)

The Punjab State Electricity Regulatory Commission (Power Purchase and Procurement Process of Licensee) Regulations 2012:

“10 Criterion for Power Purchases

- (i).....
- (ii) *While effecting power purchase, the Distribution Licensee(s) shall adhere to the principle of least cost plan (least financial cost to the Distribution Licensee), the ultimate objective being to make available secure and reliable power supply at economically viable tariffs to all consumers while satisfying power supply planning and security standards.*

13. Power Purchase Arrangements or Agreements

Any new long term power purchase arrangement or agreement and amendments to existing PPA entered into by Distribution

Licensee(s), shall be subject to prior approval of the Commission under section 86 of the Act, in respect of:-

(i) Necessity;

(ii) Reasonability of cost;

.....

(viii) Conformity with policy directives of the State Government and policies issued by the Government of India viz. National Electricity Policy, Tariff Policy, long term and short term power procurement guidelines.”

Thus, for adoption of tariff and approval of power procurement, the Commission is mandated to see whether transparent process of bidding in accordance with the guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act has been followed in discovery of such tariff and also to examine the same on the criteria of its need/necessity and whether the same has reasonable cost and is economical in the prevalent circumstances. The Commission proceeds to analyse the same as hereunder:

4.1 Transparency of the process of bidding in accordance with the Guidelines

The Ministry of Power (**MoP**), Government of India notified the “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar Power Projects”. The salient features of the Guidelines vis-à-vis the compliance thereof by PSPCL is as under:

4.1.1 Bid Documentation

The Guidelines specify that:

“3.1.1. Bid Documentation:

a) Prepare the bid documents in accordance with these Guidelines and Standard Bidding Documents (SBDs) [consisting of Model Request for Selection (RfS) Document, Model Power Purchase Agreement and Model Power Sale Agreement], notified by the Central Government, except as provided in sub clause (c) below.

b) Inform the Appropriate Commission about the initiation of the bidding process.

c) Seek approval of the Appropriate Commission for deviations, if any, in the draft RfS draft PPA, draft PSA (if applicable) from these Guidelines and/ or SBDs...

.....

5. The draft PPA proposed to be entered into with the successful bidder and draft PSA (if applicable) shall be issued along with the RfS.....”

It has been submitted that PSPCL issued a tender (RfS No. 27/PSPCL/IPC/SOLAR/250MW/2021/ET-1 dated 27.04.2021 for procurement of 250 MW power from grid connected Solar projects (located anywhere in India). The tender/bid documents (RfS and draft PPA) were prepared in accordance with the bidding guidelines along with certain deviations. Accordingly, PSPCL filed a petition (26 of 2021) before the Commission, informing about the initiation of the bidding process and for seeking approval for the deviations. By Order

dated 22.07.2021, the Commission approved some of the deviations sought by PSPCL and the requisite amendments in the tender documents as per the said Order were carried out by PSPCL by issuing Corrigendum No. 4 in the tender. PSPCL has specifically placed on record that, *“No deviations were made in regard to the bidding guidelines (excluding normal consequential addition/deletion and the Order dated 22.07.2021 passed by the Commission).”*

4.1.2 BIDDING PROCESS:

The Guidelines specify that:

“6.1. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.

6.4. The Procurer shall publish the RfS notice in at least two national newspapers and its own website to accord wide publicity.

6.5. The Procurer shall provide opportunity for pre-bid conference to the prospective bidders.....

9.1. In the bidding process, a minimum period of 30 (thirty) days shall be allowed between the issuance of RfS documents and the last date of bid submission.”

The Commission notes that:

- (i) PSPCL has used the DEEP e-bidding portal of MSTC (A Govt. of India Enterprise) for the bidding.
- (ii) The Tender Enquiry for the same was published on 28.04.2021/29.04.2021. PSPCL has submitted the copy of

the documents demonstrating publication of the tender enquiry in the newspapers namely Hindustan Times, Times of India, Business Standard and Indian Express.

(iii) Perusal of documents also reveals that, the bid information sheet also provided for pre-bid conference to the prospective bidders.

(iv) As per NIT dated 27.04.2021, the last date for Bid submission was kept as 10.06.2021 (i.e. more than 30 days), which was subsequently extended to 09.07.2021, 03.08.2021, 01.09.2021 and finally upto 16.09.2021 by issuing Corrigendum No. 1, Corrigendum No. 2, Corrigendum No. 3 and Corrigendum No. 5 respectively.

4.1.3 **BID SUBMISSION AND EVALUATION**

The Guidelines specify that:

“8.2. The Procurer 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.

.....

8.6. To ensure competitiveness, the minimum number of qualified Bidders should be two...

.....

10.2. 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.”

The Commission notes that:

- (i) PSPCL has submitted a copy of its Office Order regarding the constitution of Bid Evaluation Committee, for evaluation of the bids as per the evaluation criteria set out in the RfS, as under:

S.No.	Members of the Committee
1.	CAO/PPR, PSPCL
2.	Dy.CE/ISB-2, PSPCL
3.	Dy.CE/IPC, PSPCL

- (ii) All the 5(five) participating bidders were found eligible for submission of financial bids.

- (iii) PSPCL has also submitted the copy of the conformity certificate to the effect that the Bid Evaluation Committee had conducted the bid in conformity with the provisions of the RfS document.

In view of the above, the Commission is inclined to agree with the PSPCL's submission that a transparent bidding process, in accordance with the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Electricity Act, has been followed in discovery of the said tariff.

4.2 "Necessity" and "Reasonability of Cost" of the power procurement:

PSPCL has submitted that by way of the Notification dated 02.01.2019; the Commission had prescribed a Solar RPO of 8% for the FY 2022-23 and the same is set to increase for the ensuing period. The Scheduled Commercial Operation Dates of the Projects are 18 months from the date of execution of the PPA and should be achieved in FY 2023-24, which would help PSPCL meet its RPO requirements.

The Commission in its Order dated 22.07.2021 in petition no. 26 of 2021, has already observed as under:

“..The Commission notes that as per the projections submitted by PSPCL in its ARR for FY 2021-22, it is falling short of its Solar RPO by 458 MU. The deficit is going to increase further with progressive increase in the Solar RPO targets. As such, PSPCL’s plan to initiate the process for procurement of solar power through competitive bidding process is in line with the requirement of solar power in the State.”

Further, the tariff of Rs. 2.33/kWh and Rs. 2.34/kWh per unit as discovered through the e-bidding/ e-reverse auction process carried out by PSPCL is also competitive and reasonable/economical in the prevalent circumstances, particularly so when it was clarified in the bidding document that:

“3.14...

ii) The Financial Bid shall factor in the implications of the Office Memorandum No. 283/3/2018-GRID SOLAR dated 09.03.2021 issued by Ministry of New and Renewable Energy (MNRE), on the imposition of Basic Customs Duty (BCD) on Solar PV Cells and Modules/Panels and any further notifications that may be issued by Government of India providing for BCD to be at 40% (Solar Module) and 25% (Solar Cell) with effect 01.04.2022. Such imposition shall not be considered as Change in Law within the scope of Change in Law provision in the Power Purchase Agreement.”

In view of the above, the Commission decides to adopt the tariff for 250 MW Solar power for the said Power projects selected through competitive bidding process and approves the power procurement in respect thereof i.e. 100 MW from M/s Renew DinkarJyoti Private Limited at Rs. 2.33 KWh and 150 MW from M/s Adani Renewable Energy Holding Fifteen Limited at Rs.2.34/KWh.

Further, PSPCL is directed to publicly disclose the name(s) of the successful bidder(s) and the tariff quoted by them, after the execution of the PPAs, in accordance with clause 10.3 of the Guidelines.

The petition is disposed of in terms of the above.

Sd/-

(Paramjeet Singh)
Member

Chandigarh
Dated:24.01.2022

Sd/-

(Anjuli Chandra)
Member

Sd/-

(Viswajeet Khanna)
Chairperson