

8.8. Event of Default and the Consequences thereof

This clause lays down the broad principles of contractually dealing with the default of the Generator and the Procurers.


8.8.1. Generator's Event of Default and the consequences thereof:

- a. In the event the generator is unable to commission the plant within the stipulated time period, or fails to supply power in terms of the PPA, or assigns or novates any of its rights or obligations contrary to the terms of the PPA, or repudiates the PPA, or effectuates a change in control or shareholding of its promoters in breach of the provisions of 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 defined period, as may be provided in the PPA, the generator shall be construed to be in default.
- b. Upon being in default, the Generator shall be liable to pay to the Procurer, damages, as provided in these Guidelines in Clause 17.3 for failure to commission within stipulated time and Clause 8.2 for failure to supply power in terms of the PPA. For other cases, Generator shall pay to the Procurer, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity. 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.
- c. 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 agreement provided in the PPA and in concurrence with the Procurer. However, in the event the lenders are unable to substitute the defaulting generator within the stipulated period, the Procurer may terminate the PPA and acquire the project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the project assets.

8.8.2. Procurer Event of Default and the consequences thereof:

- a. If the Procurer is in default on account of reasons including failure to pay the monthly and/or supplementary bills within the stipulated time period or repudiation of the PPA, the defaulting Procurer shall, subject to the prior consent of the Generator, novate its part of the PPA to any third party, including its Affiliates within the stipulated period.
- b. In the event the aforesaid novation is not acceptable to the Generator, or if no offer of novation is made by the defaulting Procurer within the stipulated period, then the Generator may terminate the PPA and at its discretion require the defaulting Procurer to either (i) takeover the Project assets by making a payment of the 'termination compensation' which will be equivalent to the amount of the 'debt due' and the 110% (one hundred and ten per cent) of the adjusted equity as defined below, less Insurance Cover if any or, (ii) pay to the Generator, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the Project assets being retained by the Generator.
- c. In the event of termination of PPA, any damages or charges payable to the STU/ CTU, for the connectivity of the plant, shall be borne by the Procurer.

Adjusted Equity means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the 'Reference Date'), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring between the first day of the month of Appointed Date and the Reference Date;



- i. On or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and Reference Date;
- ii. An amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the 'Base Adjusted Equity').
- iii. After COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.333% (zero point three three three *per cent*) thereof at the commencement of each month following the COD [*reduction of 1% (one percent) per quarter of an year*] and the amount so arrived at shall be revised to the extent of variation in WPI occurring between the COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the PPA period is extended, but the revision on account of WPI shall continue to be made.

Debt Due means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- i. The principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the 'Principal') but excluding any part of the principal that had fallen due for repayment prior to the Transfer Date;
- ii. All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (i) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Utility Default, and (iv) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.

Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken.

Provided further that the Debt Due, on or after COD, shall in no case exceed 80% (eighty percent) of the Total Project Cost.

9. BIDDING PROCESS

9.1. SECI will call for the bids adopting a single stage two envelop bidding process to be conducted through Electronic mode (e-bidding). SECI will conduct e-reverse auction for final selection of bidders for which E- procurement platforms with a successful track record and with adequate safety, security and confidentiality features will be used.



9.2. SECI will invite the bidders to participate in the RfS for installation of Blended Wind Power Project(s) in terms of these Guidelines.

9.3. The bidding documents including the RfS, draft PPA and draft PSA shall be prepared by SECI in consonance with these Guidelines.

9.4. The RfS notice shall be well publicized including on SECI's website.

9.5. The SECI 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 SECI 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.

9.6. In case of an ongoing bidding process by SECI, if the bids have already been invited prior to the notification of these Guidelines, and if there are any deviations between these Guidelines and the proposed RfS, PPA, PSA, the RfS, PPA and the PSA shall be amended as per these guidelines and the bidders shall be provided a period of at least 7 (seven) days therefrom, for submission of bids/ revised bids.

10. RfS DOCUMENT

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

10.1. Bid Responsiveness: The bid shall be evaluated only if it is responsive and satisfies conditions of RfS including following-

- i. bidder or any of its Affiliates is not a wilful defaulter to any lender
- ii. there is no major litigation pending or threatened against the bidder or any of its Affiliates which is of a nature that could cast a doubt on the ability or the suitability of the bidder to undertake the project
- iii. performance of bidder is satisfactory in earlier project(s) awarded by SECI, if any.

10.2. Qualification requirements to be met by the bidders:

10.2.1. **Technical Criteria:** The Government encourages competition by way of increased participation. However, in order to ensure proper implementation of the projects, SECI may choose to specify technical criteria such as past experience of the bidders, timely execution of projects, etc. 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. Cut-off date for meeting the technical criteria should normally be kept as the end date of the financial year that is previous to the financial year in which the bid is being floated.

10.2.2. Financial Criteria:

a) Net-worth:

- (i) SECI 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 20% of the Estimated Capital Cost for project for the year in which bids are invited.
- (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.



(iii) 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/ any bank reference to manage the fund requirements for the project. Accordingly, SECI may also stipulate suitable parameters such as annual turnover, internal resource generation, bank references/ line of credit, bidding capacity, etc.

10.3. Quantum of the Earnest Money Deposit (EMD): SECI will specify the quantum of the Earnest Money Deposit (EMD) in the form of a bank guarantee, to be furnished by the bidders. The EMD shall stand forfeited in the event of failure of the successful bidder to execute the PPA within the stipulated time period.

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

11. BID SUBMISSION AND EVALUATION

11.1. 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. SECI may specify technical and financial criteria, and lock in requirements for the lead member of the consortium.

11.2. SECI 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.

11.3. The bidders may be required to submit non-refundable processing fee as specified in the RfS.

11.4. The bidders shall be required to submit separate technical and price bids. Bidders may also be required to furnish necessary bid-guarantee in the form of an EMD along with the bids.

11.5. 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.

11.6. To ensure competition, 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 Intermediary Procurer still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

11.7. 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.

11.8. Bid evaluation methodology: The comparison of bids shall be on the basis of the bidding criteria i.e. fixed tariff in Rs./kWh for 25 years. Ranking of the bidders will start from the bidder quoting the 'lowest tariff (L1)'. SECI may choose to define a band from L1 in terms of percentage of L1 within which they will accept bid offers.

11.9. The selection of all successful bidders would be on bucket filling approach starting with L1, till entire capacity of 2500 MW is full. The detailed procedure for evaluation of the bid and selection of the bidder shall be provided for in the RfS.

