

5. APPROPRIATE COMMISSION

5.1. Subject to the provisions of the Electricity Act, 2003, Appropriate Commission would be as under:

- a. In case the hybrid power projects is supplying power to Distribution licensee(s) of one State, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the State Electricity Regulatory Commission of the concerned State where the distribution licensee(s) is located.
- b. In case the hybrid power projects supplying power to Distribution licensee(s) of more than one State, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the Central Electricity Regulatory Commission.
- c. For cases involving sale of hybrid power from generating companies owned or controlled by Central Government, the Appropriate Commission shall be the Central Electricity Regulatory Commission.

6. PREPARATION FOR INVITING BID AND PROJECT PREPAREDNESS

The Intermediary Procurer shall meet the following conditions:

6.1. Bid Documentation:

It shall prepare the bid documents in accordance with these Guidelines and shall approach the Ministry for any deviations (if required) from these Guidelines.

6.2. Site-related project preparatory activities including clearances:

In order to ensure timely commencement of supply of electricity, the bidder would be required to submit documents in respect of matters as mentioned below, as per the time schedule specified in the bidding documents:

- a. Land acquisition: Submission of documents / Lease Agreement to establish possession and right to use 100 % (hundred per cent) of the required land in the name of the HPG for a period not less than the complete term of PPA, on or before the Scheduled Commissioning Date (SCD). Wherever leasing of private land is involved, the lease should allow transfer of land lease rights to the lenders or Procurer, in case of default of the HPG.
- b. No Objection Certificate (NoC)/ Environmental clearance (if applicable) for the Project.
- c. Forest Clearance (if applicable) for the Project.
- d. No objection certificate (NoC) from Ministry of Defence (if applicable).
- e. A letter from Central Transmission Utility (CTU) confirming technical feasibility of connectivity of the plant to CTU substation.
- f. Any other clearances (if any), as may be legally required.

7. BID STRUCTURE

7.1. Bid Size: A bidder is allowed to bid for a minimum 50 MW project at one site. The Procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its Affiliates. The maximum capacity for single bidder or company or group of companies may be fixed by the Procurer keeping in mind factors such as economies of scale, land availability, expected competition and need for development of the market.

7.2. Bidding Parameters: For procurement of wind solar hybrid power, the tariff quoted by the bidder shall be the bidding parameter. The Procurer may select either

of the following kinds of tariff based bidding: (a) fixed tariff in Rs./kWh for 25 years or more or (b) escalating tariff in Rs./kWh with pre-defined quantum of annual escalations fixed in Rs./kWh and number of years from which such fixed escalation will be provided. 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. The procurer may disclose in the RfS, the prevailing incentives available to the HPGs.

8. 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:

8.1. PPA Period: As the PPA period influences the tariff by determining the period over which the investment is returned to the investor/ Developer, longer PPA is favoured for lower tariffs. The PPA period should thus be not less than 25 (twenty-five) years from the date of the Scheduled Commissioning Date (SCD). The Generators are free to operate their plants after the expiry of the PPA period in case the arrangements with the land and infrastructure owning agencies, the relevant transmission utilities and system operators so provide.

8.2. CAPACITY UTILIZATION FACTOR (CUF):

8.2.1. The Generator(s) will declare the annual CUF of its Project at the time of bid submission and will be allowed to revise the same once within first three years of COD. Calculation of CUF will be on yearly basis from 1st April of the year to 31st March of next year. The declared annual CUF shall in no case be less than 30 per cent. The Generator(s) shall maintain generation so as to achieve annual CUF not less than 90% of the declared value (i.e. Minimum CUF) and not more than 120% of the declared CUF value (i.e. Maximum CUF), during the PPA duration of 25 years. The lower limit will, however, be relaxable to the extent of non-availability of grid for evacuation of hybrid power, which is beyond the control of the HPG. Energy supplied between COD and the commencement of first financial year after COD will not be taken into consideration for the purpose of calculation of CUF. Subsequently, the annual CUF will be calculated every year from 1st April of the year to 31st March next year.

8.2.2. In case the project supplies energy less than the energy corresponding to the minimum CUF, the HPG will be liable to pay to the Procurer, compensation for the shortfall in availability of energy. This will, however be relaxable to the extent of grid non-availability for evacuation, which is beyond the control of the Generator. The amount of such compensation will be calculated @ 50% (fifty per cent) of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA. Such compensation as recovered from the Generator shall be passed on by the Intermediary Procurer to the End Procurer.

8.2.3. In case of availability of energy more than the maximum annual CUF specified, Generator will be free to sell it to any other entity provided first right of refusal will vest with the Procurer(s). In case the Procurer purchases the excess generation, the same may be done at 75% (seventy-five per cent) of the PPA tariff, and provision to this effect shall be clearly indicated in the RfS document.

8.3. Repowering: The Hybrid Power Generator(s) will be free to re-power their plants during the PPA duration. However, after repowering, the minimum ratio of both the resources (wind & solar) shall be kept as per clause 3.1. Further, the Procurer will be obliged to buy power only as per terms of PPA and any excess generation will be dealt as specified in clause 8.2.3 of these Guidelines.

8.4. Payment Security: The Procurer(s) shall provide adequate payment security measures, as specified below:

a. Payment Security by Intermediary Procurer to the HPG: The Intermediary Procurer shall provide payment security to the HPG through:

- i. **Revolving Letter of Credit (LC)** of an amount not less than 1 (one) months' average billing from the Project under consideration;

AND

- ii. **Payment Security Fund**, which shall be suitable to support payment of at least 3 (three) months' billing of all the Projects tied up with such fund. For the purpose of this Payment Security Fund, the Intermediary may collect Rs 5.0 Lacs / MW (Five Lacs per MW) from Hybrid Power Generator(s). Such charges shall be stipulated clearly in the RfS and shall go to the Payment Security Fund set up for such Intermediary Procurer.

b. Payment Security by Distribution licensee to Intermediary Procurer: The Distribution licensee shall provide payment security to the Intermediary Procurer through:

- i. **Revolving Letter of Credit (LC)** of an amount not less than 1 (one) months' average billing from the Project(s) under consideration;

AND

- ii. **State Government Guarantee (or Tri-Partite Agreement)**, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any.

For the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges.

The Intermediary Procurer shall ensure that upon invoking this guarantee, it shall at once, pass on the same to the Hybrid Power Generator, to the extent the payments to the Hybrid Power Generator in terms of the PPA are due.

Provided that where the End Procurer is not covered by the Tri-Partite Agreement and is not in a position to give the State Government Guarantee, the Revolving Letter of Credit may be for two months.

8.5. CHANGE IN LAW

8.5.1. In the event a change in Law results in any increase or decrease in the cost of generation, the said increase / decrease in cost shall be passed on in tariff in the following manner:

(a) For the purpose of ensuring that the pass through happens in an expeditious manner within 30 days of the Change in Law event, the following formula may be followed:-

Let Financial Impact of Change in Law = P;

Then, the modification in PPA tariff (M.T.) for compensating the financial impact is given by

$$M.T. = Y/X$$

Where, X = estimated monthly electricity generation (in kWh) = (1/12) [contracted capacity of the RE power plant as per PPA (in MW) × Annual CUF declared in PPA (in %) × 8760 hours × 10];

and

$$Y = [(P \times M_r) \{ (1 + M_r)^n \}] \div [\{ (1 + M_r)^n \} - 1]$$

where,

n = no. of months over which the financial impact has to be paid; and

M_r = monthly rate of interest = ; where R = annual rate of interest on loan component (in %) as considered by Central Electricity Regulatory Commission (CERC) in its Order for Tariff determination from Renewable Energy Sources for the year in which the project is commissioned. In absence of relevant CERC Orders for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India Marginal Cost of Funds based leading rate (MCLR of one year tenor) prevalent during the last available six months for such period.

Further, the M.T. shall be trued up annually based on actual generation of the year so as to ensure that the payment to the Generator is capped at the yearly annuity amount.

(b) The pass through according to the formula stipulated above shall be calculated and shall come into effect automatically after 30 days of the Change in Law event.

(c) Within 30 days of the pass through coming into effect the Generator/ Intermediary procurer/ Procurer shall submit the relevant documents/calculation sheets to the Appropriate Commission for truing up the rate of pass through per unit.

(d) The Appropriate Commission shall verify the calculation and do the truing up within 60 days of the pass through coming into effect after which the rates of pass through shall be adjusted if necessary according to the truing up.

8.5.2. In case change in Law / Regulations results in delay in commissioning, where cause and effect between these two can be clearly established, the Intermediary Procurer may provide suitable extension to commissioning of the project.

8.5.3. In these Guidelines, the term 'Change in Law' shall refer to the occurrence of the following events, after the last date of the bid submission, (i) the enactment of any new Law; or (ii) an amendment, modification or repeal of an existing Law; or (iii) the requirement to obtain a new consent, permit or license; or (iv) any modification to the prevailing conditions prescribed for obtaining a consent, permit or license, not owing to any default of the Generator; or (v) any change in the rates of any taxes which have a direct effect on the Project.

However, Change in Law shall not include any change in taxes on corporate income or any change in any withholding tax on income or dividends.

8.6. 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 take a decision on his claim within 15 days of the receipt of the intimation.

8.7. Offtake constraints due to Back down:

The Generator and the Procurer shall follow the forecasting and scheduling process as per the regulations in this regard by the Appropriate Commission. The Government of India, as per Clause 5.2(u) of the Indian Electricity Grid Code (IEGC), provides for status of "must-run" to solar power projects. Accordingly, no hybrid power plant, duly commissioned, should be directed to back down by a Discom/ Load Dispatch Centre (LDC). In case of Backdown, including non-dispatch of power due to non-compliance with "Order No. 23/22/2019-R&R dated 28.06.2019 of Ministry of Power regarding Opening and maintaining of adequate Letter of Credit (LC) as Payment Security Mechanism under Power Purchase Agreements by Distribution Licensees" and any clarifications or amendment thereto, the Power Generator shall be eligible for a Minimum Generation Compensation, from the Procurer, in the manner detailed below.

Duration of Backdown	Provision for Generation Compensation
Hours of Backdown during a monthly billing cycle.	<p>Minimum Generation Compensation = 100% of [(Average Generation per hour during the month) (number of backdown hours during the month) x PPA Tariff]</p> <p><i>Where, Average Generation per hour during the month (kWh) = Total generation in the month (kWh) ÷ Total hours of generation in the month</i></p>

The Generation Compensation is to be paid as part of the energy bill for the successive month after receipt of Regional Energy Accounts (REA). No Trading Margin shall be applicable on this Generation Compensation. Possible conditions for exclusion of Generation Compensation, on account of Backdown purposes, shall be clearly specified in the RfS and the PPA.

No compensation shall be payable, however, if the backdown/ curtailment is on account of considerations of grid security/ safety. Such a backdown will be recorded and reported to RLDC/ NLDC. RLDC/ NLDC will examine the issue of grid safety/ security and give a finding that the issue of grid safety existed.

The details of back-down/ curtailment, including justifications for such curtailment, to be made public by the concerned Load Dispatch Centre.

8.8. Event of Default and the Consequences thereof

While detailed provisions with regard to the event of default of the concerned parties and its resulting consequences shall be detailed in the SBDs, this clause lays down the broad principles of contractually dealing with the default of the HPG and the Procurers.

8.8.1. Generator 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 HPG, 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 HPG, 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 HPG, or if no offer of novation is made by the defaulting Procurer within the stipulated period, then the HPG 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