BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION AT GANDHINAGAR

PETITION NO.......OF 2021

IN THE MATTER OF:

MISCELLANEOUS PETITION UNDER SECTION 86 READ WITH SECTION 63 OF THE ELECTRICITY ACT 2003 FOR APPROVAL OF DEVIATIONS FROM THE MINISTRY OF POWER GUIDELINES DATED 30.01.2019 FOR PROCUREMENT OF ELECTRICITY FOR MEDIUM TERM FROM POWER STATIONS SET UP ON FINANCE, OWN & OPERATE BASIS

IN THE MATTER OF:

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan
Race Course, Vadodara 390007
Gujarat

Petitioner

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For Gujarat Urja Vikas Nigam Ltd

Place – Vadodara, Gujarat
Date - 01-06-2021
BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION, GANDHINAGAR

Filing No:

Petition No:

IN THE MATTER OF

MISCELLANEOUS PETITION UNDER SECTION 86 READ WITH SECTION 63 OF THE ELECTRICITY ACT 2003 FOR APPROVAL OF DEVIATIONS FROM THE MINISTRY OF POWER GUIDELINES DATED 30.01.2019 FOR PROCUREMENT OF ELECTRICITY FOR MEDIUM TERM FROM POWER STATIONS SET UP ON FINANCE, OWN & OPERATE BASIS

PETITIONER

Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan,
Race Course,
Vadodara - 390 007

MOST RESPECTFULLY SHOWETH:

1) The Petitioner, Gujarat Urja Vikas Nigam Limited (herein after referred to as "GUVNL") is a Company incorporated under the provisions of the Companies Act, 1956 with registered office at Sardar Patel Vidyut Bhawan, Race Course, Vadodara (Gujarat). The Petitioner is engaged in the activities of bulk purchase and bulk supply of electricity for & on behalf of its four Distribution companies viz. Uttar Gujarat Vij Company Ltd. (UGVCL), Madhya Gujarat Vij Company Ltd. (MGVCL), Dakshin Gujarat Vij Company Ltd. (DGVCL) and Paschim Gujarat Vij Company Ltd. (PGVCL) and is a licensee for the said activities under the provisions of the Electricity Act, 2003.
2) The Petitioner have been tying up power on long term, medium term as well as short term basis from time to time in order to ensure availability of adequate power as per the requirement at competitive rates.

2.1 As on 30.04.2021, GUVNL has tied up capacity of 18,453 MW from Conventional sources on long / medium term basis out of which around 2,645 MW capacity is Gas based capacity. In order to meet the peak power demand, operation of Gas based stations is necessary however presently cheaper gas is available for operating only meagre capacity. With international market prices of RLNG being very high, this capacity cannot be utilized fully as generation cost is very high.

2.2 State has implemented Kisan Suryodaya Yojana (KSY) with an objective to enable utilization of generation from upcoming solar capacity for meeting power demand of agriculture sector during day period instead of present arrangement of supplying power to Agriculture sector under various groups during day & night period.

2.3 With implementation of scheme, State has witnessed increase in power demand during day period (5 AM–9 PM) due to shifting of Agriculture load. Further, with shifting of additional load in phased manner in upcoming period, the day power demand to be catered by State DISCOMs would further increase.

2.4 Generation from Renewable projects is infirm in nature and depends upon availability of wind / solar. State is having 8192 MW wind capacity operational out of which capacity of GUVNL / DISCOMs is 4219 MW. Wind generation is mainly during night hours and availability is very less / unavailable during peak demand hours. Therefore, wind generation cannot be considered for meeting peak power requirement.
Similarly, solar generation during day hours is parabolic in nature and increases in gradual manner reaching up to full capacity by noon and reduces rapidly after around 3:00-3:30 PM. Therefore, thermal generation capacity is required to be operated for balancing the grid requirement.

3) It is humbly submitted that in order to meet the power requirement of its subsidiary DISCOMs and with an objective of optimization of power purchase cost, the Petitioner intends to procure power through competitive bidding process on medium term basis for the period 1st September 2021 to 31st July 2023.

4) It is further submitted that Ministry of Power vide letter dated 29.01.2019 has issued revised Model Bidding documents and vide resolution dated 30.01.2019 has notified Revised Guidelines for Procurement of Electricity from Medium Term from Power Stations set up on Finance, Own & Operate (FOO) basis which provides as under:

4.1 The aforesaid Guidelines provides for Model Bidding Documents comprising RFQ, RFP & PPA.

4.2 The guidelines would be applicable for purchase of power with a contract period between one and five years.

4.3 The tariff determined through DEEP e-Bidding process using e-reverse Auction based on these Guidelines comprising the Model Bidding Documents shall be adopted by the Appropriate Commission in pursuance of the provisions of section 63 of the Act.

4.4 As per para (4) of Ministry of Power Guidelines dated 30.01.2019 (Annexure A to petition), any deviation from the Model Bidding Documents shall be made only with the prior approval of the Appropriate Commission.

Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not
be construed as deviations from the Model Bidding Documents.

The copy of Ministry of Power Letter dated 29.01.2019 & Guidelines dated 30.01.2019 is placed herewith as Annex-A.

5) It is humbly submitted that the Petitioner vide letter no. 419 dated 06.04.2021 has apprised Hon'ble Commission regarding the initiation of bid invitation process for tie up of 1000 MW power on medium term basis in accordance with Ministry of Power Guidelines dated 30.01.2019. (the copy of GUVNL's letter dated 6.04.2021 is placed herewith at Annexure-B)

6) It is humbly submitted that the Petitioner has published a Notice Inviting Tender in 2 national newspapers on 06.04.2021. Further, Petitioner has also uploaded the Draft Bid Documents (RFQ, RFP & PPA) on DEEP Portal of Ministry of Power and Petitioner's website to accord wider publicity. As per the Guidelines, the Petitioner has invited the suggestions / queries from the prospective bidders. The Petitioner has received queries / comments as well as suggestions from various bidders. The Petitioner has released the Clarification to the Queries of interested bidders on 31.05.2021. (the copy of Notice Inviting Tender is placed herewith at Annexure-C and Clarification issued with regard to queries received from prospective Bidders is attached herewith at Annexure-D)

7) The Petitioner has prepared draft bid documents based on Model Bid Documents of Ministry of Power. However, the Petitioner intends to make certain deviations to Model Bidding Documents in order to ensure commercial clarity with regard to contractual provisions and in order to safeguard the interest of the Petitioner. Further, certain modifications in the Bid Documents are proposed in order to align contractual terms in accordance with prevailing Rules & Regulations and to avoid cost implication on the Petitioner.
8) The Petitioner is seeking following deviations / modifications from the model bidding documents for simplification of commercial aspects and to optimize the overall cost of power procurement.

a. **Delivery Point** – With regard to Delivery Point, clarification has been added that for Projects connected with Gujarat State Transmission Utility (STU) network i.e. GETCO – Delivery Point shall be Interconnection of Generator & Gujarat STU in intra-state Grid where supply is received by Utility and for Projects connected to network other than Gujarat State Transmission Utility i.e. GETCO – Delivery Point shall be Interconnection Point of Central Transmission Utility (CTU) with Gujarat STU network in intra-state Grid where supply is received by Utility.

It is to submit that the above modification is proposed in order to have clarity with regard to evaluation of bids from projects connected at different network and to have landed cost working of all Projects at equal interconnection point for comparison and to have parity for evaluation of bids for projects in Gujarat or outside Gujarat.

b. **Financial Capacity / Net Worth criteria for pre-qualification** – As per the Model Bidding Documents, the Bidder shall have a minimum Net Worth (the "Financial Capacity") equivalent to Rs. 1 Crore per MW of the capacity the Bidder is willing to Bid, at the close of the preceding financial year.

In view of various stressed power plants having merchant capacity willing to participate, in the tender invited by Power Finance Corporation in Jan-2020 for aggregated power of 2500 MW under Pilot scheme-II, no financial capacity was solicited from bidders to encourage participation.

Accordingly, the Petitioner proposed to take the deviation to the Model Bidding Documents by removing the financial capacity /
Net Worth criteria in line with Pilot Scheme II of Govt. of India. It is to humbly submit that for ensuring adequate risk coverage regarding supply commitment under the contract, Bidder / Supplier would be required to submit Bid Security and Performance Security to Utility (i.e. Petitioner).

c. Right to accept or reject any Bid / Application – GUVNL at present is having litigations pending with Generator(s) regarding non-fulfilment of contractual obligations which are pending at various forum. Accordingly, allowing / making eligible such applicant(s) for participation under this tender may compromise/dilute the stand taken by the Petitioner (GUVNL) before regulatory forum and judicial body and may pose consequential implications.

In order to avoid any implications under the pending litigations of the Petitioner (i.e. Utility), an additional clause has may be incorporated in the Draft Bid Documents under RFQ (as 2.6.2 (c) clarifying that the Petitioner shall have a discretion to accept / reject such bids at qualification stage.

d. Extension of Contract Period - Clause 3.2 of PPA providing for damages to be paid by the Utility (i.e. Petitioner) to Supplier in case of non extension of contract after original period may be deleted as in the Tender to be floated by the Petitioner, the contract period is pre-defined and any extension would be mutual and in accordance in terms laid out in the Bid Documents.

e. Transmission Charges, Losses & Open Access: The bid documents may be appropriately revised clarifying that the Supplier (incl. Trading Licensee, in case of a Trader) shall be responsible for timely making application for Short / Medium Term open Access, for & on behalf of the Utility. Further, for ensuring uniformity in transmission charges & losses to be quoted by bidder(s), it may be clarified that for projects connected with other than Gujarat STU network, the Petitioner shall pre-specify the
ISTS transmission charges (in Rs/unit) (based on prevailing Medium Term Open Access charges grossed up at 85%) and transmission losses for ISTS network (in %) to be quoted by the Bidder while submitting the bid. Whereas, the transmission charges & losses to be quoted by Projects connected with Gujarat STU shall be assumed as NIL as such projects would not be incurring transmission charges & losses of ISTS network for supply of power to the Petitioner.

It is to humbly submit that the above clarification & modification would enable evaluation of bids from various Projects at uniform level, provide transparency with regard to applicability of ISTS transmission charges as well as pass through of the transmission charges & losses during the contract period in addition to clarity on responsibility of open access.

f. Payment Security Mechanism: The Model Bidding Documents provides for establishment of Default Escrow Agreement and Deed of Hypothecation by the Petitioner in addition to Letter of Credit equal to 20% of annual capacity charge payable by Utility for a month.

In order to help with avoiding the implementation of multiple payment security mechanism under the arrangement and avoid associated cost thereof specifically taking into consideration that contract period is 23 months only, the Petitioner intends to seek deviation towards removal of Default Escrow Agreement and Deed of Hypothecation as payment security mechanism to Supplier / Bidder and in lieu of the same has increased the amount of Letter of Credit equivalent to one month energy bill at normative availability to ensure adequate risk coverage to Supplier.

g. Force Majeure – Various provision(s) with regard to Force Majeure conditions and sharing of cost implications thereof has
been deleted in order to avoid any unfettered cost implication on Utility (i.e. Petitioner) as the same would be more relevant in power tie up on long term basis. The details of clauses which are proposed to be deleted is as under:

i. Clause 17.2 (d) – regarding delay or failure of an overseas contractor to deliver equipment in India – the clause may be deleted as the same would not be relevant in the present tender proposed to be floated by the Petitioner wherein participation would be pre-dominantly from operational projects.

ii. Clause 17.4 (a) – any Change in law event shall be considered as Political Event under Force Majeure if consequences thereof cannot be dealt with under Article 21 (Change in Law) and its impact in financial terms exceeds the sum specified in Article 21. To avoid consequential implication on the Petitioner due to claim referring to such events, the Petitioner intends to delete the same.

iii. Clause 17.7.1 (b) – upon occurrence of a Political Event, all Force Majeure costs attributable to Political event shall be reimbursed to Supplier by the Utility – the Petitioner hereby seeks a deviation and clarifies that such costs shall be borne by Supplier only and the Utility (i.e. Petitioner) shall not be required to bear the same.

iv. Clause 17.10 – Relief for Unforeseen Events provides that upon occurrence of an unforeseen event, parties may refer the matter to Conciliation Tribunal for appropriate relief / remedy including costs, expense, revenues of Power Station etc – allowing relief to Supplier on account of unforeseen events may lead to dispute / litigations and consequential impact including cost on the Petitioner (i.e. Utility). Accordingly, since the tender is being invited on medium term basis and risk /obligation with regard to fuel arrangement being on Supplier / Bidder, the Petitioner intends to take a deviation and delete the above provision.