

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 2068 of 2022.

In the Matter of:

Petition under Section 63 read with 86(1)(b) of the Electricity Act 2003 for seeking adoption of tariff discovered under Competitive Bidding Process conducted vide RFS No. GUVNL/500 MW/Solar dated 03.01.2022 (Phase XIII) issued by GUVNL for procurement of power from 500 MW Solar PV Power Projects in the State of Gujarat.

Petitioner : Gujarat Urja Vikas Nigam Limited

Represented By : Ms. Sailaja Vachhrajani and Mr. Parthik Joshi

CORAM:

Anil Mukim, Chairman

Mehul M. Gandhi, Member

S. R. Pandey, Member

Date: 12/05/2022.

DAILY ORDER

1. The matter was heard on 26.04.2022.
2. Ms. Sailaja Vachhrajani, appearing on behalf of the Petitioner GUVNL, submitted that the present Petition has been filed under Section 63 read with 86(1)(b) of the Electricity Act 2003 seeking adoption of tariff discovered under Competitive Bidding Process conducted vide RFS No. GUVNL/500 MW/Solar dated 03.01.2022 (Phase XIII) issued by GUVNL for procurement of power from 500 MW Solar PV Power Projects in the State of Gujarat.

- 2.1. It is submitted that the bidding documents i.e. RfS and draft PPA of the aforesaid tender were earlier published on the Petitioner's website for information as well as on bidding portal for downloading the official copy of the Tender Documents for participation in bidding procedure including e-reverse auction. It is submitted that a Pre-bid meeting was held on 18.01.2022 at Petitioner's place through video conferencing, wherein; bid parameters, provisions of bid documents & timelines were discussed. It is submitted that during the said meeting, certain bidders suggested for incorporating 'Change in Law' clause to include Goods & Service tax including surcharge thereon which has direct effect on cost of Solar Modules in the bidding documents so as to enable the prospective bidders to accordingly submit their bid quotation with consideration of such clause because otherwise it is difficult for the bidders to anticipate future change in rates of taxes, duties, levies etc. However, by allowing change in rate of GST / Surcharge as pass through under 'Change in Law' provisions, presumptive loading by the bidders can be avoided. Accordingly, the Petitioner had modified the 'Change in Law' provision in draft PPA by including above.
- 2.2. It is argued that the 'Change in Law' provisions as per Guidelines issued by the Ministry of Power are very wide to include changes in taxation, duties, cess etc. as well as other legal/statutory changes as pass through in tariff with restitution principle. However, the relevant provision in earlier bidding documents of the Petitioner were restrictive in nature. Hence, with the aforesaid modified clause of 'Change in Law' by the Petitioner which is incorporated in the bidding documents is towards aligning with provisions of the guidelines and according to the Petitioner's view is not a deviation requiring prior approval of the Commission. Further, during the pre-bid meeting, the Petitioner had addressed the queries raised by the prospective bidders and subsequently made some of the acceptable changes in the tender documents pursuant to discussions with bidders, uniformly applicable to the participating bidders. The Minutes of Pre-bid meeting were also issued and hosted on websites of GUVNL and on e-bidding portal.
- 2.3. It is submitted that pending the issuance of Standard Bidding Documents by Central Government, the bid documents have been prepared by GUVNL from time to time

which provide detailed clauses/provisions in bidding documents that are consistent with the Guidelines as amended from time to time. Moreover, when the first tender document was issued by GUVNL, there were no Guidelines issued by the Central Government but after issuance of Guidelines, the Petitioner had earlier approached this Commission twice for approval of certain deviations from the bidding guidelines pending the issuance of Standard Bidding Documents. Accordingly, the Commission vide Order dated 15.03.2018 in Petition No. 1706 of 2018 and Order dated 13.01.2020 in Petition No. 1848 of 2019 has approved deviations prayed for in that matter. The deviation in 'Change in Law' clause approved by the Commission in 2018 is very restrictive in nature to only include any changes in law that results in additional tax, duty, cess etc. on generation of electricity (leviable on the final output in the form of energy) or sale of electricity to be allowed as pass through under Change in Law provisions.

2.4. It is submitted that the Petitioner had previously approached this Commission as above for seeking approval of deviations from the MoP Guidelines in order to avoid any potential disputes / litigations that may frequently take place for tariff revision on account of broad scope of the Change in Law provisions in the guidelines. It is submitted that the Commission vide its Order dated 15.03.2018 in Petition No. 1706 of 2018 had approved the deviation proposed by the Petitioner to limit the scope of Change in Law only with respect to changes in taxes, rates & duties applicable on generation or sale of electricity leviable on final output in form of energy.

2.5. It is also submitted that when the Petitioner had prepared the bid documents with above deviation, the tariffs discovered were in the range of Rs. 2.98 – 3.06 / unit in the E-RA conducted in March-2018 (Phase II) and the Petitioner had scraped the said tender due to discovery of higher tariffs. It is submitted that the developers conveyed to Petitioner that the discovery of high tariff was due to potential imposition of safeguard duty / anti-dumping duty on solar modules being contemplated at that time, which was not eligible as pass through in tariff under the above deviation for the Change in Law clause taken by GUVNL. In view of the said discussions with the developers, thereafter, the Petitioner included Introduction of safeguard duty and/or anti-dumping duty which has direct effect on the project cost under the ambit of Change in Law provisions of PPA in the re-tendering process, wherein the tariff of