

Comments and Suggestions on the 'Draft Guidelines for short-term Sale of Power by Power Generating Company and Distribution Licensees through Tariff based bidding process'

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The Ministry of Power published the draft guidelines for short-term sale of power through tariff-based bidding process on the 6th of March 2019 for public consultation.

The proposal of the Ministry to revise the guidelines three years after the launch of DEEP, the e-bidding platform to aid short-term and medium-term power procurement for DISCOMs, is a welcome step towards ensuring an integrated and comprehensive set of guidelines which address many of the issues faced by generators, traders, DISCOMs and Electricity Regulatory Commissions in the recent past. The draft guideline also proposes to extend its scope to include open access consumers. Not only will such a step increase the gamut of options before participating generators, traders and open access consumers but it also will go a long way to broaden and deepen markets in India. Including open access consumers would also mean significant changes in the guidelines and operation of the short-term bidding process to ensure smooth operation and adequate accountability mechanisms. Prayas (Energy Group)'s comments and suggestions in this regard focus on some ideas that can be introduced in the guidelines to ensure transparent and fair procurement practices and also highlight areas where more clarity is needed to aid smooth implementation.

These are detailed below:

1 Need for statement of reasons

Some of the changes proposed are fundamental changes including:

- The specific objectives of the guidelines
- The roles and responsibilities of procurers and sellers
- The bidding process
- The role of electricity regulatory commissions

Many of these changes may have been required to ensure participation of open access consumers in the e-bidding system and some of these changes may have been necessary to address operational issues with implementation of the revised guidelines issued on 30th March 2016. Unfortunately, there is no such background material that elaborates on the aims and

objectives of the draft guidelines or explains the analysis and reasoning behind introducing the new processes.

It is suggested that the Ministry of Power release a statement of reasons or an explanatory document highlighting the background analysis, the major changes proposed and the intended policy direction along with the draft guidelines. This will ensure more clarity, promote engagement, and aid consensus building among stakeholders in the process. The document can be released even after the first round of public consultations on this draft has been completed.

2 Need for clarity on definitions

There are many terms which do not have a clear definition in the guidelines. In order to ensure clarity and to avoid unnecessary disputes, terms such as 'bid validity', 'contract period', 'bidder', 'reserve price', 'bid fees', 'technical bid', 'financial bid', 'authorised representative', 'Letter of Award' and 'Letter of Credit' should be defined in the guidelines.

3 Draft Model Power Purchase or Power Supply Agreement for public consultation

The short-term power purchase or power supply agreement will have to incorporate the changes proposed in the draft guidelines. To ensure standard bidding and procurement practices for a well-functioning market, the Ministry of Power should also release a revised draft model short-term power supply or power purchase agreement for public consultation. These should be finalised based on comments from generators, open access consumers, traders, DISCOMs, ERCs and sector experts. The finalised model bidding guidelines should also be available on the DEEP portal website.

4 Invitation for bids by both buyers and sellers

The 2016 bidding guidelines were based on a reverse auction model where the procurer stated its power requirements by publishing an RfP inviting sellers to bid the quantum and price to meet this requirement. The draft bidding guidelines suggest a major change in the bidding process where it is the sellers who invite bids from buyers to procure the power they have available for sale, similar to a simple auction.

In the current e-auction process, as DISCOMs are unaware of the power supply options at various time blocks with various generators, the bid invitations are based on the block based requirements and are not informed by the existing supply with the generators. The option for sellers to advertise availability and invite bids from procurers also informs the procurers of the options available in the market. Such a major change could also be to ensure effective participation of open access consumers, whose demand is lower. However, a mechanism where only the seller advertises bids could also result in sub-optimal outcomes. The sellers' RfPs may

be for different periods than when procurers (DISCOMs and open access consumers) require power.

To address the information asymmetry in the current and proposed mechanism, it is suggested that both procurers and sellers should be able to invite bids and to create events advertising short-term requirement and availability for sale. Buyers and sellers should be allowed to participate in each other's events and sign contracts accordingly. Such a system of continuous trading is already implemented by the Power Exchanges for intra-day, day-ahead contingency and daily contracts. It is suggested that the bidding process (invitation of bids, issue of RfP, bid submission and evaluation) be modified to allow for both buyers and sellers to invite bids for sale and purchase respectively. The bidding process itself may be different depending on whether the bid was invited by a buyer or a seller (especially with respect to the issue of a reserve price, who pays the EMD and the CPG etc.) but in both, the outcome would be an agreement to transact power at a mutually agreed price. Open access consumers will be able to participate in such a dynamic market by themselves or with the assistance of the authorised representative as specified in the guidelines. In order to operationalise this, the e-bidding platform could also provide functionalities (similar to e-commerce websites) for buyers and sellers to search through bid invitations to meet their requirement in an efficient manner.

5 Checks and Balances to deter non-serious players

While the Earnest Money Deposit and the Contract Performance Guarantee are high enough to deter non-serious bidders, especially open access consumers, additional measures need to be considered to deter non-serious generators and prevent gaming.

In the present and draft guidelines there are no mechanisms to address market cartelisation and concentration, especially by generators. To address this, the bidding guidelines can also institute a market monitoring committee that analyses data and trends in the trades, discusses possibilities of gaming and addresses them and also discusses and finalises ways and means to improve the e-bidding system and thereby provide for faster course correction. The committee should be assisted by PFCCL or the authorised representative for data compilation and analysis and can consist of sector experts, representatives from generators, open access consumers, DISCOMs, traders, power exchanges, CTU, CEA and ERCs.

Further, the inter-linkages with other sectoral policies and dispensations could also create possibilities of gaming due to lack of clarity. For example, under the SHAKTI policy, generators can also obtain coal allocation for short-term sale of power. In the draft guidelines, it is the generators that invite bids from procurers. In such a case it is unclear whether the coal allocation is provided to the generators when they issue their RfP for sale of power, when they are given the EMD or when the LoA is awarded or after the Short-term Power Supply

Agreement (SPSA) is signed. Addressing such issues will ensure that generators participating in the short-term procurement process are there to sell power rather than ensure allocation of coal.

To address this, Para 6.5 of the short-term bidding guidelines can explicitly state that any special dispensations, rights or priority allocation based on the short-term contract will be provided only after the date of the PPA or SPSA and will be applicable only for the duration of the contract.

6 Information on bids and bid events

As per Para 10 of the draft guidelines, information on all the bids at an event shall be made public by the seller after the contract is effective. However, in order to ensure informed decision making, encourage dynamic bidding strategies and facilitate transparent operations, the following information should be available on the website of the e-bidding platform:

- Details from RfPs with quantum requisitioned or available, details of the procurer or seller as the case may be, time period for supply, and reserve price if applicable. These should be easily accessible and visible to all visitors of the website and would be effective along with newspaper advertisements (as suggested in the guidelines) to ensure interest.
- Details of successful bids with details of the buyer, seller and the price and quantum quoted by all bidders.
- Tracking of major milestones from the activation of the event till the PPA is signed for each event.
- Visitors should also have the capability of searching, filtering and comparing various events based on their requirements. To enable analysis by generators, procurers and potential participants in the short-term market, all this information should be provided in downloadable .csv or excel formats as well.

As the volume of trades grow in such markets, it is essential to ensure the e-based bidding platform has the functionalities to provide such information to facilitate informed participation. These requirements for the e-based bidding platform can also be stated in the bidding guidelines. Ensuring such transparency is critical as in the absence of such transparency, regulatory commissions and consumers will have to rely on secondary information / analysis, which are often dated and hence will not be able to effectively utilise DEEP based trading to ensure optimum power purchase cost.

7 Ensuring accountability for short-term procurement by DISCOMs

7.1 Regulatory approval

In Para 4.1 and 4.2 of the existing guidelines state that:

- Short-term power procurement by DISCOMs should be as per the plan approved by the Appropriate Commission.
- If short-term procurement is in excess of what is planned, DISCOMs need to obtain approval from the Commission before participating in the bidding process.
- Furthermore, initiation of the procurement process needs to be informed to the Commission.

With growing uncertainty in demand, issues with fuel availability and with seasonal shortages, DISCOMs participation in short-term bidding processes will be significant. As revenue recovery from consumers takes place on a cost-plus basis, regulatory accountability and scrutiny for the power procured is of paramount importance. Para 4.1 and 4.2 should not be applicable on open access consumers as they bear the cost and planning risk of procurement. But it should be retained for DISCOMs to ensure regulatory accountability in cost-plus businesses.

7.2 Regulatory mandate to ensure all short-term bilateral procurement takes place through e-bidding platform or power exchanges

To ensure procurement takes place on a transparent, competitive basis, SERCs should mandate that all short-term power procurement by DISCOMs takes place through e-based bidding as per the short-term bidding guidelines or via power exchanges. This will ensure efficiency in price discovery for short-term procurement. This should be part of the bidding guidelines to ensure ERCs modify regulations or issue directives to that effect.

However, open access consumers who have a strong incentive to optimise their costs should be allowed to procure power through bilateral traders and other sources according to their needs. Therefore, the mandate to ensure procurement via e-based bidding or through power exchanges need not extend to them.

8 Combined procurement and sale

Para 2.4 of the existing guidelines permits procurement by more than one procurer through a combined bid process and lays down the procedure for the same. In a similar fashion, Para 2.4 of the proposed guidelines permits combined sale by more than one seller. As combined procurement and sale will increase the options available in the market, both should be enabled in the bidding guidelines.

Combined bid process for sale of power as proposed in the draft guidelines will also enable sale of seasonal surplus in the market.

- The authorised representative or an appointed nodal agency (say, a trading licensee) can be authorised by DISCOMs to sell such power.
- The nodal agency could combine available unutilised capacity due to seasonal variation in demand and supply, from multiple DISCOMs and generators and invite bids for procurement.
- The revenue from such sale could be passed on to the buyers and the nodal agency can retain a nominal trading margin.
- There should be a master power purchase agreement between the DISCOMs and generators selling power and the nodal agency to enable such transactions.

This arrangement will lead to better utilisation of ‘backed down’ contracted capacity across the country and should be permitted in the short-term bidding guidelines.

9 Lack of clarity on arbitration

Para 8 of the draft guidelines states that any dispute regarding determination of tariff or tariff-related matters which could result in change in tariff shall be adjudicated by the appropriate commission. All other disputes are to be resolved by arbitration. There is a need for clarity on whether tariff related disputes of open access consumers will also be adjudicated by the regulatory commission. In such a case, especially for intra-state trades, it is not clear whether the appropriate commission would be the commission where the generator is located or where the consumer is located. Given the increase in type of participants, the appropriate commission in each case should also be clarified.

10 Conclusion

Revision of the short-term bidding guidelines is a much needed exercise and we welcome the Ministry of Power’s proposal to permit open access consumers to participate in DEEP. The Ministry has also proposed changing the bid design from a reverse auction to a simple auction. In order to ensure specific requirements are catered to and to ensure less information asymmetry, we propose an e-bidding system where both buyers and sellers can initiate RfPs and both parties can participate in each other’s events. Given the potential benefits, we strongly urge the Ministry to consider this suggestion. In addition, we also suggest that:

- The Ministry of Power finalises and publishes a model short-term Power Purchase and/or Power Supply Agreement after due public consultation.
- Information on bids and events be published on the e-bidding portal continuously in an easily accessible format to enable comparison and analysis by all.
- There is clarity in the guidelines to prevent unnecessary legal disputes and implementation issues

- The clauses on regulatory approval for short-term power procurement by DISCOMs in the existing guidelines be retained.
- Furthermore, the guidelines should also specify that regulators should mandate all DISCOMs to procure short-term power only through the e-bidding platform or power exchanges to encourage transparent and competitive bidding practices.
- The guidelines should also specify mechanisms for market monitoring.

Revision of the bidding guidelines in such a manner can go a long way in ensuring a transparent platform for bidding where there are enough mechanisms to address gaming possibilities and where the risk allocation in the face of fuel and demand uncertainty is equitable.

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