

Draft Standard Bidding Documents for Privatization of Distribution Licensees

Comments and Suggestions by Prayas (Energy Group)

7th October 2020

The Ministry of Power published draft standard bidding documents (SBDs) for stakeholder consultation on the 22nd of September 2020. The documents consist of a guidance note outlining key proposals, a draft request for proposal (RfP), draft shareholders/ share acquisition agreement, draft transfer scheme and a draft bulk supply agreement.

The draft SBDs should aim to provide flexibility to the state government to determine the type and mode of ownership change they want to adopt if privatisation is considered suitable by state leadership for their ground reality and specific objectives. At the same time, the SBDs should provide a broad framework to aid protection of consumer interest, encourage efficiency in transaction, minimise governance lapses and increase accountability for future performance. In this context, Prayas (Energy Group)'s comments on the proposal are detailed in this submission. The contents of the submission are outlined below:

1	Approach and Perspective	1
1.1	Need to establish if privatisation is needed to achieve policy objectives	1
1.2	Retail competition and shift from cost-plus regulation necessary preconditions for privatisation	3
2	Pre-transaction activities by state government.....	4
2.1	Need for public participation and consultation in crucial processes.....	4
2.2	Other aspects of pre-transaction activities.....	5
3	Regarding bid parameters.....	6
3.1	AT&C loss reduction.....	6
3.2	Equity transfer.....	10
3.3	Flexibility to introduce other bid parameters.....	10
4	Regarding specifications in the Request for Proposal	11
4.1	Clarity on role of bid evaluation committee and technical evaluation committee	11
4.2	Constitution of the Bid Evaluation Committee	11
4.3	Publishing standard bid evaluation spread sheets	11
4.4	Need for transparency in crucial information shared by the bidders	12

1 Approach and Perspective

1.1 Need to establish if privatisation is needed to achieve policy objectives

The draft RfP and shareholders agreement state that the objective of the privatisation exercise is to:

- improve the quality, security, reliability of power supply and consumer service;
- achieve global benchmarks in AT&C;
- achieve affordable and reasonable pricing of electricity.

The process outlined in the SBDs would result in the transfer of ownership of a cost-plus, regulated distribution business to the highest bidder which could be a private or public sector entity. As the

current mode of privatisation has limited accountability for cost efficiency¹ and inadequate avenues for retail competition, it would merely result in the creation of a ‘private’ monopoly in place of a public monopoly.

While existing private utilities have been able to reduce AT&C losses and improve supply quality and service in urban centres, the experience with privatising rural distribution circles requires closer study. Regulatory records in Odisha show that there was limited improvement in loss reduction and supply quality. In addition to privatisation, different models of franchisees aimed at AT&C loss reduction have also been attempted but there has been no comprehensive or recent study to assess progress and challenges with this approach.

In the past, many private utilities have exhibited reluctance to sign sufficient long term contracts to meet base load. Thus, between 2005 and 2014, despite relatively low cost power being available via competitive bidding, most utilities had significant dependence on high cost short term power procurement. When many of these utilities finally signed long term contracts, it was with a thermal power plant owned by a sister concern/ subsidiary using the cost-plus route. Table 1 shows that this is the case with private utilities operating in Gujarat, Maharashtra, Uttar Pradesh and West Bengal. In recent years, even competitively bid renewable energy capacity has mostly been contracted from sister concerns. This trend has significantly contributed to the increase in cost of supply of the utilities. In fact, Table 1 also shows that the cost of supply of private utilities is much higher than neighbouring state-owned utilities. Thus, it is doubtful if privatisation alone would result in achieving affordable and reasonable pricing of electricity.

Table 1: Rising costs and power procurement trends of private utilities

State	DISCOM	% of total long term capacity power contracted from sister concerns	Average cost of supply (ACoS)	ACoS of neighbouring State-owned utility/ies
Delhi	TPDDL	0.1%	8.12	7.08
	BYPL	19%	7.22	7.03
	BRPL	2%	7.41	7.08
West Bengal	CESC	100%	7.52	7.22
Gujarat	TPL-A ,TPL-S	100%	7.36	6.02
Maharashtra	AEML	100%	8.42	7.51
	TPC-D	100%	7.93	7.51
Uttar Pradesh	NPCL	100%	7.51	7.03

Note: TPDDL and BRPL border Haryana DISCOMs, whereas BYPL and NPCL border Uttar Pradesh’s PVVNL. For West Bengal and Maharashtra, the state DISCOMs cost of supply is stated. For Gujarat is it the weighted average cost of supply of all state DISCOMs. The data for contracted capacity and cost of supply is as per latest regulatory filings in the state. Data for Tata Power Central Odisha Distribution Ltd (TPCODL) not included as take-over of CESU was completed a few months ago.

¹ For more details, please see analysis on the operation of private utilities in Mumbai available here: <https://www.prayaspune.org/peg/publications/item/333>. Issues with accountability for capital expenditure was noted in Delhi post privatisation. Relevant analysis available here: <https://www.prayaspune.org/peg/publications/item/144>.

While contemplating the transfer of ownership, it must be noted that there could also be challenges and trends which adversely impact the objectives for undertaking the privatisation exercise in the first place. The experience from past efforts should be studied and documented to help the discourse around the issue. This will help states and union territories determine if the approach is suitable for their license area.

It is strongly urged that before finalising the SBDs, the Ministry of Power should conduct a detailed study examining past privatisation efforts especially focussing on the private participant's performance in ensuring efficient operations and providing reliable, affordable power supply to consumers. The study should also examine franchisees and other modes of encouraging public-private partnerships in the distribution segment to improve service as well as technical and financial efficiency. Such a study would also help avoid post-bidding challenges and disputes as seen in the past experience in Delhi and Odisha as well as with the recent transaction in Odisha.

1.2 Retail competition and shift from cost-plus regulation necessary preconditions for privatisation

In order to protect consumer interests, it is essential that utilities are held accountable for their performance and are incentivised to become more efficient. Further, every effort should be made to further competition in the licensee area to provide consumers access to reasonable tariff and to ensure utilities do not operate as monopolies. In this context, the following preconditions are necessary for any privatisation effort:

Adoption of Multi-Year Tariff (MYT) framework for performance accountability

Along with the notification of MYT regulations, it is important that performance trajectories and benchmarks are specified for a 5 year period with an appropriate gain and loss sharing mechanism. The multi-year tariff process should also determine tariffs for a five year period along with approval of power procurement and capital investment plans. In addition, increase in O&M expenses should be linked to inflation rather than actual cost escalation. These measures can contribute to adequate risk sharing and higher accountability, but is currently not being implemented in all states. In addition, measures can be undertaken to provide incentives on return on equity only if certain performance norms are met. This could be similar to the approach CERC has instituted for generation and transmission utilities in its MYT regulations.

Retail Competition is encouraged in area of supply

Consumers in the licensee's area should be able to exercise their choice to procure power via open access or captive or through net metering. Allowing consumers' freedom to obtain supply from alternate supply options would help ensure competitive pressures on utilities to reduce their cost of supply. As this is an important lever to ensure efficiency, the following measures are essential:

- monitoring processing of open access/ captive applications with imposition of penalties for delays above stipulated periods in granting open access/ captive permissions;
- fixing wheeling and cross-subsidy charges for a five year period to provide certainty in charges to consumers;
- designating consumers above certain load, say 100 kW as ‘contestable consumers’ or ‘deemed OA consumers’ and requiring such consumers to secure their supply from market or alternative sources in a phased but time bound manner, in say 3 to 5 yrs.
- promoting net metering for consumers investing in solar options on payment of appropriate charges for banking and grid services. These charges should account for the value of power banked and unbanked.

Accountability for quality of supply and service and affordability concerns

Improvement in supply and service quality cannot be guaranteed with the take-over of the distribution business by another entity especially in rural circles. It is vital that robust measures to track quality of supply and service and penalties for poor quality of supply are in place. This must include measures such as remote tracking and automatic compensation for key supply quality parameters as envisaged in the Draft Electricity (Rights of Consumers) Rules, 2020. This should be supplemented with dedicated regulatory review of quality of supply including a public process. In addition, to ensure affordability of supply to small consumers, tariffs of LT consumers with consumption less than 200 units can be linked to inflation to protect such consumers from tariff shocks.

2 Pre-transaction activities by state government

2.1 Need for public participation and consultation in crucial processes

As per the guidance note, there is significant flexibility provided to the state government to determine duration, nature and extent of support provided, decide approaches to transfer existing power purchase agreements, define area for privatisation, finalise reserve equity/ opening balance etc. This also means that to understand the nature of privatisation in the state and to safeguard consumer interest, stakeholders and consumers will have to actively engage in the state level processes towards privatisation. This participation and engagement is crucial to ensure consensus building in the state. To enable this, the SBDs must specify that:

State Government to publish a paper for public consultation with transaction strategy

The paper should discuss area configuration and network boundaries for area to be privatised, determination of opening balance along with decisions on treatment of assets, and the handling of existing PPAs. In addition, it should provide details of assumptions and results of financial modelling to showcase viability of the business for 5-7 years (including complete financial model in spread

sheet form). The paper should also contain the employee transfer scheme/ strategy and also provide the report of the committee for staff evaluation. Crucial performance parameters such as the baseline AT&C loss and expected performance trajectory as well as supply and service quality performance as per compliance to SoP regulations should be detailed. Most importantly, details of the bid parameters, equity share that the state government/ utility chooses to retain, regulatory, legal and contractual issues relevant to the transfer of ownership as well as transition support being provided by the state government, along with ways and means to finance it should be available for public review and consultation. The paper should also include a copy of the draft transfer scheme and other draft bidding documents being finalised by the state government/ utility.

Wide public consultation while finalising bidding documents

The public consultation process should take place such that stakeholders have 30 to 45 days to send in comments and suggestions. This should be specified in the SBDs so states can stipulate adequate time for public consultation. Similar to regulatory processes, the public consultation should also involve public hearings. Further, the final documents should be accompanied with detailed documentation of all the comments and suggestions received from the stakeholders with a response to each type of comment.

In order to facilitate timely decision making, the draft SBDs encourage states to appoint an empowered committee comprising of the equivalent of the state chief secretary, the finance secretary and the power secretary along with other members. The empowered committee should be tasked with conducting such a public process and publishing final documents.

2.2 Other aspects of pre-transaction activities

Role of regulator to be clarified in the pre-transaction/ pre-feasibility documents

To ensure smooth conduct of processes, the role of the regulator should be clearly specified in the pre-transaction/pre-feasibility documents. The potential role of the regulatory commission should be detailed in Section 3.1 of the guidance note. This could include directions and orders which the Commission needs to provide to approve the bulk supply agreement, approve transfer of licence, track AT&C loss commitments, approve gain and loss sharing mechanism and clarify on treatment of transferred liabilities, regulated equity etc.

Policy advice to be sought from regulatory commission before finalising SBDs

It is vital that the regulatory commission is consulted before finalising the bidding documents. This will also help address any regulatory challenges that might arise in the process and avoid post

bidding issues as in the case of TPCODL². In this context, **the SBDs should specify that the state government must seek policy advice from the regulatory commission before finalising SBDs.**

Conflict of interest checks for transaction advisors

States or Union Territories are to appoint transaction advisors for end to end support during the privatisation process. **It must be ensured that the advisory selected is not a subsidiary or sister concern of any of the potential bidders as the conflict of interest could potentially lead to governance challenges.** Given the significantly high eligibility criteria, the potential pool of bidders would be small and such an ex-ante check may not be an onerous task.

Clarity on UDAY loans

The SBDs must specify that the state government should stipulate in its pre-feasibility report about how UDAY loans and grants would be treated along with other state government loans in the transfer scheme. **It might be more optimal if states have a framework from MoP to decide on treatment of loans under all the national schemes.**

3 Regarding bid parameters

The draft SBD stipulates two major bid parameters for the selection of bidders. These are reduction in AT&C losses and provision of premium equity. State Governments can choose different models of privatisation based on the suggested bid parameters. In areas with low losses (<15%), the bidder has to meet the fixed AT&C loss trajectory specified in the bidding documents while bidding additional/premium equity over the reserve equity specified in the RfP. In areas with higher losses (>15%), the bidder has to pay the fixed equity amount specified in the RfP and bid by stating an AT&C loss reduction commitment.

The SBDs also state that for areas which are financially viable, the state government should conduct a 100% transfer of equity and transfer all the PPAs to the successor entity. However, in case the area is not financially viable, the state government should retain a 26% equity stake and postpone transfer of PPAs till such a time as it deems appropriate. In the interim, the state/utility can sign a bulk supply agreement with the successor entity for a limited period to supply power at concessional rates. Comments on the proposed arrangement are detailed below:

3.1 AT&C loss reduction

Need to detail status of metering before ascertaining baseline AT&C loss

The guidance note states that the baseline AT&C loss should be decided based on an energy audit study which also comprises of the status of boundary metering. In addition, it is important that the energy audit study also identifies all interface meters and details the current status of such meters.

² <https://www.newindianexpress.com/states/odisha/2020/aug/07/within-weeks-of-cesu-takeover-in-odisha-tata-power-seeks-review-of-vesting-order-2180281.html>

In addition it should also include a comprehensive analysis of the status of consumer meters (number of consumers with no meters, non-functional meters, inaccessible meters etc.). The assessment of interface and consumer metering status along with crucial assumptions made regarding unmetered consumption will play a major role in ascertaining baseline AT&C losses and should be clearly detailed in the energy audit study. This can be specified in the SBDs.

Baseline loss by independent third party

The guidance note states that the estimation of baseline AT&C losses should be prepared by the third party/ transaction advisor. It is suggested that the third party audit should be by an independent agency other than the transaction advisor to ensure autonomy and validity of the findings. Given previous experiences with determination of baseline AT&C losses as evinced in Agra franchisee appointment³, it would be necessary to ensure this separation.

In addition, to aid the process, the Ministry of Power could also publish a list of empanelled auditors to estimate AT&C losses. Such agencies can perform third party audits for the selection of private players but can also assess losses during the selection of franchisees and conduct studies for the evaluation of progress under IPDS, UDAY and other central/state government schemes where AT&C loss evaluation is critical.

As suggested in the draft SBDs, providing access to disaggregated data and access to the data room to potential bidders during the due diligence stage is a welcome step to ensure availability of crucial information.

Need to specify methodology for estimation of AT&C loss

As it is a bid parameter, it is crucial that the Standard Bidding Documents stipulate a methodology for calculating AT&C losses. This is essential as states do not use a uniform methodology for estimation of losses and without a framework, even small variations in methodology could show significant reduction in losses even with no interventions or change in ground realities. The CEA methodology, which is the existing standard, does not specify how to treat:

- Energy input and sales to open access and captive consumers
- Energy input for distributed energy sources
- Energy input and sale to franchisees in the distribution area⁴

³ As per the CAG report, there were discrepancies with the sales and distribution loss estimates considered for the base year as compared to the DISCOM accounts and submissions. For more details, please see: https://cag.gov.in/sites/default/files/audit_report_files/Uttar_Pradesh_PSU_1_2013.pdf.

⁴ Many SERCs and DISCOMs treat distribution franchisees like a bulk consumer drawing power at the EHV level or 33 kV level. For example, the Bihar ERC considered input to franchisees at 33 kV level as sales to franchisee areas. Thus, the distribution losses at lower voltage levels are not accounted for even though many consumers are connected at lower voltage levels. The Jaipur DISCOM treats input to distribution franchisees (which includes losses) as sales while estimating total DISCOM sales. Percentage losses are applied on this sales estimate to determine the energy requirement.

Therefore, state utilities and successor entities can use their own methodology to show dramatic reduction in losses. Estimations show that the difference in treatment of energy handled especially due to franchisees and sales migration can show a 1 p.p to 4 p.p variation in AT&C losses⁵. The guidance note states that the baseline AT&C loss study should review energy input, including from distributed generation sources which is currently not accounted for in the CEA methodology. **The SBDs should specify the detailed methodology for treatment of energy handled by the system and the resultant losses.**

As per the CEA methodology, collection efficiency is defined as the ratio between the total revenue collected by DISCOMs (including collection of pending payments) and the total revenue payable due to sale in that year. The collection efficiency is capped at 100% such that the AT&C loss computed would not yield a negative number. When capped at 100%, the AT&C loss estimated would only reflect the distribution losses. The commercial losses for the current year would be masked by the recovery of past payments, if any. Thus, the objective of capturing energy and commercial losses in one metric would not be served. To understand collection practices, two metrics may be required. One which captures revenue collected for the current year (excluding arrears) and the other which captures pending payments as well. **The metric to capture AT&C loss or its equivalent, should be based on the collection efficiency for the current year alone.** The recovery of pending payments is an important performance parameter to track given the financial predicament of DISCOMs but it can only be comprehensively tracked if it is not capped and is evaluated and compared separately. As per the RfP, successor entities are provided with incentives to collect existing arrears. Therefore, pending payments can be resolved over time without it being accounted for in the AT&C loss formula.

Reference loss reduction trajectory

Para 2.2.12 of the draft RfP specifies a fixed AT&C loss reduction trajectory in case bids are based on premium equity consideration. However, the RfP does not specify a fixed, reference AT&C loss trajectory for participants bidding on the basis of AT&C loss reduction commitment. Without a reference loss reduction trajectory and in the absence of competition, a bidder who commits to loss reduction which is higher than the DISCOMs current loss reduction trajectory could also potentially be selected. This defeats the purpose of competitive bidding to identify efficient players. **Therefore, the RfP should be modified to also specify a reference AT&C loss reduction trajectory such that bidders have to commit above this trajectory to qualify.**

Bid selection to be based on cost savings rather than total cumulative loss reduction

Para 6.3.5 of the draft SBD discusses the principle for selection of bidders based on their quotes for AT&C loss reduction. It also provides an example to highlight that the selection will be based on the

⁵ For more details, please see: <https://www.prayasapune.org/peg/publications/item/407>.

sum of the projected cumulative loss reduction. The example is reproduced in Table 2. In this example, bidder 1 is selected as the sum of the cumulative loss reduction is the highest.

Table 2: Selection of bidders example in draft SBD

Bidders	Parameter	Base	Y1	Y2	Y3	Y4	Y5	Cumulative reduction
Bidder 1	AT&C Loss (%)	25%	22%	20%	19%	18.5%	18%	
	Annual reduction (p.p)		3	2	1	0.5	1	
	Cum. reduction (p.p)		3	5	6	6.5	7	27.5
Bidder 3	AT&C loss (%)	25%	23%	21%	19%	18%	17%	
	Annual reduction (p.p)		2	2	2	1	1	
	Cum. reduction (p.p)		2	4	6	7	8	27

While this methodology provides a higher weightage for loss reduction in earlier years, it could also result in selection of an entity which commits to lower cost savings under certain circumstances. This is shown in the example in Table 3. For this example, let us assume that bidder 1 and bidder 3 in the previous example bid in an area of supply with an average power purchase cost (APPC) of Rs. 4/unit and sales of 5000 MUs per annum in the base year with a 4% per annum escalation in average power purchase cost. If the sales increase at 4% per annum, then the cumulative savings are higher for Bidder 1. However, if sales increase at 7% per year, the cumulative savings are higher for Bidder 3.

Table 3: Savings estimation based on example in SBD

Case	Parameter	Base	Y1	Y2	Y3	Y4	Y5	Saving
Sales growth at 4%	Cost if losses @ 25%	667	721	780	844	912	987	
	Cost if loss reduction as per Bidder 1	667	635	624	641	675	711	
	Cost if loss reduction as per Bidder 3	667	663	655	641	657	671	
	Savings with Bidder 1	-	-87	-156	-202	-237	-276	-958
	Savings with Bidder 3	-	-58	-125	-202	-255	-316	-956
Sales growth at 7%	Cost if losses @ 25%	667	742	826	919	1,022	1,138	
	Cost if loss reduction as per Bidder 1	667	653	660	698	756	819	
	Cost if loss reduction as per Bidder 3	667	683	693	698	736	774	
	Savings with Bidder 1	-	-89	-165	-220	-266	-319	-1,059
	Savings with Bidder 3	-	-59	-132	-220	-286	-364	-1,062

In the same example, if sales growth is fixed at 4% per annum, the savings for bidder 3's loss reduction trajectory is higher than bidder 1 when the APPC grows at 6% per annum. Conversely, savings with bidder 1 are lower than bidder 3 when APPC rises at 2% per annum. It is clear from the example, that savings depend on sales and power procurement cost growth trajectories in the area. **Therefore, instead of using total cumulative percentage point loss reduction to evaluate bids, the savings in cost due to loss reduction would be more appropriate.** To ensure loss reduction in earlier years is properly accounted for, it is also important to apply appropriate discount rates while assessing cumulative savings over the five year period. This will account for the time-value of savings in cost. Such an approach for bid evaluation should be specified in the SBDs.

This type of assessment will let participants bid in terms of percentage point AT&C loss reduction over the years. However, the evaluation of the bids would be based on savings due to the proposed trajectory from the bidder with reasonable estimates for cost and sales growth as well as discount rates. In such a case, the financial models and projections prepared by the state government as part of the pre-feasibility exercise and the spread-sheet used by the bid evaluation committee would be extremely crucial to provide reasonable assumptions.

3.2 Equity transfer

State government to have flexibility to determine equity share

The share of equity that the state government holds (in a utility that is financially viable or in one that requires support) should be determined at the discretion of the state government as long as it is not above 50%. This will provide adequate flexibility to the states to determine the model of privatisation they want to adopt.

Premium equity not be considered as part of regulated equity base

Where bidding takes place based on upfront premium equity, the premium bid by the participant should not be reflected in the regulated rate base. If considered, it will increase the return on equity to be recovered from consumers and would be inappropriate. The bid parameters should be such that they do not adversely impact consumer tariffs. In this context, the equity contribution of the successor entity should be different from the regulated equity base. This was ensured in the recent takeover of RInfra's business by AEML and was also ensured in the case of Tata Power's takeover of CESU. This condition should be explicitly stated in the draft RfP.

Reserve equity to include grant contribution

As per the guidance note, the fixed asset valuation is to be based on equity and long term liabilities as per SERC approved values. The values approved during true-ups might vary from actual valuation of fixed assets due to capitalisation based on state government grants/internal accruals and potentially due to disallowed capital expenses. The deviation between the regulated fixed assets value and actual fixed asset value could be significant in states like Gujarat which has had significant capital works funded via grants. While such variation in estimation should not affect consumer tariffs, it could potentially lead to undervaluation of the asset if the equity contribution is determined only on the basis of regulated equity. This could lead to windfall gains if the successor entity decides to sell its shares after ten years. To address this issue, the equity value of the entire 100% shares can also be corrected in the RfP to account for grant contribution.

3.3 Flexibility to introduce other bid parameters

The SBDs should also provide flexibility to the state government to choose more bid parameters. This could be AT&C loss, as well as quantifiable supply and service quality indicators such as

improvements in DT failure rate, or a pre-stated commitment to specific, necessary capitalisation works in an area with poor network. This choice of bid parameters in addition to equity commitment could be left to the discretion of the state. The draft SBDs should allow for and encourage such options.

4 Regarding specifications in the Request for Proposal

4.1 Clarity on role of bid evaluation committee and technical evaluation committee

Section 1.6 of the Guidance note states that the:

State/ UT Governments will be required to create Technical Evaluation Committee for evaluation of bids received. Further, a nodal officer will be required to manage bid process including acting as a point of contact for the bidders, issuance of documents/ clarifications and receipt of bids.

At the same time, Section 1.2 (c) (v) states that the approval of bid outcome should be conducted by the bid evaluation committee.

The RfP makes no mention of the Technical Evaluation Committee or the Bid Evaluation Committee but it refers to a bid process authority which is '*authorized by Government of [State/ UT name] for running the bid process for Selection of Bidder for purchase of majority shares in [Distribution Licensee/ SPV] for distribution and retail sale of electricity in [area description];'*

This seems to be referring to the transaction advisor appointed by the state government or the representative of the state government itself which has invited the bids.

Clarity is needed as to whether the Technical Evaluation Committee and the Bid Evaluation Committee are the same. Further, the role of the committee/s should also be clearly defined in the RfP where it is conspicuous in its absence.

4.2 Constitution of the bid evaluation committee

As stated in the guidance note, we believe it is imperative that the bid outcomes be approved by a bid evaluation committee (BEC). The BEC can be constituted by the Empowered Committee and should be headed by a serving/ retired judge of the High Court nominated by the Chief Justice of the High Court. The committee should also have an independent member as decided by the empowered committee.

4.3 Publishing standard bid evaluation spread sheets

While flexibility should be provided to states, it is also important to have transparent and consistent methodology for bid evaluation. It is likely that each state government or bid process authority or bid evaluation committee might make assumptions to evaluate the bids which are not clear or transparent. To avoid such uncertainty and to reduce the possibility of selection based on the state

government's discretion rather than on principles of competition, MoP should publish standard bid evaluation spread sheets for various models or approaches to privatisation. This will at least clarify the assumptions, parameters and variables to consider while evaluating the bids. Any amendment to the standard bid evaluation spread sheet should be discussed at the pre-feasibility stage during the public process.

4.4 Need for transparency in crucial information shared by the bidders

Para 4.5.2 of the draft RfP on confidential and proprietary data states that all information submitted as part of the bid is to be confidential. Further the bid process authority itself cannot divulge information relating to evaluation or qualification of bids unless:

- a) *such publication is contemplated under this RFP;*
- b) *such publication is made to any Person who is officially involved with Bid Process or is a retained professional advisor advising Bid Process Authority or Bidder on matters arising out of or in connection with Bid Process;*
- c) *it is directed to do so by any statutory authority that has the power under law to require its disclosure;*
- d) *such publication is to enforce or assert any right or privilege of the statutory authority and/ or Bid Process Authority or as may be required by law (including under the Right to Information Act, 2005 or amendments thereof); or*
- e) *in connection with any legal process.*

It must be noted that not all information provided in the bidding process is confidential or proprietary. **In fact, data related to proof of eligibility, bid submission, decision of the bid evaluation committee along with spread sheet used to evaluate bids, issues discussed in pre-bid meetings and clarification sought by bidders, should be available in the public domain a week after issue of LoA to the qualifying bidder.** Sharing information at that stage of the process will not infringe on the commercial interests of the bidders but will go a long way in building public confidence and serving public interest. This will also avoid any disputes or controversy at later state. Given the number of governance challenges that the sector has witnessed during bidding for generation contracts⁶ and franchisees⁷, it is imperative that such information is publicly available. It would also aid smooth resolution of any disputes. In addition, the bid process authority must share all details provided by the bidders with the appropriate regulatory commission.

--XX--

⁶ Analysis of competitive bidding process between 2005 and 2011 for generation capacity by various utilities shows that there have been multiple instances of re-bidding. In some cases, like in Uttar Pradesh the rebidding has even resulted in discovery of tariffs higher than that discovered in the original round of bidding. For more details, please see:

<https://prayaspune.org/peg/publications/item/140>.

⁷ Analysis of early experience in awarding franchisees in Maharashtra shows that bidders were making unviable bids which would have required loss reduction to be negative for the input rate to be feasible. For more details, please see:

<https://www.prayaspune.org/peg/publications/item/75>.