

Comments and suggestions from Prayas (Energy Group), Pune, regarding the Guidelines for determination of Tariff through bidding for procurement of power from Ultra Mega Power Projects (UMPPs) based on Imported Coal:

1. **Approval for deviations from the standard bidding documents:** The para 3.2(ii) of the guidelines states as follows:

Approval of the Central Government shall be sought in the event of deviations from the Standard Bidding Documents and/or conditions/provisions given in these Guidelines.

Instead of the Central government, Central Electricity Regulatory Commission (CERC), which would be the agency responsible for adopting the tariffs, should be the agency that would approve the deviations, if any. This is important because the government's role should be limited to policy formulation and designing the guidelines and standard bidding documents, but the implementation should be left CERC, which is more suited for this role. It is important to note that vide notification dated 5th May 20-15, the central government has already amended the guidelines to incorporate this point in case of thermal projects set up on Design, Build, Finance, Own and Operate (DBFOO) basis and the same consistent approach can be followed in this regard as well.

2. **Bid evaluation:** The section 4.6.1 of the guidelines states as follows:

To ensure competitiveness, the minimum number of qualified bidders should be at least two other than any affiliate company or companies of the Procurers. If the number of such bidders responding to the RFQ is less than two then the bidding process shall be annulled. However, if the number of qualified bidders responding to the RFP is less than two and if the Procurers desire to continue with the bidding process, the same may be done if Procurers who procure at least 75% of the total allocated capacity give their consent to the opening of the Bid. (Emphasis added)

Low number of bidders could be an indication of lack of market interest and with less number of players, chances of competitive discovery of tariff are substantially lowered. **In such a case, approval of the Commission to proceed becomes crucial, because if the procurer gets locked into a high price contract, ultimately the consumers will suffer.** Power purchase cost is entirely a pass through element as far as procurers are concerned. Therefore, making the lead procurer responsible for buying highest share of such power is no safeguard for ensuring a rational process and/or competitive outcome. The onus of ensuring such competitive outcome should be on the commission, as it is empowered to balance interests of all stakeholders. Even in the earlier 2005 guidelines (clause 5.7), this responsibility was with the appropriate commission and not the procurer. Learning from past experiences, E.g. Appeal no 109 of 2009¹, it is very important to ensure that such crucial decisions are not left to the discretion of the procurers alone.

¹ <http://aptel.gov.in/judgements/109%20of%202009.pdf>

3. **Conflict of interest:** The clause 4.6.2 of the proposed guidelines states as follows:
The Procurers shall constitute a Committee for evaluation of the Bids with at least one member external to the Procurer's organisation and affiliates. The external member shall have expertise in financial matters / bid evaluation. Keeping in view the different expertise/skills required for evaluation of the RFQ and RFP bids, the composition of members should differ in respect of the Committees being set up for the evaluation of RFQ and RFP bids. However, the Chairman of both these Committees should be the same. The Procurers shall reveal past associations with the external member - directly or through its affiliates - that could create potential conflicts of interest. (Emphasis added)

While it is necessary to avoid any conflict of interest, it is not sufficient to evaluate it only from the point of view of association with procurers. Association with bidders and lending agencies is equally important and can have serious governance implications. **Therefore, this clause should be modified and the external member should be explicitly required to reveal all present and past associations, directly or through its affiliates with the lending agencies and the bidders participating a given bid process.**

4. **Phased implementation of the project:** The section 3.2.1 of the Article 3 of the PPA states as follows:
The Seller may, at its discretion, undertake construction of the Power Station in 2 (two) phases, wherein the 1st (first) phase shall comprise of not less than 50% (fifty percent) of the Contracted Capacity of the Power Station ("Phase I") and the remaining Contracted Capacity shall comprise the 2nd (second) phase ("Phase II"). (Emphasis added)

It is not clear why this discretion is with the seller, when the demand risk is entirely with the procurers. Further, if at all such discretion is to be given, it should be exercised at the time of bidding, so that it can be factored in for bid evaluation. A project that is assuring entire 4000 MW of capacity to be available from the scheduled date of commissioning deserves higher weightage than a project, which will only deliver 2000 MW at the same time. Further, given the rapid changes in renewable space and changing market structure, with more consumers having the choice of the selecting the supplier, **such discretion may be useful, but it should be at the discretion of the procurers and not the seller.**

5. **Lease of Land for the Power Station:** It is a welcome thing that the guidelines and the bidding documents rightly talk about leasing the land so that at the end of the project term, it can be returned back to the procurers. However, in the event of early or premature termination of the contract, Land Lease Agreements and the Mortgage Deed become crucial documents, which will effectively decide how these provisions will be implemented. Given this significance of these documents, it will be prudent to make them a part of the standard bidding document or the model PPA itself.

6. **Better enforcement of contracts:** The experience of the competitive bidding so far has been mixed, to say the least. While seemingly competitive and economical tariffs have been discovered, contract enforcement has been a serious issue². Even in case of the UMPPs, none of the projects has been able to deliver as per the PPA agreed terms and conditions. Experience with case-1 and case-2 projects is also very similar. Further, there have been instances where the seller has terminated the PPA and the procurer simply chose to not act on the termination notice. In spite of this, neither the project developer, nor the procurer approached the commission for more than a year³. Similarly, some of the projects have failed to meet the conditions subsequent and yet no legal action has been taken by the procurer⁴.

Presently, there is no way of knowing the exact status of the project and the PPA. This creates serious issues in terms of power purchase planning, financing and also managing scarce interlinked resources such as fuel, land and water, which these unviable projects un-necessarily lock-in for long periods. Given the ongoing litigations pertaining to competitively bid capacity and high level of stranded assets, it becomes **critical to develop a framework to weed out such projects as soon as any crucial milestones are missed.** Such framework should not be limited to imported coal based UMPPs, but should apply to all competitively bid projects.

One such mechanism could be to mandate the appropriate commission to monitor and track the status of the project and compliance with the PPA terms and conditions.

The guidelines should explicitly mandate the appropriate commission with this responsibility and the procurers should be mandated to submit six monthly status reports along with any correspondence received in connection with the project from the seller and/or lenders. Such tracking would also be necessary for the commission to monitor and verify whether the procurers' power purchase plans are progressing in the right direction. The guidelines should also mandate the Commission to publish this information in electronic form and to keep it archived on its website for easy retrieval at any point of time.

7. **Need for central information repository regarding bidding based capacity addition:** Given the multiplicity of options to undertake bidding, it becomes crucial to for the procurers and the respective commissions to be aware of the status of all these processes and the kinds of bids being discovered. This is also crucial to establish that a given discovered tariff is in line with prevailing market prices, as this is the condition based on which the tariff is supposed to be adopted. Therefore, it is essential to have a **central information repository that will compile and publish all the important information and documents for each state and each bidding process,** such as RFQ, RFP along with date of publication, deviations in bidding documents, respective

² More than 20 GW of the capacity contracted through bidding is under litigation and seeking revision of competitively discovered tariff.

³ Please see MERC order in case no 68 of 2012 for more details in this regard.

<http://mercindia.org.in/pdf/Order%2058%2042/Final%20Order%20Case%20No.%2068%20of%202012.pdf>

⁴ To give an example, in 2008 MSEDCL has signed a PPA for 680 MW at a levelised tariff of Rs. 2.70 per unit with M/s Lanco Kondapalli Power Ltd under case-1 bidding. The project was supposed to be commissioned in 2012. However, no progress has been reported till date, but it is not clear whether MSEDCL is exercising its legal rights under the PPA to protect itself from the possible adverse outcome of the capacity not materialising at all.

commission's tariff adoption order in that matter, final signed PPA along with bid evaluation spreadsheet and anonymous comparison of bids.

The said repository should also maintain the data about actual status of all projects contracted under the bidding route, as mentioned in point no 6 above, which the commissions should track and publish. At the behest of the Ministry of Power, in 2011 Prayas had developed a framework for this purpose and the same is attached for ready reference with this submission as Annexure I.

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Annexure I

Prayas suggestions for designing a Central Information Repository for projects coming up under competitive bidding guidelines

Important steps needed for creating a CIR: Establishing a web based Centralized Information Repository (CIR) will need following major activities to be done:

1. **Set-up a web-based portal** where procurers i.e. the discom(s) can submit/upload all bidding and related documents. The web portal should have at least the following features:
 - a. Simple screen for login and registration. Please refer [Annexure 1](#) for details to be captured for the purpose of registration. Once registered, it should create a unique id which will also be used as login id by the discom and a password for each bidding process for each discom. Using this id and password, the discom can then upload all the documents related to that process.
 - b. Upon successful registration by a discom an auto email intimating about the same should be sent to authorized representative as well as officer designated by CEA for this purpose.
 - c. There should be a section on the website which says '[Central Information Repository for competitively bid projects](#)'. It should have at least the information shown in [Annexure 2](#) along with a link which will allow procurers to register for new bidding process(s).
 - d. Managing access permissions for uploading documents: Only the procurer i.e. the discom should be authorized to submit information using the unique id generated for a given bidding process. Whenever any information has been uploaded, an automatic e-mail informing about the same should be sent to the designated authorized representative of the discom and concerned officer of CEA. No body except the discom representatives should be authorized to upload or modify any documents of the CIR.
 - e. The portal should allow for maintaining audit trails of changes being made to same bidding document. For example let us say a procurer issued notice inviting tenders for RFP on X date but subsequent to discussions with bidders and with regulatory commission's approval makes changes to the same and publishes the modified RFP on Y date (Y being greater than X). In this case the portal should show version 1 as RFP published on X date and version 1.1 as RFP published on Y date along with petition and all other related submissions made before the regulatory commission for making changes to the bidding document as well as order of the commission approving those changes. Please refer to [Annexure 3](#) for more details.
 - f. Once discoms from all states start uploading information, the storage space requirement for the portal will start rising. Hence the portal should be designed keeping in mind this space requirement, as many of the PDF files (being scanned documents) will generally be in excess of 5 Mb each.
 - g. For all other users visiting CEA website there should be only read permission for viewing the information hosted by CIR. Whenever any user clicks on the CIR link, he/she should be taken to a page that displays information as per [Annexure 2](#)

- format. Clicking on unique id for the given bidding process should display basic information updated under [Annexure 1](#).
- h. Further the portal should allow users to search the CIR using simple interface with facility to enter keywords for the search. The search should be able to look inside PDFs.
 - i. All the data uploaded to the portal should be archived from time to time so that same can be tracked at any point of time. Search feature should be able to find results from all the archives as well. Also CEA should maintain hard copies of all the data uploaded by the discom for each bidding process.
2. Define data formats and bidding process milestone-wise documents to be uploaded
 - a. **Stages of bidding process to be tracked:** The Centralized Information Repository (CIR) should track and publish documents for the following steps of bidding process:
 - i. RFP and/or RFQ, depending up on whether it is single stage or two stage bidding process
 - ii. Documents i.e. orders and petitions related to regulatory process seeking deviations from Standard Bidding Documents
 - iii. Bid evaluation committee report
 - iv. Letter of Intent issued to successful bidder(s)
 - v. Signed copy of PPA and anonymous comparison of bids, as per bidding guidelines
 - vi. Petition filed for adoption of discovered tariff along with all relevant submissions
 - b. Please see the [Annexure 3](#) for the data formats for each stage of bidding
 3. Develop rules/guidelines defining the role and structure of CIR and mandating discoms to comply with CIR requirements. This will help formalizing the process and give structural clarity to discoms regarding the kind of information to be submitted.
 4. **Points to be noted:**
 - a. The structure of the web based portal allows procurers i.e. distribution companies to upload data as soon as they undertake respective stage of bidding to the CIR. For example as soon as a discom issues tender notice inviting bids, it can simply send a copy of the same to CEA or upload the same directly to the CIR.
 - b. All the documents proposed to be hosted on CIR are of public nature and hence the discom should not have any issues in sharing the same with CEA.
 - c. The main task for CEA would be to allow for web interface i.e. portal to upload information and to ensure that documents submitted by discom get uploaded in timely manner and to issue guidelines and data formats for discoms to submit information.
 - d. CEA **would not** be responsible for ensuring compliance with the guidelines by the discoms. The respective state regulatory commission should be entrusted with the task of ensuring compliance. It is also proposed that Forum of Regulators will publish best practice code for ERCs which will direct the state commissions for ensuring compliance with CIR requirements.

Annexure 1

Name of the distribution Company or companies*	
State(s)*	
Quantum of power to be procured in MW*	
Type of bidding*	Case 1 or Case 2
Stages of bidding*	Single stage or Two stage
Type of Fuel*	Coal - Domestic /Imported Gas - Domestic /Imported
Medium or Long term*	Term of the contract in years
Intimation being sent to respective regulatory commission about bidding process	PDF of the letter/submission
Tender notice issue date*	dd-mm-yyyy
Copy of the tender notice*	PDF
Link to the notice on website and/or newspapers	hyperlinks
Name and designation of the Authorized representative(s) of the procurer for the bidding process	Name Designation
Mail id(s) of the Authorized representative(s) of the procurer for the bidding process. *	xyz@abc.com

Fields marked with '*' are mandatory and unique ID will not be generated if appropriate information is not submitted. Non mandatory fields should be updated later if the information is not available at the time of registering.

Once the above information is submitted a unique id for the given bidding process should be automatically generated. All the subsequent information for this bidding process should be uploaded using that id. The information asked above is of most essential type and more fields can be added as per CEA requirements. For security reasons, the registration page can have captcha and other fields.

Annexure 2

State	Name of the Discom(s)	Bidding Process ID [^]	Quantum of Power to be procured in MW	Zero date	Status [#]
Maharashtra*	MSEDCL	UID0001	1000	MM-DD- YYYY	RFP or RFQ issued / Bids submitted / Lol issued / PPA signed / Process Completed

**The information entered in first row is only illustrative and not related to any actual ongoing bidding process*

[^]Bidding process ID should be clickable link, clicking on which should take the user to a page displaying the basic information updated under [Annexure 1](#).

[#]The information entered in this column should be a hyperlink and clicking on it should take the user to table 1 shown in [Annexure 3](#)

Annexure 3

Table 1

Unique ID	Zero date	Date of relevant bidding stage	Stage of bidding	Relevant Document	Deviations from Standard Bidding Document	Relevant details*	Current Status
UID0001	dd-mm-YYYY	dd-mm-YYYY	RFP	RFP Ver 1	Yes / No	(clicking here should take the user to table 2.1 below)	Awaiting regulatory approval for proposed changes
UID0001	dd-mm-YYYY	dd-mm-YYYY	RFP	RFP Ver 2, etc	Yes / No	(clicking here should take the user to table 2.1 below)	Awaiting regulatory approval for proposed changes
UID0001	dd-mm-YYYY	dd-mm-YYYY	RFQ	RFQ Ver 1	Yes / No	(clicking here should take the user to table 2.2 below)	Amended RFQ published on dd-mm-YYYY
UID0001	dd-mm-YYYY	dd-mm-YYYY	RFQ	RFQ Ver 2, etc	Yes / No	(clicking here should take the user to table 2.2 below)	Amended RFQ published on dd-mm-YYYY
UID0001	dd-mm-YYYY	dd-mm-YYYY	Draft PPA	Draft PPA Ver 1, etc	Yes / No	(clicking here should take the user to table 2.3 below)	Awaiting regulatory approval for proposed changes
UID0001	dd-mm-YYYY	dd-mm-YYYY	Draft PPA	Draft PPA Ver 2, etc	Yes / No	(clicking here should take the user to table 2.3 below)	Awaiting regulatory approval for proposed changes

UID0001	dd-mm-YYYY	dd-mm-YYYY	Bid evaluation	Bid Evaluation committee report (PDF)	Not Applicable	Supporting documents if any (PDF)	
UID0001	dd-mm-YYYY	dd-mm-YYYY	Bid evaluation	Bid Evaluation spreadsheet (excel file)	Not Applicable	Supporting documents if any (PDF)	
UID0001	dd-mm-YYYY	dd-mm-YYYY	Lol	Copy of Lol (PDF)	Not Applicable	Supporting documents if any (PDF)	
UID0001	dd-mm-YYYY	dd-mm-YYYY	Singed PPA	Copy of final signed version of PPA (PDF)	Not Applicable	Supporting documents if any (PDF)	PPA signed but tariff yet to adopted
UID0001	dd-mm-YYYY	dd-mm-YYYY	Anonymous comparison of bids	Financial bids of winning bidder and L1, L2, L3, etc (all PDFs)	Not Applicable	Supporting documents if any (PDF)	
UID0001	dd-mm-YYYY	dd-mm-YYYY	Tariff adoption	Tariff adoption Order	Not Applicable	Petition and any other supporting matter placed before the commission for tariff adoption	Process concluded

**Entries made under this column should be clickable links which will take the user to the respective tables or files.*

Values entered in the last column are merely illustrative.

Table 2.1 RFP

Unique ID	UID0001
Stage of bidding	RFP
Date of first publication of the said bidding document	dd-mm-yyyy
Date of filing petition seeking deviations from Standard bidding document	dd-mm-yyyy
Copy of the Petition	PDF
Additional information submitted to Commission, if any	PDF(s)
Minutes of Meeting with bidders, if any	PDF
Record of proceedings before the commission	PDF
Date of ERC order regarding the proposed changes	dd-mm-yyyy
Commission's order regarding the proposed changes	PDF
Changed/Modified version of the bidding document after ERC order	PDF

Table 2.2 RFQ

Unique ID	UID0001
Stage of bidding	RFQ
Date of first publication of the said bidding document	dd-mm-yyyy
Date of filing petition seeking deviations from Standard bidding document	dd-mm-yyyy
Copy of the Petition	PDF
Additional information submitted to Commission, if any	PDF(s)
Minutes of Meeting with bidders, if any	PDF
Record of proceedings before the commission	PDF
Date of ERC order regarding the proposed changes	dd-mm-yyyy
Commission's order regarding the proposed changes	PDF
Changed/Modified version of the bidding document after ERC order	PDF

Table 2.3 PPA

Unique ID	UID0001
Stage of bidding	Draft PPA
Date of first publication of the said bidding document	dd-mm-yyyy
Date of filing petition seeking deviations from Standard bidding document	dd-mm-yyyy
Copy of the Petition	PDF
Additional information submitted to Commission, if any	PDF(s)
Minutes of Meeting with bidders, if any	PDF
Record of proceedings before the commission	PDF
Date of ERC order regarding the proposed changes	dd-mm-yyyy
Commission's order regarding the proposed changes	PDF
Changed/Modified version of the bidding document after ERC order	PDF