S.I. 87 of 2024

ELECTRICITY ACT, 2023

(Act 13 of 2023)

Electricity (Independent Power Producer) Regulations, 2024

Arrangement of Regulations

Regulations

PART IV - COMPETITIVE PROCESS FOR SELECTION OF PROPOSAL, AWARD OF CONTRACT

PART V - TERMS AND CONDITIONS OF POWER PURCHASE AGREEMENT

S.I. 87 of 2024

ELECRICITY ACT

(Act 13 of 2023)

Electricity (Independent Power Producer) Regulations, 2024

In exercise of the powers conferred by section 47 of the Electricity Act, the Minister responsible for energy makes the following Regulations —

PART I - PRELIMINARY

Citation

1. These Regulations may be cited as the Electricity (Independent Power Producer) Regulations, 2024.

Application

2.(1) These Regulations are applicable for the selection of an independent power producer who produces electricity from renewable energy sources:

Provided that —

(a) the selection shall be through a competitively solicited proposal;

(b) the entire electricity produced by independent power producer shall be off taken by the distribution and supply licensee; and

(c) renewable power to be contracted exceeds 500 kW.

(2) These Regulations provide for a fair and transparent procurement framework to be followed by the distribution and supply licensee for selection and award of contract to an independent power producer under Build, Own and Operate (BOO) or Build, Own, Operate and Transfer (BOOT) business models for electricity generation from renewable energy sources and its supply to it.

(3) The provisions of these Regulations are applicable to every

procurement of electricity generated from renewable energy sources by the distribution and supply licensee after their notification by the Commission.

(4) The distribution and supply licensee shall develop the procedure to be followed for procurement management along with procurement documents including all applicable contractual documents in conformity with provisions of the Public Procurement Act, (Cap 305) and the Regulations, guidelines or instructions made or issued thereunder.

(5) The distribution and supply licensee shall submit the procedure and the procurement documents including all the contractual documents for the approval of the Commission.

(6) The distribution and supply licensee shall follow the approved procedure and use the procurement documents including the contractual documents for any new procurement of electricity from renewable energy sources.

(7) In cases where the distribution and supply licensee is desirous of any change in the approved procedure and the procurement documents including the contractual documents for any procurement, it shall apply to the Commission for approval providing the reasons for the proposed changes.

(8) The proposed changes under subregulation (7) shall be applicable only in the form and with the terms and conditions as approved by the Commission.

Interpretation

3.(1) In these Regulations, unless the context otherwise requires —

"Commission" means the Utilities Regulatory Commission established by section 3 of the Utilities Regulatory Commission Act, 2023;

"power purchase agreement" means an agreement between a generation licensee and a distribution or a supply licensee for sale of the electricity produced by the generation licensee;

"Procurement Oversight Unit" means Procurement Oversight Unit as defined in the Public Procurement Act, (Cap 305).

"renewable electricity" means the electricity generated using renewable energy sources;

"renewable energy sources" means —

(a) energy generated from natural non-depleting sources, including wind, solar, biomass, geothermal, hydro, ocean and tidal energy, biodegradable fraction of municipal and industrial waste and such other sources as maybe prescribed and includes renewable energy source with storage or generation from a combination of renewable energy sources with or without storage; and

(b) biomass and bagasse based generation plants if the total consumption of fossil fuels shall be limited to the extent of 15% of total fuel consumption by weight on annual basis; and

"storage" means energy storage system utilising methods and technologies like, solid state batteries, flow batteries, pumped storage, compressed air, fuel cells, hydrogen storage or any other technology, to store various forms of energy and to deliver the stored energy in the form of electricity.

PART II - ROLES AND RESPONSIBILITIES OF LICENSEES AND OTHER ORGANISATIONS

Responsible Ministries and organisations

4.(1) The Ministries and organisations responsible for the development, implementation, monitoring and evaluation of procurement framework and the procurement undertaken under these Regulations are —

(a) Ministry responsible for energy;

(b) Ministry responsible for finance;

(c) Commission;

(d) Distribution and supply licensee;

(e) Procurement Oversight Unit;

(f) Independent power producer;

(g) Utility responsible for transmission; and

(h) Utility acting as Market and System Operator.

(2) The Ministries and organisations stated under subregulation (1) shall, in the discharge of their responsibilities, comply with all applicable Acts, Regulations and guidelines or instructions issued by the Procurement Oversight Unit.

Roles and responsibilities

5. The roles and responsibilities of the Ministries and organisations under regulation 4 (1) shall be as stated in the Table below —

Sl. No	**Ministries/Organisations**	**Role**	**Responsibilities**
1.	Ministry responsible for Energy	Develop the electricity sector's legal andpolicy framework, and integrated development of electricity sector	Develop and approve the Integrated Electricity Plan and related power procurement plan.

2	Ministry of Finance	Subsidy management, provide payment security or counter guarantees to independent power producers	Consider and provide financial support such as capital grants, subsidies, viability gap funding, generation-based incentives, and tax incentives etc. for promotion of renewable energy based electricity generation in the country. Provide payment security mechanism or counter guarantees to independent power producers on behalf of the distribution and supply licensee for the power procured.
3	Commission	Monitor and review these Regulations	Approve the procedure for procurement management and procurement documents including the contractual agreements. Evaluate and approve the changes proposed by the distribution and supply licensees.

			Monitor and evaluate the efficacy of these Regulations in achieving its stated objectives and accordingly recommend appropriate changes in these Regulations. Act as the arbitrator between distribution and supply licensee and the independent power producer in case of any dispute arising out of the interpretation of the terms and conditions of the contractual agreements. Approve the power procurement process undertaken by the distribution and supply licensee and the tariff for the power to be procured through the competitive procurement process.

4	Distribution and supply licensee	Develop standard procurement documents, manage the procurement process, and implement these Regulations	Develop standard procedures for procurement management, standard procurement documents and other contractual agreements for the approval of the Commission. Manage the procurement process according to the provisions of these Regulations and the approved procurement procedure. Bring to the notice of the Commission the changes required to address issues experienced during the implementation of the approved procedure for procurement management. Sign the power purchase agreement with independent power producer, off take the electricity and comply with the agreed terms and conditions of the agreement.

5	Procurement Oversight Unit	Approve the model procedure for procurement management and procurement documents including the contractual agreements	Approve the model procedure for procurement management and procurement documents including the contractual agreements for their alignment with the provisions of the Public Procurement Act. Procurement Overseas Unit may in consultation with the Commission grant exemptions to the provisions of the proposed model procedure for procurement management and procurement documents if these are according to the best international practices and support in achieving the objectives of the competitive procurement of services of independent power producer.

6	Independent power producers	Finance, build, own, and operate the generating plant according to BOO model or also transfer it to the distribution and supply licensee or to the agency mentioned in the procurement document under the BOOT business model if applicable according to the terms and conditions of the power purchase agreement.	Finance, design, construct, operate and maintain their generating plants according to the terms and conditions of the power purchase agreement with the distribution and supply licensee. Transfer the project at the end of the contract under BOOT business model. Comply with all the legal, policy and regulations, including to obtain the necessary licence, applicable to generating plant.
7	Utility responsible for transmission in outer and other islands of Seychelles	Provide interconnection to generating plant of an independent power producer	Provide transmission facility at the interconnection point for evacuation of electricity generated and supplied by independent power producer.

			Develop, operate, and maintain the interconnection point including the evacuation system according to the applicable Grid Code and the terms and conditions of interconnection agreement and transmission service agreement. For the independent power producers connected at distribution voltage level, the concerned distribution and supply licensee will be required to provide the interconnection facility and would be required to develop, operate and maintain the interconnection point including the evacuation system according to the applicable Code.

8	Utility responsible for market and system operator in outer and other islands of Seychelles	Scheduling the power plant	To schedule and operate the generating plant according to the terms and conditions of the contractual agreements, grid code and applicable regulations for schedule and despatch of generating plants. For generating plant connected at the distribution voltage level, the concerned distribution and supply licensee shall be responsible for scheduling and operating the plant in case no specific entity has the mandate to schedule and operate such plants.

Preparation and approval of the Integrated Electricity Plan

6.(1) The Integrated Electricity Plan shall be prepared by the distribution operators and approved by Ministry responsible for Energy in consultation with other government departments and other entity regulators.

(2) The Integrated Electricity Plan shall be placed before public for consultation and feedback.

(3) The Integrated Electricity Plan requires preparation of least-cost rolling plan with a ten-year planning horizon for normal, optimistic, and pessimistic scenarios of demand and supply estimates

(4) The Minister shall review Integrated Electricity Plan every two years or earlier, if so required.

Contents of the Integrated Electricity Plan

7. The preparation of the Integrated Electricity Plan shall involve the following —

(a) identification of the policy commitments towards the expansion of energy or electricity generation, transmission, distribution, and supply by the Government;

(b) the Government stated energy or electricity commitments shall guide the objective and the planning philosophy of the Integrated Electricity Plan;

(c) the commitments of the Government may relate to energy security concerns, promotion of indigenous sources of electricity, targets for renewable energy penetration in the power supply portfolio, electricity access targets, electricity supply quality and reliability, environmental concerns, socio-economic targets, international promises etc.;

(d) compliance with the existing legal, policy and regulatory framework of the Government; and

(e) indicate the considerations made, based on the Government commitments and the existing legal, policy and regulatory framework.

Development of sales projections

8.(1) The Integrated Electricity Plan shall provide the consumer category wise electricity consumption and demand (MW and MWh) projections using both top down and bottom-up approaches.

(2) The electricity consumption and demand projections shall be done using both econometric and statistical modelling techniques, provided that any other modelling techniques may also be employed but the rationale for preferring these modelling techniques shall be provided in the Integrated Electricity Plan document.

(3) The data required for these projections shall be collected through surveys and load research according to the requirement.

(4) The questionnaires and the methodology employed for this purpose shall be provided in the Integrated Electricity Plan document.

(5) The Integrated Electricity Plan in its bottom-up approach for demand forecast shall consider feeder and transformer wise loading and possible load development activities such as Ports, Airports, Industrial parks and all major loads that have been planned and approved by the appropriate Planning Authorities.

(6) The Integrated Electricity Plan shall propose and include demand side management and energy efficiency programs for various categories of consumer to be implemented over the planning horizon.

(7) The Integrated Electricity Plan shall transparently consider the impact of these programs while projecting consumer category wise electricity consumption and demand.

(8) The spatial distribution of consumer category wise consumption and demand projections shall also be provided region and Island wise.

(9) The Integrated Electricity Plan shall, for the estimated consumption and demand of various categories of consumers, provide hourly projections.

Estimation of generation from distributed energy generators

9.(1) The Integrated Electricity Plan shall project the distributed energy generation (MW and MWh for all distributed energy sources including renewable energy) from each category of consumers including its time and geographical distribution.

(2) The projection shall duly consider the Government policy and the gap between the levelised cost of electricity of distributed renewable energy and retail tariffs.

Projections of transmission and distribution losses

10.(1) The Integrated Electricity Plan shall separately estimate transmission and distribution losses for the projected consumption and demand, including the geographical spread, projected distributed energy generation and proposed capital schemes in transmission and distribution.

(2) The estimation under subregulation (1) may be an iterative exercise with available capital budget and the cost benefit exercise may be a factor to be considered.

(3) The loss estimation for transmission and distribution systems shall be separately done.

(4) For distribution system, the Integrated Electricity Plan shall estimate both technical and nontechnical losses.

(5) The loss estimation shall be done using appropriate internationally recognised transmission and distribution planning tools and software.

(6) The assumptions made for the loss study shall be justified in the Integrated Electricity Plan document.

(7) The loss estimation shall be done region wise or Island wise, voltage wise and consumer category wise.

Estimation of demand curves

11.(1) The Integrated Electricity Plan shall estimate demand curves at the interface point of distribution and transmission network using the projected hourly demand (MW) and consumption data (MWh), projected distributed energy generation and the projected distribution losses.

(2) The projected demand curves, at the interface point of distribution and transmission network, shall be extrapolated to the interface point of generation switchyard (generation delivery point) and transmission network (interconnection point) duly considering projected transmission losses to determine generation ex-bus requirements.

Estimation of supply curves of existing generating plants

12.(1) The Integrated Electricity Plan shall project supply curves of existing generating plants considering expected hourly generation both in MWh and MW based on their past performance, probable maintenance schedules, unscheduled outages in past and performance improvement activities planned for the future.

(2) While developing the supply curves, due consideration shall be given to the retirement plans of the existing generating plants.

Estimation of demand and supply gap

13.(1) The Integrated Electricity Plan shall estimate the demand and supply gap based on the projected demand and supply curves at generation and transmission interface level.

(2) The demand and supply gap shall be determined both at the national and regional levels.

(3) The existing generating plants shall be considered as despatched in the merit order for estimating the gap.

Generation planning

14.(1) For generation planning, appropriate tools with either deterministic or probabilistic approach shall be used.

(2) The Integrated Electricity Plan, while projecting the generation requirements to meet the demand supply gap, shall consider suitable electricity supply reliability criteria ('N minus 2' criterion, that is, one of the largest generators is assumed to be on maintenance, while the second largest generator is assumed to be on breakdown), adequate spinning reserve requirements, supply curves of different electricity generation sources and technology such as gas, biomass, wind, solar with no availability constraints.

(3) The outcome of this exercise shall be projection of new capacity requirements, recommended technology and its geographical spread subject to the fulfilment of Government commitments.

(4) The iterative exercise shall be done in conjunction with transmission planning, and investment and operating costs analysis of various electricity generation resources and technology to achieve least cost siting including the cost of transmission.

Transmission planning

15.(1) Transmission planning shall be an integral part of the Integrated Electricity Plan.

(2) Appropriate tools for power system modelling and analysis which include power flow analysis, short circuit analysis and transient stability analysis shall be used.

(3) The potential impact of integration of variable renewable power sources on the frequency, voltages and stability of the power system shall be explicitly considered.

(4) The outcome of the transmission planning exercise shall be to identify in particular evacuation system and system strengthening schemes required for the identified new generation capacities.

(5) The iterative exercise shall be done in conjunction with generation planning to achieve the least cost generation siting.

Power procurement plan

16.(1) The Integrated Electricity Plan shall consider the outcome of generation and transmission planning exercises, technology, quantum of capacity required, time when it is required including its geographical spread, and the time required to commission the identified generation capacity, to develop a power procurement plan.

(2) It shall identify location, technology, and output characteristics (quantum of firm power and its variability through the day).

(3) The Power Procurement Plan shall indicate the levalised cost of electricity and its impact on the retail tariff.

Compliance with power procurement plan

17.(1) The distribution and supply licensee shall adhere to the approved power procurement plan for procuring electricity for its retail consumers.

(2) The distribution and supply licensee shall initiate the procurement process according to the timelines indicated in the power procurement plan, under intimation to the Commission.

(3) The Commission may, within 10 days of receiving the intimation, raise objections, if any to the procurement process, intimating reasons to the distribution and supply licensee, who shall appropriately respond to the objections raised.

(4) The Commission shall take a final decision in this regard and shall intimate the distribution and supply licensee of its decision along with reasons.

(5) In case the distribution and supply licensee wishes to deviate from the approved power procurement plan, it shall approach the Commission for approval of this deviation providing reasons thereof.

(6) The Commission shall consider the request of the distribution and supply licensee and shall take a decision and intimate the distribution and supply licensee of its decision along with reasons.

PART IV - COMPETITIVE PROCESS FOR SELECTION OF PROPOSAL, AWARD OF CONTRACT

General Principle

18.(1) Every procurement of renewable power by the distribution and supply licensees shall, subject to subregulation (2), be done through a competitive process.

(2) In case of emergency for procurement, the distribution and supply licensee shall obtain sanction from the Commission.

(3) The tariffs discovered through competitive process under subsection (1) shall be approved without any change by the Commission.

(4) The distribution and supply licensee shall establish a transparent procurement process along with standard procurement documents including contract agreement, which shall be pre-approved by the Commission.

(5) The procurement process including the procurement documents shall be in accordance with the Public Procurement Act (Cap 305) and Regulations issued thereunder.

(6) The distribution and supply licensee shall select and award contract to an independent power producer under Build, Own and Operate (BOO) or Build, Own, Operate and Transfer (BOOT) business models to procure electricity from renewable energy sources.

(7) The distribution and supply licensee shall lay down principles for choosing either of the business models under subregulation (6), for selection of an independent power producer.

(8) The distribution and supply licensee shall state the business model under which the independent power producer is proposed to be selected in the procurement documents.

Procurement process for selection of an independent power producer

19.(1) The distribution and supply licensee shall obtain prior approval of the

Commission for the quantum, technology, project site, interconnection point, and the time of the day when power is required, before inviting the proposals.

(2) The distribution and supply licensee shall, in the application to the Commission, state —

(a) whether the procurement is for site specific project, or independent power producer is at liberty to site the project according to its convenience to supply the output sought subject to the project meeting the technical feasibility requirements for interconnecting with the grid; and

(b) whether it shall provide or facilitate the independent power producer for procurement or leasing of land from the Government, including the local authorities or the independent power producer shall be responsible for procurement or leasing of land from the private owners of land.

(3) The implementation agreement shall be a part of the procurement documents.

(4) In case where the land is leased from the Government, or local authority, the roles and responsibilities, including the payment of compensation or rent for the land, of the independent power producer, distribution and supply licensee and the Government for the term of the power purchase agreement and on its termination shall be specified in the implementation agreement.

(5) The procurement documents shall lay down a time table for the following activities —

(a) date by when proposals shall be invited;

(b) date by when queries on the proposal shall be submitted;

(c) date on which pre-proposal meeting shall be organised provided that there is sufficient time to proposers to read and understand the documents;

(d) date by when the queries related to the procurement shall be answered;

(e) date by when the proposals shall be submitted by the proposers provided that there is sufficient time to the proposers to consider the clarifications, if any and submit a responsive proposal;

(f) date by when technical evaluation shall be completed and financial proposals shall be opened; and

(g) date by when letter of award shall be issued to the successful proposer.

(7) The application to the Commission shall contain request for qualification or request for proposal, power purchase agreement, generation licence, implementation agreement, interconnection agreement, transmission service agreement and wheeling agreement according to the requirement of the project.

(8) The request for qualification or request for proposal under subregulation (7) shall include —

(a) introduction and background to the project;

(b) information related to Procurement Committee, its constitution, its roles and responsibilities towards bid process management, consideration and redressal of complaints from proposers, evaluation of proposals and recommend preferred proposer;

(c) clarity on project scope i.e., whether the project shall be established under BOO (finance, design, build, operate, and maintain the project for the contract period and own the project after the contract period is over) or BOOT (finance, design, build, operate and maintain the project for the contract period and transfer the project to the distribution and supply licensee or to the specified agency after the contract period is over) business models;

(d) whether the project is site specific or quantum specific and the proposer is at liberty to site the project according to its convenience provided that it meets the technical requirement for interconnectivity with grid;

(e) definitions of specific terms, particularly the terms which convey specific meaning in the context of this project;

(f) clarity on whether the bid shall be awarded to a single proposer or can be awarded to multiple proposers;

(g) the procurement document shall state, in the case the bid can be awarded to multiple proposers, the minimum size of the project that can be proposed by a proposer; and

(h) procurement related information and instructions to proposers such as how these documents can be obtained, cost of documents, and bid processing fee.

Single-stage or two-stage selection process.

20.(1) The procurement process may either be a single-stage or a two-stage selection process.

(2) The distribution and supply licensee is entitled to use its discretion to select either single-stage or a two-stage selection processes considering the complexity of the project and the time budgeted for completing the procurement process.

(3) In the single stage selection process, the proposer shall be required to submit separate technical and financial proposals but both together.

(4) In the two-stage selection process, the proposer shall be required to submit first the technical proposal and only when its technical proposal has been accepted or selected by the distribution and supply licensee, the proposer shall be required to submit the financial proposal.

(5) The technical proposal shall contain the information as stated in Regulation 22.

(6) The financial proposal shall be in accordance with the requirements stated in Regulation 23.

(7) The price or tariff quoted in the proposal shall remain valid during the proposal validity period.

Procurement documents

21.(1) The project related information shall be part of the procurement documents which shall include —

(a) plant capacity/output (MW/MWh) to be delivered at the interconnection point;

(b) acceptable variations (max and min) in capacity/output; and

(c) broad technical specifications of the project (fuel, plant availability, economic life etc.) and project location (or the generation delivery/injection point in the grid.

(2) The project description shall be clear to as to whether the bid is for site specific project, or it is for a specified quantum of power.

(3) The independent power producer has the flexibility to site specific project according to its convenience but shall meet the technical requirements to interconnect with grid.

(4) The procurement documents shall identify projects that are eligible to participate in the bid (to be constructed, under construction, constructed but not commissioned, commissioned but without power purchase agreement) and shall state whether the project must be fully or can be partially dedicated (a part of the installed plant capacity) to the distribution and supply licensee.

(5) The procurement documents shall —

(a) specify the party that shall be responsible for constructing the power evacuation system from the project to interconnection point and provide connectivity with the grid;

(b) identify and name all regulations, codes or guidelines applicable to the project;

(c) identify all charges and taxes payable by independent power producer;

(d) state the financial support such as capital grants or subsidies, viability gap funding, generation-based incentives and tax incentives etc. that shall be provided by the Government to this project, for promotion of renewable energy based electricity generation in the country;

(e) state the applicable terms and conditions for providing the financial support;

(f) identify the permits, approvals and licenses required for developing the project and the role and responsibilities of independent power producer to acquire them;

(g) state the time allowed for commissioning the project or for delivery of the contracted output;

(h) state the acceptable procedure for achieving commercial operation by the project and delivery of the contracted output;

(i) indicate whether part commissioning of the project is acceptable, the liquidated damages to be paid in case there is a delay in commissioning of the project or only part of the contracted capacity is commissioned;

(j) contain a provision for early commissioning of the contracted project or capacity; and

(k) specify bid security amount, bid validity period, the acceptable forms in which it shall be submitted with the proposal by the proposer and the conditions when it can be forfeited.

(6) The bid security amount can be a certain percentage of the expected project value or according to the prevailing procurement practices.

(7) The bid validity date shall be mentioned in the procurement documents duly considering time that may be required to evaluate the proposal and award the contract.

Qualification and eligibility requirements for the proposers

22.(1) The proposer shall submit the required information to indicate that it meets the prescribed eligibility criteria prescribed under subregulaion (2) in its technical proposal.

(2) The technical and financial eligibility criteria for selection of qualified proposers are —

(a) nationality restriction- any requirement for the proposers to be registered in Seychelles shall be stated but for international competitive procurement, there shall be no restriction on the nationality of the proposer;

(b) any ownership restriction- any requirement on private, Government or jointly owned proposers shall be stated;

(c) any proposer, if previously blacklisted in Seychelles (including for nonperformance of power purchase agreement) by the Government or by UN or by any international financial institution shall not be eligible to submit proposal; and

(3) The proposers shall demonstrate technical capability- experience in successful designing, installing, commissioning, operating, and maintaining similar projects.

(4) The proposers shall demonstrate financial capability to provide the funds required to develop the project-positive net worth for last 5 years, Quick ratio shall be more than 1 and financial resources shall be sufficient to fund the project cost (to be estimated by the procurer but the required amount shall not be stated in the procurement documents).

(5) The procurement documents shall require evidence of financial commitments from lenders, project equity providers and joint venture partners to the project.

Bid evaluation criteria and procedure

23.(1) The procurement documents shall state the evaluation criteria for selection of the bid of the technically qualified proposer and the proposer, in its financial proposal, shall submit information to indicate that it meets the evaluation criteria.

(2) The tariff for electricity to be supplied to the distribution and supply licensee for the contract term shall be the criteria for proposal evaluation.

(3) The proposer shall quote the tariff for the electricity that it proposes to sell to the distribution and supply licensee for the entire duration of the contract and tariff quote shall be according to the guidelines provided in the procurement document.

(4) The procurement documents shall indicate the tariff and its component and the unit of output in which proposer shall be required to quote.

(5) The tariff may be specified in terms of per kWh or per KW or both i.e. in units in which the project shall deliver its contracted output.

(6) If the contracted output is specified both in MW (capacity availability) and MWh (energy generated), the tariff quote shall be in two parts representing both the components of output.

(7) The indexation mechanism applicable to tariff (single or multiple components) for the contract term shall be specified in the procurement documents.

(8) It is appropriate that an illustration along with all the necessary computations are provided in the procurement documents.

(9) The proposer shall in its tariff quote, factor the financial support to be provided by the Government as indicated in the procurement documents.

(10) The tariff quote may be made in local or foreign currency or a mixture of both local and foreign currencies.

(11) The evaluation of quoted tariff shall be done in the local currency and the methodology for conversion of quote in foreign currency to local currency shall be specified in the procurement documents.

(12) The procedure for evaluation of the financial proposals including consideration of the situation when the quoted tariff is same shall be provided in the procurement documents.

(13) The description of conditions where the proposal is considered non-responsive, and the implications thereof for the proposer shall be provided in the procurement documents.

Notification of preferred or selected proposer

24. The procurement documents shall provide following information for preferred or selected proposer —

(a) process for notification of the preferred or selected proposer including the announcement of the results in public;

(b) the period after the notification of award of contract within which the performance guarantee, including the amount shall be submitted, power purchase agreement and other contractual agreements (GL, IA, TSA and WA) shall be signed by the preferred or selected proposer and concluded with the distribution and supply licensees and other counter parties and shall be submitted to the distribution and supply licensee;

(c) once preferred proposer signs all the specified contractual agreements, it shall be considered as deemed licensee and shall be required to approach and seek generation licence from the Commission according to the notified regulatory process;

(d) the distribution and supply licensee shall seek the approval of the of the Commission for procurement process followed, and the tariff discovered through this process before notification of the award of contract to the preferred proposer; and

(e) the distribution and supply licensee shall, only after receiving the approval of the Commission publicly notify the preferred proposer and award the contract to it.

PART V- TERMS AND CONDITIONS OF POWER PURCHASE AGREEMENT

General Principle

25.(1) The principles of power purchase agreement shall be applicable for competitive selection for renewable energy sources of electricity.

(2) The distribution and supply licensee shall, based on the principles prescribed in this Part, prepare bankable and contractually enforceable model power purchase agreements to be signed with the selected independent power producer at the time of award of contract.

(3) The model power purchase agreements shall be specific for each renewable energy sources considered in the approved Integrated Electricity Plan.

(4) All model power purchase agreements shall be approved by the Commission and shall be public documents.

(5) The approved model power purchase agreement relevant to the renewable energy source of electricity for which proposals have been sought, shall accompany the procurement documents, and shall be shared with the potential proposers.

(6) In cases where changes are required in the approved model power purchase agreement for any procurement or otherwise, the distribution and supply licensee shall again approach the Commission for approval of the proposed changes, prior to initiating the procurement process.

Contents of power purchase agreement

26.(1) A power purchase agreement between independent power producer and the distribution and supply licensee shall include the following terms and conditions or details —

(a) the period of the contract;

(b) the period within which the following shall be met prior to power purchase agreement coming into effect —

(i) grant of generation license by the Commission;

(ii) submission of performance guarantee or completion bond of prescribed amount;

(iii) financial closure of the project;

(iv) submission of detailed project report and other project details; and

(v) issue of purchase orders for the equipment and award of engineering procurement and construction contract;

(c) the renewable energy source, applicable technology for generation of electricity and the project location;

(d) the project output or expected project performance on achieving commercial operation, in terms of capacity, energy, capacity utilisation factor or plant load factor, plant availability, preferred hours of electricity supply and the divergence allowed in the mandated performance or output. The performance or output shall be measured at the identified interconnection point;

(e) the interconnection point of the grid where the project shall be interconnected and where the performance or output shall be measured;

(f) the role and responsibilities of the independent power producer and the transmission/distribution and supply licensee for timely construction, operation, and maintenance of substation bays etc. at the interconnection point, including the ownership of assets created, exchange of information, metering, billing and accounting of energy at the interconnection point shall be clearly specified through an interconnection agreement;

(g) the role and responsibilities of an independent power producer towards construction and development of the project, which include the following —

(i) obtaining clearances from the statutory and other authorities;

(ii) purchase or leasing of land from private owners of land and possession of land required for the project;

(iii) designing, constructing, commissioning, testing, commencement of supply before the commissioning date;

(iv) building the interconnection system and connecting the project at the interconnection point; and

(v) operating the project for the term of the contract according to the applicable grid and other codes etc.;

(h) the role and responsibilities of the distribution and supply licensee, which include the following —

(i) support in getting clearances for the project from the statutory and other authorities;

(ii) support in purchase or leasing and possession of land from Government or local authorities required for the project;

(iii) obligation for purchase of the contracted capacity and energy from the project;

(iv) dispatch and scheduling of the plant; and

(v) timely payment for the purchased capacity and energy;

(i) conditions under which the due date for commissioning of the project can be extended;

(j) liquidated damages to be paid by independent power producer to the distribution and supply licensee for delay in commissioning of the project if delay is beyond the mandated due date;

(k) the delay may result in proportionate or full encashment of performance guarantee along with termination of power purchase agreement;

(l) principles and process for synchronisation, commissioning and commercial operation of the project;

(m) provide for early and late commissioning of the project including the applicable financial incentives and penalties;

(n) principles and process for performance test of the project before commercial operation and subsequently during the term of the contract, financial and other consequences for not achieving the specified performance standards;

(o) principles and procedure for dispatch and scheduling of the project;

(p) conditions for consideration of deemed generation, mechanism for computation of deemed generation, the tariff payable for the deemed generation, and the manner in which the tariff shall be payable;

(q) applicable guidelines and Codes for metering the electricity supplied at the interconnection point and the responsibility for reading the meters;

(r) identify the party which shall be responsible for filling the application for carbon credits and the percentage in which these shall be shared among the parties;

(s) all the charges and taxes that are required to be borne by the independent power producer for the term of the contract;

(t) the tariff approved by the Commission including the tariff indexation formulas for the term of the contract for electricity supplied at interconnection point;

(u) tariff payable for early commissioning of the project, generation in excess or less than the mandated generation, the party responsible for bearing the fuel prices risk and foreign exchange risk;

(v) the financial support to be provided to the independent power producer by the Government along with the applicable terms and conditions of the support;

(w) mechanism for billing and payment for electricity supplied by independent power producer at the interconnection point and the mechanism for penalty;

(x) payment of security if any, provided by the distribution and supply licensee and the counter guarantees if any, provided by the Government to the independent power producer, the mechanism as to how and the conditions under which these become operational;

(y) the duration for which performance guarantee shall be provided by the independent power producer, the form and the manner in which it shall be discharged;

(z) any restriction on change in ownership and equity distribution of the special purpose vehicle (SPV) formed by the independent power producer to operate the project and the duration for which this shall remain in force and the consequence for non-compliance of this condition;

(aa) force majeure conditions and mitigation measures during the term of the contract;

(bb) consequences of change in law and its implications on the tariff;

(cc) events of default by either party and termination of contract;

(dd) step in right for project lenders in case of loan payment default by the independent power producer but with prior approval of the Commission or the Government as the case may be;

(ee) mechanism for termination of the power purchase agreement and the principles for determination;

(ff) governing law and dispute resolution mechanism;

(gg) the terms and conditions applicable at the end of the contract, which includes the following —

(i) contract extension for a predefined period through mutual consent at existing or different tariff;

(ii) transfer of asset to the distribution and supply licensee or to any other agency under BOOT business model or its retention by independent power producer under BOO business model; and

(iii) responsibility for decommissioning and disposal of the project under BOO business model.

(2) The power purchase agreement shall specify the consequence of non-fulfilment of the conditions such as termination of power purchase agreement and encashment of the performance guarantee or completion bond.

(3) The independent power producer may approach the distribution and supply licensee for extension of time limit for compliance of the conditions if the reasons for non-fulfilment of the prescribed conditions are beyond its control but the time limit for commissioning the project shall not be extended without the prior approval of the Commission.

MADE this the 21st day of October, 2024.

FAVIEN JOUBERT
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