

Petition No. 2018 of 2023
BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Date of Order: 30.10.2023

PRESENT:

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

IN THE MATTER OF: Seeking approval of Request for Selection (RFS) and Power Purchase Agreement (PPA) for Procurement of Power through Tariff Based Competitive Bidding Process from Grid Connected Solar Power Plants connected to selected segregated agriculture feeder of Distribution substation cumulative capacity of 150 MW for Sale of Power to UPPCL at various locations in the state of Uttar Pradesh through RESCO Mode under feeder level solarization of PM KUSUM component-C2 scheme.

1. U.P. New & Renewable Energy Development Agency (UPNEDA),

Vibhuti Khand, Gomti Nagar, Lucknow - 226010

2. U.P. Power Corporation Ltd. (UPPCL),

Shakti Bhawan, 14-Ashok Marg, Lucknow-226001

..... Petitioner(s)

The following were present:

1. Sh. Anupam Shukla, Director, UPNEDA
2. Sh. Ashish Asthana, C.E.(PPA), UPPCL
3. Sh. Rakesh Agarwal, S.P.O, UPNEDA
4. Ms. Namrata Kalra, Advisor, UPNEDA
5. Sh. Tannhauser D Pierce, Consultant, UPNEDA

ORDER

(Date of Hearing 17.10.2023)

1. The Petitioner(s) by way of instant Petition seek approval of Request for Selection (RFS) and PPA for procurement of power from Grid connected solar power plants through Tariff Based Competitive Bidding Process from plants connected to selected segregated agriculture feeder of distribution substation for cumulative capacity of 150MW and sale of power to UPPCL through RESCO model under feeder level solarization of PM-KUSUM scheme.
2. The Prayer(s) of the Petitioner(s) are as below:
 - a) Admit this Petition on record and treat it as complete.



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- b) Issue necessary Order for approval of Bid documents namely the Request for Selection (RFS) and Power Purchase Agreement (PPA) as enclosed in Annexure-6.
- c) Condone any inadvertent omissions/errors/shortcomings and permit the Petitioner to add/change/modify/alter after this filing and make further submissions as may be required at a future date.
- d) Pass such further order, as the Commission may deem fit and appropriate, keeping in view the facts and circumstances of the case.

Brief of the Case:

3. The Petitioner(s) has mainly submitted in the Petition as under:

a) Ministry of New and Renewable Energy (MNRE) has issued a new scheme- "Pradhan Mantri Kisan Urja Suraksha evam Utthan Mahabhiyan Yojna" (PM-KUSUM Yojna) for farmers with the following components:

i) Component-A: Setting up of decentralized ground/tilt mounted grid connected solar or other renewable energy-based power plant of capacity 0.5 MW to 2 MW.

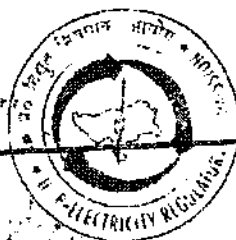
ii) Component-B: Installation of standalone solar agriculture pumps.

iii) Component-C: Solarizations of Grid connected agriculture pump.

b) In continuation of the PM KUSUM Scheme dated 22.07.2019, MNRE has issued guidelines for implementation of feeder level solarization under Component-C of PM-KUSUM Scheme on dated 04.12.2020 which provides the terms & conditions for inviting Expression of Interest (EOI)/Tariff based competitive Bidding for installation of Decentralized Ground/tilt Mounted Grid Connected Solar or other Renewable Energy based Power Plants.

c) The objective of Component-C of PM-KUSUM Scheme is to provide reliable day-time solar power for irrigation through agriculture feeders which have been separated and solarised under the scheme. Feeders having major load for agriculture may also be considered for solarization under the scheme. Solar power plants of capacity that can cater to the requirement of assessed annual power for agriculture feeder can be installed either through CAPEX mode or RESCO mode.

d) Renewable Energy Power Plant (REPP) would preferably be installed within a 5 km radius of the sub-stations to avoid the high cost of sub-transmission lines and reduce transmission losses.



- e) For installation of feeder level solar power plants through RESCO model, the project developers will be selected based on lowest tariff offered for supply of power for a period of 25 years. The developer will get Central Financial Assistance @ 30% of the estimated cost of installation of solar power plant i.e., Rs. 1.05 Cr/MW (30% of Rs. 3.5 Cr/MW).
- f) Further, under U.P. Solar Energy Policy-2022, for solarization of segregated Agriculture feeders will be promoted as per the guidelines issued under PM-KUSUM Scheme Component (C2) wherein State Government will provide maximum Viability Gap Funding (VGF) of Rs. 50 lakh/MW in addition to the subsidy being provided by the Central Government. UPNEDA have issued office order no. 6221/UPNEDA-SE-PM KUSUM component-C2/2022 dated 03.02.2023 for disbursement of Viability Gap Funding to RESCO developer @Rs 50 Lakhs/MW in addition to 30% CFA.
- g) As per U.P. Solar Energy Policy 2022, UPPCL through its Discoms will purchase the solar power generated under PM KUSUM scheme component C. UPPCL vide its letter dated 16.02.2023 has directed to UPNEDA for implementation of feeder level solarization under Component-C2 of PM-KUSUM Scheme.
- h) It has been proposed to implement Ground Mounted Grid Connected Solar PV Power Plant under this component C2 Scheme connected at 33/11kV Substation. UPPCL on behalf of Discoms have provided list of 33/11 kV distribution substations with agriculture feeder of cumulative proposed capacity 150MW for setting up of Grid connected solar power plant under Feeder level solarization.
- i) As per consent of UPPCL, UPNEDA Proposes to invite tariff based competitive bidding for procurement of cumulative 150 MW capacity against concerned agriculture feeder informed by UPPCL as per guidelines dated 22.07.2019 & 04.12.2020. UPPCL, as procurer will sign PPA with successful Bidder(s) for procurement of power for 25 years.
- j) Earlier, UPNEDA had conducted the tariff based competitive bidding for PM KUSUM C2 scheme for 150 MW capacity for which the Commission had granted the approval to the RFS documents vide its order dated 05.04.2023 in Petition No. 1957/2023. Subsequently, in view of only one bid received against the floated tender dated 14.04.2023, UPNEDA cancelled the tender.
- k) UPNEDA conducted stakeholder consultation on 10.06.2023 and floated revised RFS on 28.07.2023 after incorporating the suggestions of stakeholders. A pre bid meeting was held on 08.08.2023 to understand the concerns of bidders and to ensure greater participation from them.
- l) Draft RFS and PPA documents as prepared by the Petitioner after incorporating the suggestions received from the prospective bidders after pre-bid meeting, are enclosed for approval by the Commission.



4. The Petitioner(s) vide its additional submission dated 26.09.2023 furnished the minutes of meeting with the stakeholder consultation and Pre-bid meeting held with prospective bidders along with amendments proposed in the bid documents with respect to approved documents in Petition No. 1957/2023.

Records of Proceedings:

5. During the hearing on 17.10.2023, representative of UPNEDA submitted that they have filed revised RFP & PPA documents along with the justification/reasoning for the deviation sought. On specific query of the Commission regarding salient features of the scheme, it was submitted that total ninety-eight s/s have been identified with one hundred forty-three number of segregated agriculture feeders for solarization. Further, it was also submitted that selection of solar power developer shall be done through tariff based competitive bidding and Solar plants shall be established Sub-station wise by developers for the capacity based on average of last three years consumption on associated agriculture feeders.
6. It was also submitted that in addition to CFA (Central Financing Assistance) of Rs. 1.05 Cr per MW, State Govt would provide funding of Rs. 50 lakh per MW and UPNEDA would facilitate loan tie-up to achieve financial closure. Further, it was also submitted that Farmers/ FPO (Food Processing Organizations) could also participate in the bidding and O&M responsibility during the PPA tenure of 25 years shall be that of bidder.

Commission's View

7. The Commission vide its earlier Order dated 05.04.2023 in Petition No. 1957/2023 had already approved the proposed RFS & PPA documents for the procurement of 150MW Solar PV based power under Component-C of the PM KUSUM Scheme i.e., solarization of the agricultural feeders. The relevant extract of the said Order dated 05.04.2023 are as under:

"9. The Commission opines that solarization of segregated agriculture feeder would help the UPPCL in achieving better load demand management as well as power purchase cost optimization for agriculture dependent consumers/farmers in the state. Further, there is no deviation in the bidding documents as acknowledged by the representative of UPNEDA. In view of the above, the Commission approves the proposed RFS documents, and its amendments as annexed to this Order."

8. The Petitioner(s) has filed an instant Petition seeking approval of the amendments made in the approved RFS & PPA documents post cancellation of tender dated 14.04.2023 and after consultation with the stakeholders and holding pre-bid meeting. On 26.09.2023, UPNEDA filed its additional submissions summarizing the deviation/amendments sought. Further, on 17.10.2023, UPNEDA filed revised RFS & PPA documents along with justification/reasoning for the deviation sought for approval of the Commission.

9. On perusal of the documents placed on record, the Commission approves the revised RFS & PPA along with the deviation (at Annexure-I) of this



Order for the procurement of 150MW under Component C of the KUSUM Scheme with the following directions:

a) It is observed that in Section-V of the revised RFS, Clause A.2.4 has been retained as per previous RFS document i.e., without any change. However, in the deviation statement submitted on 17.10.23, amendment to clause A.2.4 has been proposed. **The Commission approves clause A.2.4 in Section-V in the revised RFS document. The approved clause A.2.4 in Section V is as follows:**

"On completion of Techno-commercial bid evaluation, if it is found that only one bidder is eligible, opening of the financial bid of the bidder will be at the discretion of UPNEDA. Thereafter, UPNEDA will take appropriate action as deemed fit."

b) Article 1.1 of the PPA i.e., in the definition of "Indian Govt. Instrumentality" the word **"Uttar Pradesh"** shall be added after the word **"Government of state of"** in the first line.

c) Article 3.1 (a) of the PPA the word **"Agreement to Sell"** to be replaced with **"Land Sale deed"**.

d) Article 4.10.2 of the PPA, in the last line, the word **"JMR"** should be replaced by **"JMR / Remote Metered data, as may be mutually agreed"**.

e) At Schedule 6 of the PPA, final voltage at Delivery point should be **33/11kV** instead of **132/33kV**.

f) Article 13.3.5 of the PPA should be retained as per Model PPA document of KUSUM -A scheme, which reads as follows:

"13.3.5 Subject to the terms of this Agreement, upon occurrence of a SPG Event of Default under this Agreement, the lenders in concurrence with the DISCOM, may exercise their rights, if any, under Financing Agreements, to seek substitution of the SPG by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the SPG and performing the obligations of the SPG. However, in the event the lenders are unable to substitute the defaulting SPG within the stipulated period, DISCOM may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the debt due or less as mutually agreed, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.

Provided further that in case of any liquidation of assets of the solar power plant prior to completion of PPA period, the first charge shall be towards recovery of proportionate CFA granted to the project by MNRE."





Provided that any substitution under this Agreement can only be made with the prior consent of DISCOM including the condition that the selectee meets the eligibility requirements of Request for Selection (RfS) issued by DISCOM and accepts the terms and conditions of this Agreement.

Provided further that in addition to the above, in the event SPG fails to perform its obligations under the PPA and in case the substitution of the selectee also fails, then the CFA provided by the Central Government and Viability Gap Funding provided by the State Govt., may be recoverable as arrears of land revenue with interest @ SBI one year MCLR.

g) Article 3.4.1 of the PPA shall be modified as follows:

"3.4.1 Subject to Article 3.3, UPNEDA shall retain the Performance Bank Guarantee during the complete tenure of the PPA i.e., 25 years."

h) Article 1.1, the definition of Central Finance Assistance (CFA) shall be modified as:

"shall be INR 1.05 Crore/MW i.e., 30% of estimated cost of installation of SPP at INR 3.5 crore/MW. CFA shall be governed by relevant Govt. of India guidelines from time to time.

CFA up to 100% of the total eligible CFA will be released to the RESCO developer through Procurer on successful operation and performance of the solar plant for two months after the commissioning with at least one-month CUF as per minimum CUF agreed in PPA."

The Petition stands disposed of in terms of the above.


(Vinod Kumar Srivastava)
Member(Law)


(Arvind Kumar)
Chairman

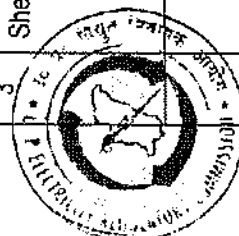
Place: Lucknow
Dated: 30.10.2023





Annexure-I
Summary of Amendments to RFS Document


Sl. No	Section	Previous Clause	Amendment to Clause	Justification
1	Check-list	In case of land taken on lease, Land lease agreement as per Annexure - E	In case land taken on lease, land lease agreement (as per Annexure-E, shall be submitted within 6 months from LoA)	In accordance with RFS documents of other states such as Rajasthan, Gujarat etc. reasonable time upto 180 days to be provided for land documents submission
2	Check-list	N/A	Certified copy of the land ownership documents as proof of land holding (shall be submitted within 6 months from LoA)	Same as above
3	Bid Information Sheet	Maximum CUF - Procuree, in any Contract Year, shall not be obligated to purchase additional energy above 21% CUF on annual basis during the PPA period from the SPG at the PPA tariff of that year. However, the excess energy generated by SPG above 21% CUF may be procured by Procuree at 75% of the PPA tariff as per Article 4.3 of PPA	Clause Deleted	As per point no. 2. Implementation Methodology of Guidelines for Implementation of Feeder Level Solarization under Component-C of PM-KUSUM Scheme dated 4.12.2020, there is <u>"no cap of the capacity of solar power plant for feeder level solarization."</u> In addition to the above the aforesaid Guidelines does not mandate any capping on CUF hence maximum CUF clause was removed
4	Bid Information Sheet	Minimum CUF - For any Contract Year except for the first year of operation, the Solar power generator shall be required to achieve a minimum CUF of 15% on annual basis during the period of PPA.	Minimum CUF - For any contract year of operation, the Solar power generator shall be required to achieve a minimum CUF of 19% on annual basis during the period of PPA.	Except for first year has been deleted to make the SPG eligible to receive subsidy after 3 months. As per point no. 2. Implementation Methodology of Guidelines for Implementation of Feeder Level Solarization under Component-C of PM-KUSUM Scheme dated 4.12.2020, the example mentioned in the point that the CUF considered is 19% and it has been mentioned there that higher or lower CUF, depending upon the average solar isolation available in the areas, may be considered for assessing solar power capacity. Therefore, Minimum CUF has been set taking into consideration criteria set by other states such as Rajasthan, Gujarat, Maharashtra etc. in their RFS





Sl. No.	Section	Previous Clause	Amendment to Clause	Justification
5	Bid Information Sheet	NA	<p>Mode of Bid Submission</p> <p>Technical & financial bids complete in all respect in line with this RFS is to be submitted online at the ETS e-bidding portal only. No hardcopy is to be submitted for documents which are to be submitted on non-Judicial Stamp paper in original as per this RFS for e.g.</p> <ul style="list-style-type: none"> a) Non blacklisting./ non debarment undertaking b) Individual power of attorney c) Joint Venture agreement d) Bid security declaration e) Bank Guarantee for EMD, if any <p>Proof of tender fee and processing fee submission</p>	<p>The mode of submission has been introduced to elaborate on the methodology of bid submission and make sure only serious bidders may approach.</p>
	Section I Definition of terms	<p>"Project Capacity" means the capacity of the individual Projects mentioned in this RFS;</p>	<p>"Project Capacity" means the AC capacity of the individual projects mentioned in this RFS.</p>	<p>Definition updated to give more clarity</p>
7	Section III Instructions to Bidders	<p><u>3.21 Right to Withdraw the RFS and reject any Bid:</u></p> <p>This RFS may be withdrawn or cancelled by UPNEDA at any time without assigning any reasons thereof. UPNEDA further reserves the right, at its complete discretion, to reject anyone or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.</p>	<p><u>A.14 Right to Withdraw the RFS and reject any bid:</u></p> <p>1. This RFS may be withdrawn or cancelled by UPNEDA at any time without assigning any reasons thereof. UPNEDA further reserves the right, at its complete discretion, to reject anyone or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.</p> <p>2. UPNEDA reserve the right to interpret the Bid submitted by the Bidder in</p>	

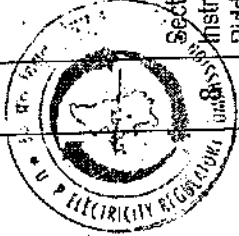


Sl. No	Section	Previous Clause	Amendment to Clause	Justification
			<p>accordance with the provisions of the and make its own judgment regarding the interpretation of the same. In this regard UPNEDA shall have no liability towards any Bidder and no Bidder shall have any recourse to the UPNEDA with respect to the selection process.</p> <p>3. Bid(s) that are grossly incomplete in any respect or those that are significantly inconsistent with the requirements as specified in this or those that do not adhere to formats prescribed herein, wherever specified, may be considered nonresponsive. However, UPNEDA reserves the right to seek additional information/clarifications from the Bidders, if found necessary, during the course of evaluation (processing of the Bid(s). Non-submission or delayed submission of such additional information or clarifications sought by UPNEDA may be a ground for rejecting the Bid(s). Strict adherence to the documents required to be submitted shall be ensured, failure on this account may lead to rejection of Bid.</p> <p>4. UPNEDA reserves its right to vary, modify, revise, amend or change any of the terms and conditions of the RFS before Bid Deadline. The decision regarding acceptance of Bid by UPNEDA will be full and final.</p>	<p>Clause updated in line with observations of recent RFS to avoid any litigation.</p>





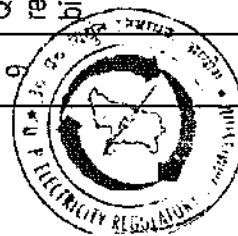
Sl. No.	Section	Previous Clause	Amendment to Clause	Justification
		<p>3.32. Delay in Commissioning of Power Plant</p> <p>a. In case of delay in commissioning of the Project beyond the SCD until the date as on 14 months from the Date of issuance of LOA (as applicable), as part of the liquidated damages, the total PBG amount for the Project shall be encashed on per-day-basis and proportionate to the balance capacity not commissioned.</p> <p>b. In case the commissioning of the solar power plant is delayed beyond the date as on 14 months from date of issuance of LOA, the PPA capacity shall stand reduced/ amended to the Project Capacity Commissioned and the PPA for the balance capacity will stand terminated and shall be reduced from the selected Project.</p>	<p>5. Bidder is to ensure compliance of all provisions of the RFS and submit their Bid accordingly. Bid with any deviation to the conditions shall be liable for rejection without any explanation.</p>	
	<p>Section III Instructions to Bidders</p>		<p><u>A.25 DELAY IN COMMISSIONING OF POWER PLANT</u></p> <p>a. In case of delay in commissioning of the Project beyond the SCD until the date as on 2 months from the SCD, as part of the liquidated damages, the total PBG amount for the Project shall be encashed on per-day-basis and proportionate to the balance capacity not commissioned.</p> <p>b. In case the commissioning of the solar power plant is delayed beyond the date as on 2 months from the SCD, and the PPA capacity shall stand reduced/ amended to the Project Capacity Commissioned and the PPA for the balance capacity will stand terminated and shall be reduced from the selected Project.</p>	<p>SCD is 12 months from Effective Date (Date of signing of PPA). Wording updated for better understanding and to provide clarification that delay shall be subject to the Force Majeure clause</p>





Sl. No	Section	Previous Clause	Amendment to Clause	Justification
9	Section - IV Qualifying requirements for bidders	4.1 General 1.2 Bidder can be sole/ single bidder OR, Joint Venture (JV) of up to 2 (two) members, with one of the members as a Lead Member	A.1 GENERAL 1.2 Bidders can be sole/ single bidder OR, Joint Venture (JV) of up to 3 (three) members, with one of the members as a Lead Member. 1.8. Sanctions: Firms, which includes any of the JV members in case of bidding Joint Venture, blacklisted by the Employer/ CPSEs or any of their subsidiaries / Government of India/ any State Government / any Regulatory Authority, as on the date of submission of Bid, are not eligible to bid. 1.9. Suspension: Firm, which includes any of the JV members in case of bidding Joint Venture under suspension by the UPNEDA as the result of the operation of a Bid-Securing Declaration or Proposal-Securing Declaration, shall not be eligible to bid. 1.10. Prohibitions: Firms, which includes any of the JV members in case of bidding Joint Venture, and individuals of a country or goods/ works/ services manufactured/ produced in a country shall be ineligible, if as a matter of law or official regulations, the Government of India prohibits commercial relations with that country.	Clause updated to include bidder feedback and allow for JV of upto 3 members to participate.

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Sl. No	Section	Previous Clause	Amendment to Clause	Justification
10	Section - IV Qualifying requirements for bidders	4.2.1 Technical Criteria Bidder shall have experience of supply, installation, commissioning and O&M of grid connected solar power plants of total cumulative capacity of 1 MWp during the last three years in India with any govt. or private organization in India.	Experience criteria removed	Technical criteria removed for all to allow for wider participation and also allow farmers / group of farmers / co-operatives / panchayats / FPOs to participate in bid
11	Section - IV Qualifying requirements for bidders	4.2.2 ii) Net-Worth of the Bidder or Lead member, in case of Consortium/ JV, During the last three financial years (FY 2019-20,2020-21 and 2021-22), the Bidder should have positive net worth and minimum of Rs. 1 Cr per MW of capacity quoted in any one year.	A.2.1 ii) Net worth of the bidder/lead member of the consortium shall be positive for the last three financial years.	Net worth positive criteria updated to allow wider participation
12	Section V: Bid Evaluation and Selection of Projects	b.4 On completion of Techno-commercial bid evaluation, if it is found that only one bidder is eligible, opening of the financial bid of the bidder will be at the discretion of UPNEDA. Thereafter, UPENDA will take appropriate action as deemed fit.	A.2.4 On completion of Techno-commercial bid evaluation, if it is found that only one bidder is eligible, the financial bid shall be opened with the following conditions: a. Power procurer (UPPCL) shall have the option to reject the bid. b. Power procurer (UPPCL) can negotiate the price of the bid. c. Any other option as deemed fit by the power procurer (UPPCL).	Criteria updated to bring in transparency as UPPCL is the procurer.

