

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.

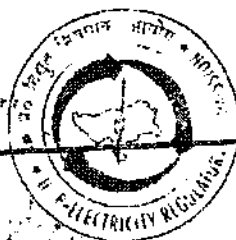
ii) Component-B: Installation of standalone solar agriculture pumps.

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."



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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

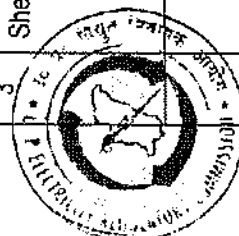
Place: Lucknow
Dated: 30.10.2023





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> <ol style="list-style-type: none"> 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. 2. UPNEDA reserve the right to interpret the Bid submitted by the Bidder in 	



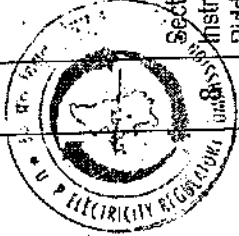


Sl. No	Section	Previous Clause	Amendment to Clause	Justification
			<p>accordance with the provisions of the and make its own judgment regarding the interpretation of the same. In this regard UPNEDA shall have no liability towards any Bidder and no Bidder shall have any recourse to the UPNEDA with respect 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. <u>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 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>



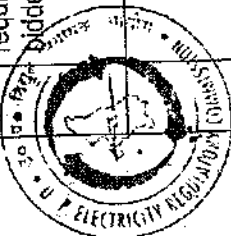


Sl. No	Section	Previous Clause	Amendment to Clause	Justification
9	Section - IV Qualifying requirements for bidders	4.1 General 1.2 Bidder can be sole/ single bidder OR, Joint Venture (JV) of up to 2 (two) members, with one of the members as a Lead Member	A.1 GENERAL 1.2 Bidders can be sole/ single bidder 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.





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.





Sl. No.	Section	Previous Clause	Amendment to Clause	Justification
13	Section V: Bid Evaluation and Selection of Projects	<u>D. STEP IV - Successful bidder selection</u> IV. From the list prepared in accordance with Clause II above, all the technically qualified Bidders shall be invited to match the RA L1 Tariff. Upon their due acceptance in writing of RA L1 Tariff, such Bidder(s) shall become Successful Bidder(s) along with Eligible Bidder with RA L1 Tariff and LOA shall be issued to them as per Work Allocation prescribed in this RfS.	Clause Deleted	Clause deleted as each substation and geography may have its challenges and not everyone will be able to match L1
14	Section V: Bid Evaluation and Selection of Projects	N/A	<u>A.4. STEP IV - Successful bidder selection</u> A.4.6 For all substations that are not awarded after the reverse auctioning process, the following methodology will be followed to offer such sub-stations for setting up of solar powerplant: i. Reverse auction will be conducted again for all such sub-stations. ii. Only the technically eligible bidders as per the previous round of reverse auction will be eligible to participate in this reverse auction process. iii. The tariff ceiling for the reverse auction will be set at the highest tariff awarded	To maximize solarization of segregated Agricultural Feeders in identified Substations.





Sl. No	Section	Previous Clause	Amendment to Clause	Justification
14	Section VI: Scope of work & -Technical Specifications	N/A	iv. For sub-stations where tariff is not received in this round of reverse auction, the substations shall no longer be available for further bidding under this RFS. Sections Added: <u>A.3 Remote Monitoring System A.4.9 Notice board for display at site</u>	Added to elaborate on essential requirement of MNRE on RMS





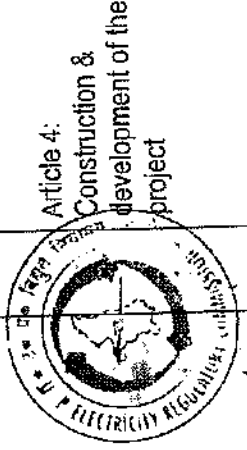
Summary of Amendments to PPA Document

Sl. No	Section	Old Clause	Amendment to Clause	Justification
1	Article 1 Definition & Interpretations	"Project Capacity" shall mean the maximum AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed;	"Project Capacity" shall mean the AC capacity of the Project at the point of injection on which the Power Purchase Agreement has been signed;	The Commission is requested to allow the word "maximum AC capacity" to be read as "AC capacity" this would be in line with the RFS document.
2	Article 2: Terms of Agreement	N/A	2.3 Early Termination 2.3.2 In such other circumstances as the Procurer and SPG agree, in writing.	To accommodate for any further unforeseen circumstance / disagreements etc. which are not covered under any of the previous sections including force majeure
	Article 3: Conditions Subsequent	N/A	a) The SPG shall submit the land documents such as Agreement to sell, lease agreement of land etc. to demonstrate that required land is under possession of SPG, for at least 27 years, within the period of 6 months from the date of issuance of LOA for the entire required land. 3.3 Performance Bank Guarantee.	Land proof for acquired / leased land to be submitted, wording shall be updated as deemed fit by the Commission.
4	Article 3: Conditions Subsequent	N/A	3.3.2 The failure on the part of the SPG to furnish and maintain the Performance Bank Guarantee shall be a material breach of the term of this Agreement on the part of SPG. 3.3.4 If the SPG is able to arrange for commissioning of only part of the total capacity bid by the SPG, the entire Performance Bank Guarantee shall be	This is to ensure that only serious candidates may apply. Further, this will ensure that the complete generation takes place. Also, similar queries were received in conversations with the prospective SPGs. Hence it was incorporated for the scenario of part commissioning.





Sl. No.	Section	Old Clause	Amendment to Clause	Justification
			<p>encashed by UPNEDA, and the project will be commissioned for the reduced capacity.</p>	
		<p>4.1 SPGs Obligations</p> <p>b) Obtaining all Consents, Clearances and Permits as required and maintaining all documents.</p>	<p>4.1 SPGs Obligations</p> <p>ii. Obtaining all Consents, Clearances and Permits as required and maintaining all documents in full force and effect during the Term of this Agreement. The SPG shall, on its own obtain permissions / sanctions from Government Authorities, if any required for establishing the project. Any steps that may be taken by UPNEDA/UPPCL in regard to grant of such consents and permits or any other approval to be taken by the SPG shall only be a voluntary endeavor with no intention of being bound by any legal or binding obligation.</p>	<p>Updated obligations of SPG and clarified UPNEDA and UPPCL's stance on support provided.</p>





Sl. No	Section	Old Clause	Amendment to Clause	Justification
6	Article 4: Construction & development of the project	4.3.1 Procurer, in any Contract Year shall not purchase any 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 will be procured by Procurer at 75% of the PPA tariff as per Article 9. For any Contract Year except for the first year of operation, the SPG shall be required to achieve a minimum CUF of 15% on annual basis during the period of PPA. For the first year of operation, the above limits shall be considered on pro-rata basis. The lower limit will, however, be relaxable by Procurer to the extent of grid non-availability for evacuation which is beyond the control of the SPG.	4.3 Right to Contracted Capacity 4.3.1 The Procurer, in any Contract Year shall not be obliged to purchase any additional energy from the SPG beyond the contract capacity at the declared annual CUF.	Updated clause in line with RfS to remove maximum CUF of 21%. The Contracted Capacity has been defined in the RFS document as <u>“Contracted Capacity” shall mean the AC capacity in MW contracted with the procurer (UPPCL) for supply by the SPG to the Procurer at the Delivery Point from the Solar Power Project, based on which the PPA is executed with the procurer.”</u>
7	Article 4: Construction & development of the project	4.3.3 For shortfall in generation on annual basis below minimum CUF (15%), penalty of 75% of PPA tariff for generation shortfall below 15% on annual basis shall be levied.	Clause Deleted	The clause has been deleted in order to bring in line with MNRE OM no. 32/645/2017-SPV Division dated 13.11.2020 which dictates as under <u>“There shall be no penalty to RPG for shortfall in solar power generation from minimum prescribed CUF.”</u> Therefore, shortfall shall have no penalty and hence clause deleted.



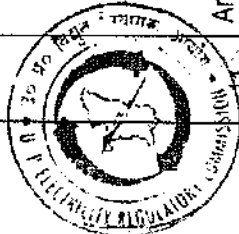


Sl. No	Section	Old Clause	Amendment to Clause	Justification
8	Article 4: Construction & development of the project	4.5.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to 14 Months from the Effective Date. In case, the Commissioning of the Project is delayed beyond 14 Months from the Effective Date, it shall be considered as an SPG Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 14 Months from Effective Date and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.	4.5.2 The maximum time period allowed for commissioning of the full Project Capacity with encashment of Performance Bank Guarantee shall be limited to 2 Months from the Scheduled Commissioning Date. In case, the Commissioning of the Project is delayed beyond 2 Months from the Scheduled Commissioning Date, it shall be considered as an SPG Event of Default and provisions of Article 13 shall apply and the Contracted Capacity shall stand reduced / amended to the Project Capacity Commissioned within 2 Months from Scheduled Commissioning Date and the PPA for the balance Capacity will stand terminated and shall be reduced from the project capacity.	Timeline is the same since SCD is 12 months from Effective Date (Date of signing of PPA). The wording updated for better understanding and to provide clarification that delay shall be subject to the provisions of Article 13 of the Power Purchase Agreement.
9	Article 4: Construction & development of the project	N/A	Clause Added: 4.7 Grid Connectivity	The clause has been added to bring in clarity concerning the responsibility of development of connectivity of the Solar Power Plant to sub-station, construction of bay, related switchgear, and extension to control room (if required) at sub-station where the plant is connected to the grid and metering is done.
10	Article 5: Synchronisation, Commissioning and Commercial operation	N/A	5.1.7 The SPG shall be permitted for full commissioning of the Project even prior to the Scheduled Commissioning Date. In case of early commissioning of entire capacity, till the SCD, UPPCL may, at its discretion if the buying entity agrees to, purchase the	Clause added to allow early commissioning and provide benefit in case parties agree. Hence if the generator Commission the project early, it would be the discretion of UPPCL to purchase the power in case of early





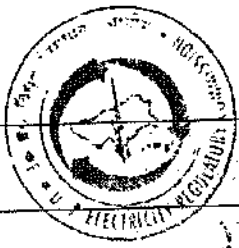
Sl. No	Section	Old Clause	Amendment to Clause	Justification
		<p>7.2 Reporting of Metered Data and Parameters</p> <p>7.2.1 The grid connected solar power plants will install necessary equipment for regular monitoring of required data and simultaneously for monitoring of the electric power generated from the Project.</p> <p>7.2.2 Online arrangement would have to be made by the SPG for submission of above data regularly for the entire period of this Power Purchase Agreement to the Procurer, the MNRE and concerned agency as per applicable regulation / directions.</p> <p>7.2.3 Reports on above parameters on monthly basis (or as required by regulation / guidelines) shall be submitted by the SPG to UPNEDA/Procurer/Ministry of New and Renewable Energy/ National Institute of Solar Energy through Procurer for entire period of PPA.</p>	<p>generation at the PPA tariff. However, early commissioning of the Project and subsequent energy procurement from the same shall be subject to the approval of the procurer (UPPCL).</p> <p>7.2 Remote Monitoring System (RMS)</p> <p>7.2.1 As per the MNRE guidelines for feeder level solarization under Component C of KUSUM scheme, it is mandatory for DISCOMs to monitor solar power generation and performance of the solar power plant through online system. The online data will be integrated with central monitoring portal of MNRE which will extract data from the State portals for monitoring of the scheme.</p> <p>7.2.2 In line with MNRE model guidelines for State Level SEDM Software Development issued in July 2020, State Level Solar Energy Data Management (SEDM) platform has been developed to integrate & monitor the performance of all systems installed under Component A, B & C (individual as well as feeder level solarization) of PM-KUSUM scheme.</p> <p>7.2.3 Also, as per the Specifications for Remote Monitoring System for Component A & C of the scheme.</p>	<p>commissioning.</p> <p>Updated Remote Monitoring System in line with MNRE guideline on Remote monitoring dated 15.07.2020.</p>



Article 7:
Metering



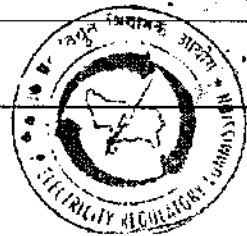
Sl. No.	Section	Old Clause	Amendment to Clause	Justification
			<p>issued by MNRE on 15 Jul 2020, the SPG under this RFS shall be required to install the mandatory remote monitoring systems for solar power plant to integrate with State SEDM platform directly which in turn will have interface with National Level Solar Energy Data Management Platform of MNRE.</p> <p>7.2.4 The SPG is responsible for making all relevant arrangements would for installation of necessary equipment for remote monitoring of required data and simultaneously for monitoring the electric power generated from the Project.</p> <p>7.2.5 It is the SPG's responsibility to ensure that the data remains available to the Procurer and on the SEDM portal at all times and to make necessary arrangements for the same.</p> <p>7.2.6 The SPG shall also be responsible for maintaining the communication security between the RMS and the State SEDM platform, which would ensure that third parties are unable to intercept or "sniff" the encrypted data.</p>	
12	Article 9: Applicable Tariff	9.1 The SPG shall be entitled to receive the Tariff of Rs.	9.1 The SPG shall be entitled to receive a Tariff of Rs: ----- /kWh for	



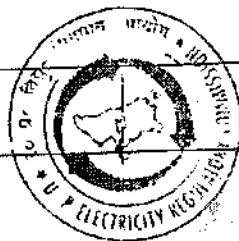


Sl. No	Section	Old Clause	Amendment to Clause	Justification
		<p>/ kWh, fixed for the entire term of this Agreement, with effect from the COD, for the power sold to the Procurer subject to clause 4.3 as reflected in the Energy Accounts. In case of early part commissioning, till the achievement of full commissioning of the Project or SCD, whichever is earlier, subject to the consent for such purchase by the Procurer, Procurer may purchase the generation at 75% (seventy five percent) of the PPA Tariff. Any energy produced and flowing into the grid before SCD shall not be at the cost of Procurer. However, SPG may sell energy generated prior to SCD to any other entity other than Procurer as per provisions of prevailing Regulations. Any excess generation in a contract year subject to clause 4.3 shall be procured by the Procurer at 75% of the applicable PPA tariff of that year.</p> <p>This tariff has been arrived at after giving due consideration to</p>	<p>the energy supplied at the Metering Point during the term of the PPA (unless extended by both the parties on mutual agreement).</p> <p>9.2 Procurer will be liable to pay the project developer the tariff as signed in the PPA.</p> <p>Remaining clauses deleted</p>	<p>Article 9 updated only to keep clause related to applicable tariff remaining deleted</p>

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Sl. No.	Section	Old Clause	Amendment to Clause	Justification
		<p>available Govt subsidy at a rate of 30% of estimated project cost of INR 3.50 crore/ MW i.e., INR 1.05 crore/ MW Govt subsidy has been factored in total project cost to arrive at quoted tariff.</p> <p>9.2 CFA/ subsidy from Central Govt. 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 upto 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. Further, a suitable clause in PPA shall be included to ensure that RESCO developer does not sell solar power to any other buyer except the concerned procurer during tenure of PPA, including penal provision calling for refund of proportionate CFA</p>		



Sl. No	Section	Old Clause	Amendment to Clause	Justification
		<p>granted to the project by MNRE on violation of this condition. 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.</p> <p>9.3 Subsidy from Government of Uttar Pradesh i.e Viability Gap Funding (VGF) Shall be a maximum of INR 0.50 Cr (50 Lakhs)/MW. VGF upto 100% of total eligible VGF will be released to the RESCO developer through UPNEDA as following.</p> <p>i)75% of total VGF shall be released on successful COD of the full Project Capacity and on UPPCL recommendation.</p> <p>ii)Balance 25% shall be released progressively over next five (5) years in five equal installments of 5% of the each on UPPCL recommendation against fulfillment of prescribed specification of PPA executed with UPPCL and successful operation & maintenance of</p>		

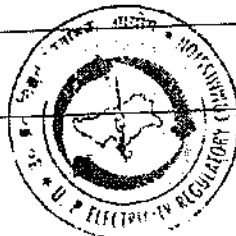
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Sl. No	Section	Old Clause	Amendment to Clause	Justification
13	Article 10: Billing and Payment	<p>plant.</p> <p>10.1.2 The SPG shall be required to make arrangements and payments for import of energy (if any) as per applicable regulations.</p>	Clause deleted	<p>Taken cues from other state PPAs such as Rajasthan, Gujarat, Maharashtra etc. The clause has been deleted to make the project lucrative towards the Solar Power Developer. The clause may be reinserted based on the directions of the Commission.</p> <p>Timelines and conditions were missing in the previous PPA document and have been added to provide clarity.</p>
14	Article 10: Billing and Payment	<p>10.2 Delivery and Content of Monthly Bills/ Supplementary Bills</p> <p>10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:</p> <p>i) deductions required by the Law, and</p> <p>ii) Amount claimed by Procuree, if any, from the SPG will be adjusted from the monthly energy payment.</p> <p>The SPG shall open a bank account (the "SPG's Designated Account") for all Tariff Payments to be made by Procuree to the SPG, and notify the procurers of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill.</p>	<p>Clause amended to include timelines and conditions for delivery and content of monthly bills</p> <p>10.3.2 The SPG shall open a bank account at Lucknow, Uttar Pradesh ("SPG's Designated Account") for all Tariff Payments to be made by the Procuree to the SPG and notify the Procuree of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. The Procuree shall also designate a bank account at Lucknow (the "Procuree's Designated Account") for payments to be made by the SPG to the Procuree, if any, and notify the SPG of the details of such account ninety (90) days before the dispatch of the first Monthly Bill. The SPG and the Procuree shall instruct their respective bankers to make all payments under this Agreement to the Procuree's Designated Account or the SPG's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.</p>	<p>Since it is possible that either party may need to pay therefore, the clause is amended so as to take into account that payments may be made both ways arising out of generic payments or repayments for adjustments or any other reason.</p> <p>The bank account at Lucknow has been added so as to take into account the manual procedure in which cheque clearance may be required, in case both the accounts are in Lucknow the clearance would take place sooner.</p>
15	Article 10: Billing and Payment			





Sl. No	Section	Old Clause	Amendment to Clause	Justification
16	Article 10: Billing and Payment	10.7.1 SPG may raise a ("Supplementary Bill") for payment on account of: i) Adjustments required by the Joint Meter Reading / Energy Accounts (if applicable); or ii) Change in Law as provided in Article 12 and such Supplementary Bill shall be paid by the other Party.	10.7.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of: i) Adjustments required by the Regional Energy Account (if applicable); or ii) Change in Law as provided in Article 12, and such Supplementary Bill shall be paid by the other Party.	Since it is possible that either party may need to pay therefore, the clause is amended to include both parties
17	Article 11: Force Majeure	11.1.2 'Force Majeure' (FM)	Definitions updated such as Occurrence of Pandemic, Lockdown quarantine, nationwide strike, war, lockout, boycott etc.	Definitions updated to provide an exhaustive list of Force Majeure events.
18	Article 13: Events of default and termination	13.2.1 (iii) Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of sixty (60) days, or 13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties agreed to the contrary or the SPG Event of Default giving rise to the Consultation Period shall have ceased to exist or shall be remedied, Procurer may terminate this Agreement by giving a written Termination Notice of sixty (60)	13.2.1(iii) Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or 13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPG Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Procurer may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPG.	Time period reduced to provide easier and quicker exit to SPG and reduced financial strain on SPG due to prolonged proceedings.
19	Article 13: Events of default and termination	13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties agreed to the contrary or the SPG Event of Default giving rise to the Consultation Period shall have ceased to exist or shall be remedied, Procurer may terminate this Agreement by giving a written Termination Notice of sixty (60)	13.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the SPG Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, Procurer may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the SPG.	Same as per above



Sl. No	Section	Old Clause	Amendment to Clause	Justification
		days to the SPG.		
20	Article 13: Events of default and termination	13.3.7 In the event the lenders are unable to substitute the defaulting SPG within the stipulated period, Procurer may terminate the PPA and may acquire the Project assets for an amount equivalent to 90% of the debt due, failing which, the lenders may exercise their mortgage rights and liquidate the Project assets.	Clause deleted	The Clause 13.3.7 was deleted as it was being repeated in clause 13.3.5
21	Article 14: Liability and Indemnification	14.1 Indemnity	Clause updated	Clause 14.1.1 (b) has been updated to indemnify the procurer in the event the SPG submits any representations or warranties which are found to be inaccurate or untrue.

