

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**
Shri. S. Venugopal, Member

Petition No. OP 04/2020

In the matter of : Petition for seeking approval for inviting bid for implementation of 60 MWp grid connected solar PV Rooftop systems in domestic/ Government/ Industrial/ commercial/ institutional premises etc in the State under 'SOURA' scheme by KSEB Ltd through Developers under Tariff basis (RESCO mode) with modifications in the approved bid documents .

Petitioner : Kerala State Electricity Board Limited

Petitioner represented by : Sri. Nazarudeen, State Nodal Officer, SOURA
Smt. Latha S.V, AEE
Smt. Deepa, R, AEE, SOURA
Sri. Nandakumar, AE, SOURA

Order dated 28.04.2020

1. KSEB Ltd, on 03.01.2020 filed a petition before the Commission with following prayers;
 - (1) Grant of consent for tender process for inviting tender for 60MWp solar rooftop systems with modifications in the approved bid documents under Tariff basis/RESCO to meet its RPO obligations.
 - (2) Permission to file separate petition for specific approvals for adoption of tariff upon conclusion of tender process.
 - (3) Allowing KSEBL to avail credit of solar energy generated under SOURA Scheme towards fulfilment of its RPO target compliance.
 - (4) Allowing any further addition / alteration/ modification of the petition as may become necessary.
2. The summary of the issues raised by KSEB Ltd in the petition is given below.
 - (1) KSEB Ltd, vide petition No. OP 50/2019 dated 24.06.2019, prayed before the Commission to;

- (a) Grant of consent to proceed with the tender process for implementation of 'SOURA' Phase-1 project comprising a cumulative capacity of 200MWp solar rooftop systems during 2019-20 to meet its RPO obligations.
 - (b) Permission to file separate petition for;
 - (i) specific approvals for adoption of Tariff or approval of EPC Cost or both, upon conclusion of tender process.
 - (ii) Procurement of power from Rooftop PV systems installed by Special Purpose Vehicle or RESCO, as may be necessary.
 - (c) Allow KSEBL to avail credit of solar energy generated under SOURA Scheme towards fulfilment of its RPO target compliance.
- (2) The Commission vide the order dated 30.08.2019, disposed the petition with the following orders.
- (i) KSEB Ltd may proceed with the tender process for implementation of 'SOURA Phase-1 project with cumulative capacity 200 MWp'.
 - (ii) While finalizing the bids and mode of implementation of the 'SOURA Phase- 1 project, KSEB Ltd shall address the issues highlighted by the Commission under the paragraphs 22, 23 and 24 above.
 - (iii) KSEB Ltd shall ensure that in case bucket filling is resorted to, all contracts awarded are exactly at the same price as that awarded to L1 bidder. No additional price on any account shall be considered or awarded by KSEB Ltd in such contracts.
 - (iv) Immediately after finalizing the bids, KSEB Ltd shall file separate petitions for the approval of EPC mode of implementation, and also for the adoption of tariff under RESCO model.
 - (v) KSEB Ltd shall, issue necessary instructions to its field offices that, feasibility certificate and connectivity shall be issued to all the consumers approaching KSEB Ltd for roof top solar PV installations, as per the provisions in the Regulations notified by the Commission in this regard, irrespective of the fact that whether the applicant is registered under SOURA or not.
- (3) KSEB Ltd invited tenders for the program after giving wide publicity through newspapers (Hindu, New India Express, Malayala Manorama & Mathrubhumi), social media and electronic media. A web based portal was developed by MSTCL for carrying out e-bidding. Tender documents were published in KSEBL website and MSTCL website. Further, two numbers of pre-bid meeting were held – one at New Delhi on 19-9-2019 and the other at Thiruvananthapuram on 5-10-2019.

Around 40 firms participated in the pre-bid meeting held at New Delhi and 70 firms participated at Thiruvananthapuram.

- (4) The last date of bid submission was 30-10-2019. The non-financial bid was opened on 4.11.2019. Five bidders had participated in the EPC Bid with aggregate quoted capacity of 46.5MWp. However, there was no participation under the Tariff bid.
- (5) KSEB Ltd had therefore analysed the feedback from those who participated in the pre-bid meeting and concluded that, the following factors were the disincentives for non-participation in the RESCO bid.
- (i) Inadequacy of Upper ceiling rates in the bid
 - (i) Higher Minimum bid capacity
 - (ii) Experience required for pre-qualification
 - (iii) Financial Criteria for pre-qualification
 - (iv) Stringent time period for completion of the project
 - (v) Larger geographical spread of the project.

Hence, KSEB Ltd decided to re-tender the work by modifying the bid parameters. The modifications proposed by KSEB Ltd is given in the subsequent paragraphs.

3. Upper ceiling rates for tariff proposed .

- (1) In the original bid, the upper ceiling rates for tariff fixed as follows:

Part-A: <= 10kWp : Rs. 3.70/unit
 Part-B: 11 - 100kWp :Rs. 3.35/ unit
 Part-C: >100 kWp :Rs. 3.20 / unit

The upper ceiling rate was fixed based on the debt : equity ratio of 80:20, base RoE -14% without grossing up of tax, deduction of AD benefits, CUF-19% etc.

In view of the lack of response from the bidders, KSEB Ltd has proposed to revise the bid parameters as follows, duly considering the debt:equity ratio at 75:25, RoE with grossing up for tax and CUF-17%.

Category	Quantity	Previous rate (Rs/ Unit)	New rate
			(Rs/ Unit)
2 -10 kWp	Not included in retender, since this group is included in the MNRE Phase-II subsidy program		
Part-A:>10-100 kWp	40 MWp	3.35	4.00
Part-B: > 100 kWp	20 MWp	3.20	3.85

KSEB Ltd further submitted that, the direction of the Commission to ask the bidders to match with the L-1 rate in the process of bucket filling is not in accordance with the standard bidding guidelines. Hence KSEB Ltd requested them to allow to carry out the bid process in the tender with bucket filling as per standard procedure.

4. Bid Capacity.

As per the original bid, the RESCO model was proposed for procuring 150 MW solar power under tariff based bidding. However, in the present petition, KSEB Ltd proposed to limit the quantum under RESCO model to 60 MW (excluding the Solar PV installation '2 kW to 10 kWp proposed in the original bid). The details are given below.

(1) Part-A: 11-100 kWp

The total capacity proposed under part-A is limited to 40MWp. The part-A bids are invited, by dividing the whole State as three region as follows.

- Region1:** Districts – Thiruvananthapuram, Kollam, Pathanamthitta, Kottayam, Alappuzha, Idukki
Region 2: Districts – Ernakulam & Thrissur
Region 3: Districts – Palakkad, Malappuram, Kozhikode, Kannur, Kasargode, Wayanad

Minimum bid capacity is 3MWp and maximum bid capacity is 10MWp for Region 1 and Region 2, 20MWp for Region 3.

(2) Part-B: >100 kWp

Part-B bids are proposed to invite for the whole State without regional segregation. The minimum bid capacity is 5MWp and the maximum bid capacity is 20 MWp.

(3) The summary of the bid capacity in Part-A and Part-B Bid are given below.

Capacity range	Minimum/ Maximum Capacity (MWp)	Region 1	Region 2	Region 3
Part-A: 11-100kWp	Min	3	3	3
	Max	10	10	20
Part-B: >100kWp	Min	5		
	Max	20		

5. Technical eligibility criteria.

Particulars	Original bid	Re-tender
Experience		
1. Minimum experience in installing Solar Capacity including Ground Mounted and Rooftop Solar together, prior to non-financial bid opening	Minimum 5 MWp, six months prior to non-financial bid opening	5 MWp is changed to 3 MWp. Further, for ANERT empanelled contractors and startups, the minimum capacity is relaxed to 1.5 MWp
2. Minimum experience on installing Rooftop solar PV		
11- 100 kWp (Part-A)	Shall have commissioned grid connected rooftop solar plant with aggregate capacity of 0.5 MWp	Shall have commissioned grid connected rooftop solar plant with aggregate capacity of 0.5 MWp. For start-ups & ANERT: aggregate capacity of 0.25MWp
>100 kWp (Part-B)	Shall have commissioned grid connected rooftop solar plant with aggregate capacity of 1 MWp including at least one grid connected rooftop solar of >100kWp	No change

6. Financial Eligibility criteria

Sl No	Particulars	Original bid	Re-tender
1	Solvency	Rs 2.65 Cr/MWp	Rs 1.50 Cr /MWp
2	Annual turnover (for three FY in the last 5 FY immediately preceding the bid opening date)	Rs 1.5 Cr /MWp	Rs 1.0 Cr/MWp
3	Net Worth		
	(a) In the last 3 FY preceding the bid opening rate	Shall be Positive	Shall be positive
	OR		
	(b) For companies incorporated within the last 3 FY, the net worth shall be	Of and above Rs 0.75 Cr/MWp of the capacity offered	Of and above Rs 0.75 Cr/MWp of the capacity offered.
4	For ANERT empanelled Solar PV developers and start-ups	For quoting ≤ 10 kWp, the condition on annual turnover and Net worth is waived	The condition on annual turnover and Net worth is waived for bidding for the entire capacity

Hearing on the petition

7. The Commission admitted the petition as OP No 04/2020 and conducted hearing on 27.02.2020 at the Court hall of the Commission at Thiruvananthapuram.

8. During the hearing, SmtLatha S.V, Asst. Executive Engineer presented the petition on behalf KSEB Ltd. The summary of the deliberations during the hearing is given below.
- (1) KSEB Ltd has arrived at the ceiling tariff as per the revised tender documents as follows.
 - Determined the levelized tariff for Debt- equity ratio, 70:30, 75:25 and 80:20, with pre-tax RoE and without grossing up RoE.
 - With CUF of 19% and 17%.
 - The tariff arrived for the above scenarios for 11 kWp to 100 kWp capacity, ranges from Rs 3.35/unit to Rs 4.60/unit based on the MNRE benchmark cost. Based on the sensitivity study, KSEB Ltd has proposed Rs 4.00/unit as the ceiling tariff, as against Rs 3.35/unit in the original bid.
 - Similarly for more than 100 KWp capacity, the tariff arrived ranges from Rs 3.20/unit to Rs 4.34/unit based on MNRE benchmark capital cost.
 - (2) KSEB Ltd has reduced the bid capacity from 150 MWp to 60 MWp, since the Roof Top solar PV capacity upto 10 kWp is proposed to be implemented through the MNRE Phase-II subsidy scheme and hence the quantum of 90 MWp earmarked to be installed upto 10kWp is excluded from the scope of the present tender.
 - (3) The minimum capacity to be installed in the capacity range 11 kWp to 100 kWp is reduced from 5 MWp to 3 MWp.
 - (4) Inorder to get more participation from the bidders empanelled within the State, KSEB Ltd proposed relax the technical eligibility criteria and financial eligibility criterion.
 - (5) The time period of competition also changed from 6 months to 9 months.
 - (6) During the hearing KSEB Ltd further submit that, inorder to get more participation of the bidders, the Commission may permit KSEB Ltd to allow to allow to carry out the bid process in the re-tender with bucket filling as per standard procedures.

Analysis and Decisions

9. The Commission, examined in detail the petition filed by KSEB Ltd as per the provisions of the Electricity Act, 2003, KSERC (Renewable Energy and Net metering) Regulations, 2020 and other relevant documents placed before it.
10. The Commission vide Order dated 30.08.2019 in OP No. 50/2019, granted permission to KSEB Ltd to proceed with the tender process for the implementation of 'SOURA phase-1 project' with a total bid capacity 200

MWp. Out of the total bid capacity of 200 MWp, 50 MWp is proposed to be implemented through EPC mode and the balance 150 MWp through RESCO mode, based on tariff based bidding. KSEB Ltd reported that, in the bids invited, there was no participation from the bidders for the RESCO model. According to the petitioner KSEB Ltd, the following factors were identified for non-participation of the bidders in the Tariff based bidding under RESCO model;

- (i) Inadequacy of Upper ceiling rates in the bid
- (ii) Higher Minimum bid capacity
- (iii) Experience required for pre-qualification
- (iv) Financial Criteria for pre-qualification
- (v) Stringent time period for completion of the project
- (vi) Larger geographical spread of the project.

Hence, in order to attract more participants in the bidding process, KSEB Ltd proposed to re-tender the scheme, with the modifications proposed under paragraphs 3, 4, 5 and 6. KSEB Ltd also submitted the bidding documents along with the petition.

The Commission examined in detail the modifications proposed by KSEB Ltd in the bidding documents. The observations and decisions of the Commission on the same is detailed below.

Upper ceiling rates

11. In the original bid, as proposed by KSEB Ltd, the Commission vide the order dated 30.08.2019 has approved, the upper ceiling on tariff as follows.

Part-A: <= 10kWp : Rs. 3.70/unit
 Part-B: 11 - 100kWp : Rs. 3.35/ unit
 Part-C: >100 kWp : Rs. 3.20 / unit

KSEB Ltd proposed the ceiling rate as above, based on the debt : equity ratio of 80:20, base RoE -14% without grossing up of tax, deducting the accelerated depreciation benefits, CUF-19% etc .

However, in view of the lack of response from the bidders, KSEB Ltd has proposed to revise the bid criteria as follows, duly considering the debt:equity ratio at 75:25, RoE with grossing up tax , CUF-17%, without deducting the benefit of accelerated depreciation.

Category	Quantity	Upper ceiling tariff approved in the original bid (Rs/ Unit)	Upper ceiling tariff proposed in the revised bid(Rs/ Unit)
2 -10 kWp	Not included in retender, since this group is included in the MNRE Phase-II subsidy program		
Part-A:>10-100 kWp	40 MWp	3.35	4.00
Part-B: > 100 kWp	20 MWp	3.20	3.85

The Commission examined the revised ceiling tariff proposed by KSEB Ltd as proposed above, and also the deliberations on this issue during the public hearing as detailed under paragraph 8(1) above, and noted the following.

- (1) As per the KSERC (Renewable Energy and Net metering) Regulations, 2020, the CUF of the Solar PV projects capacity less than 5 MW is taken at 19% and Debt-Equity ratio at 70:30. However in the current petition, KSEB Ltd has requested for relaxation in these two criteria at 17% and 75:25 respectively. **The Commission has carefully considered the submission of KSEB Ltd and noted that KSEB Ltd could not attract any bidder under RESCO model. Under such circumstances the Commission duly considered the KSEB Ltd request to relax the CUF at 19% to 17% and the debt-equity 70:30 to 75:25. The Commission would like to emphasise that this relaxation apply only to this bid and cannot be taken as a general relaxation for any subsequent bidding which is required have to be separately applied and shall be considered based on merit.**
- (2) Ministry of Power, Government of India vide the notification dated 03.08.2017 has notified the 'Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects'. The said guidelines is applicable for procuring power by the DISCOMs from 'grid connected Solar PV power projects having size of 5 MW and above, through competitive bidding.
- (3) Since these guidelines were not applicable for intra-state Wind Projects below 25 MW and Solar Projects below 5 MW. Hon'ble Minister of State (Independent Charge) for Power and New & Renewable Energy, Government of India, vide the DO letter dated 13.04.2018, addressed to the Energy Ministers of all States with a copy to the Chairpersons of SERCs informed of as follows.

"

Under Section 62 of the Electricity Act 2003, the State Electricity Regulatory Commissions (SERCs) have statutory powers to determine tariff for procuring power from solar and wind projects not covered under competitive bidding guidelines. In order to accelerate deployment of solar and wind energy and facilitate investment in these sectors from small and medium entrepreneurs, your State/ Union Territory can consider procuring power from solar and wind projects of less the defined threshold (25 MW for wind, 5 MW for solar) prescribed in the competitive bidding guidelines through FiT, to be determined by the SERC of your State/Ut".

From the above communication of the Hon'ble Minister of State for Power, it is seen that DISCOMs can purchase power from the Solar PV projects of capacity less than 5 MW at the Feed in Tariff (FiT) determined by the Appropriate Commission.

- (4) The Commission also noted that, as per Annexure-III to the KSERC (Renewable Energy and Net metering) Regulations, 2020, the

Commission has determined the generic tariff for Solar PV projects with capacity less than 5 MW at Rs 3.66/unit without the benefit of accelerated depreciation and Rs 3.35/unit after availing the benefit of accelerated depreciation for the FY 2019-20. This tariff was determined by the Commission adopting the debt-equity of 70:30, CUF of 19%. Though this tariff was due for re-consideration, due to the out break of COVID-19 and the consequent nation-wide lockdowns, the Commission is not in a position to determine the generic tariff (feed in tariff) for the FY 2020-21.

- (5) In this connection, KSEB Ltd has submitted that, the accelerated depreciation is permitted in solar industry for promoting the same.

Decision of the Commission

In view of the above facts, the Commission hereby orders KSEB Ltd to use the Commission determined generic tariff of Rs 3.66/unit, approved for Solar PV projects with capacity less than 5 MW for the year 2019-20 with the benefit of accelerated depreciation, as the upper ceiling tariff, for inviting the re-bids for both the project category Part-A with capacity 11kW to 100 kW and Part-B category with capacity above 100 kWp, under SOURA Scheme. The Commission would like to emphasize that this rate is permitted only for the limited purpose of this tender and shall not be construed as the FIT for any future bids.

Bid Capacity

12. In the original bid, KSEB Ltd invited bids for procuring 150 MWp roof top solar PV system under tariff based bidding. However, in the petition dated 03.01.2020 seeking approval for the revised bid, KSEB Ltd proposed to reduce the bid capacity to 60 MWp capacity, citing the reason that KSEB Ltd excluded the installation of the Solar PV capacity upto 10kWp from the scope of this petition, since the same was covered under MNRE Phase-II subsidy scheme.

The Commission noted the proposal of KSEB Ltd and here by permit limiting the bid capacity to 60MWp under the scope of this petition.

13. In this petition, out of the total bid capacity of 60 MWp, 40 MWp is proposed to be installed under Part-A category with capacity of installation in the range of 11kWp and upto 100 kWp. Further, 20 MWp is proposed to be installed under Part-B category with capacity of installation above 100 kWp.

Further, under the Part-A 11-100 kWp category, KSEB Ltd proposes to divide the entire State in to three region as detailed under paragraph 4 of this Order. However, in the Part-B bid category is proposed in the whole State as a whole without any regional segregation.

The minimum bid capacity in each region under Part-A category is limited to 3 MWp instead of 5 MWp specified in the original bid. The maximum bid

capacity under Part-A and Part-B is limited 20 MWp, with total capacity together as 60 MWp.

Decision of the Commission

The Commission after carefully considering the petitioner’s request, hereby grant permission to KSEB Ltd to proceed with the bid capacity in the bidding documents as proposed under paragraph 4 (3) above.

14. Technical eligibility criteria.

The technical eligibility criteria specified in the original bid and in the re-tender proposed is given below.

	Particulars	Original bid	Revised bid
	<u>Part-A: 11 kWp to 100 kWp</u>		
I	Minimum experience in Solar PV installation (including Ground mounted and Roof top together) six months prior to non-financial bid opening.		
(1)	<u>Part-A: 11 kWp to 100 kWp</u>		
	(a) General category	5 MWp	3 MWp
	(b) ANERT empanelled contractors	No relaxation	1.5 MWp
(2)	<u>Part-B. above 100 kWp</u>		
	(a) General category	5 MWp	
	(b) ANERT empanelled contractors	No relaxation	No change
II	Minimum experience in Rof Top Solar PV installation alone		
(1)	<u>Part-A: 11 kWp to 100 kWp</u>		
	(a) General category	0.5 MWp	0.5 MWp
	(b) ANERT empanelled contractors	No relaxation	0.25 MWp
(2)	<u>Part-B. above 100 kWp</u>		
	(a) General category	1 MWp	
	(b) ANERT empanelled contractors	No relaxation	No change

As stated above, KSEB Ltd has relaxed the technical eligibility criteria for ANERT empanelled contractors with grading SP1A, SP1B, SP1C, SP2A, SP2B, SP2C, SP3A, SP4A, SP4B, SP4C, SP5A and SP5B.

Since the ANERT criteria for the empanelment of vendors is neither known nor was this Commission consulted by M/s ANERT, the Commission during the public hearing on 27.02.2020, directed KSEB Ltd to provide the criteria adopted by ANERT for empanelment and grading of the contractors as provided in the bid documents. But KSEB Ltd has not produced the same to the Commission. Under such circumstances, the Commission cannot approve the relaxation provided to the ANERT empanelled contractors in the bid documents, hence the same is rejected.

Decision of the Commission.

The Commission reject the relaxation on technical eligibility criteria proposed by KSEB Ltd to the ANERT empanelled contractors and start-ups due to the reasons explained above.

15. Financial eligibility criteria.

The summary of the changes in the financial eligibility criteria proposed by KSEB Ltd in this petition compared to the original bid is given in the Table below.

Sl No	Particulars	Original bid	Re-tender
1	Solvency	Rs 2.65 Cr/MWp	Rs 1.50 Cr /MWp
2	Annual turnover (for three FY in the last 5 FY immediately preceding the bid opening date)	Rs 1.5 Cr /MWp	Rs 1.0 Cr/MWp
3	Net Worth		
	(a) In the last 3 FY preceding the bid opening rate	Shall be Positive	Shall be positive
	OR		
	(b) For companies incorporated within the last 3 FY, the net worth shall be	Of and above Rs 0.75 Cr/MWp of the capacity offered	Of and above Rs 0.75 Cr/MWp of the capacity offered.
4	For ANERT empanelled Solar PV developers and start-ups	For quoting <= 10 kWp, the condition on annual turnover and Net worth is waived	The condition on annual turnover and Net worth is waived for bidding for the entire capacity

As given as item No.4 in the Table above, KSEB Ltd has proposed to waive the financial eligibility criteria with respect to Annual Turnover and Net Worth for the ANERT empanelled Solar PV developers and start-ups.

It is to be understood that the Financial strength of a bidder is a fundamental requirement for the successful completion of any contract. Hence, the complete waiver of 'Annual Turnover and Net Worth criteria' may permit the entry of financially incapable bidders to participate in the bid and consequently result in non completion of allocated capacities. If bids from such financially incapable bidders is accepted, it may jeopardise the project either by delays, or work abandonment or both leading to non fulfilment of project objectives. Further, since roof top of private individuals are also proposed to be utilised, it can lead to disputes and prolonged litigation inconveniencing the roof owner. As already stated, the Commission is not aware of the criteria and grading of the contractors adopted by ANERT as given in the bid documents for giving relaxation on 'financial eligibility criteria'.

Considering the above reasons, the Commission cannot approve the complete waiver of 'financial eligibility criteria' offered to the ANERT empanelled contractors and start-ups in the bid documents, hence the same is rejected.

Decision of the Commission

The Commission hereby reject the complete waiver of financial eligibility criteria proposed by KSEB Ltd in the bid documents for ANERT empanelled contractors and start-ups.

16. Time period for completion of Project.

In the original bid, the time period for completion of the project was specified as '6' months from the construction start date. In the revised bid, KSEB Ltd proposed to change the time period for completion of the project to 9 months.

Decision of the Commission

The Commission noted the changes proposed by KSEB Ltd and hereby permits to incorporate the same in the bidding documents.

17. Relaxation on bucket filling from the Order issued by the Commission in its order dated 30.08.2019 in OP No. 50/2019.

The Commission vide the paragraph 26(iii) of the Order dated 30.08.2019 in OP No. 50/2019, ordered as follows.

'KSEB Ltd shall ensure that in case bucket filling is resorted to, all contracts awarded are exactly at the same price as that awarded to L1 bidder. No additional price on any account shall be considered or awarded by KSEB Ltd in such contracts.'

KSEB Ltd in the petition dated 03.01.2020 as well as during the hearing submitted as follows.

“

It is additionally submitted that Hon'ble Commission while granting consent for bid under 'Soura' Phase-1 had ordered that KSEB Ltd shall ensure that in case bucket filling is resorted to, all contracts awarded are exactly at the same price as that awarded to L1 bidder and no additional price on any account shall be considered or awarded by KSEB Ltd in such contracts.

Even though the above direction is not in line with the guidelines issued by MNRE in the case of bids for ground mounted solar systems and other Renewable energy bids in the Country, KSEBL had complied with the above direction in 'Soura' Phase-I tender. Bucket filling process is done after L-1 matching. Again asking the bidders to match with L-1 rate is not in accordance with standard guidelines and therefore, it is requested that KSEBL may be allowed to carry out bid process in the re-tender with bucket filling as per standard procedure. The re-tender bid documents are framed in this line”.

The Commission noted the submission of the KSEB Ltd. Though KSEB Ltd had mentioned that the Commission's direction in this regard was not in line with MNRE guidelines, no such guidelines issued by MNRE was available in their website. Further KSEB Ltd too did not produce any such guidelines to substantiate their contention. Hence the Commission examined the provisions in the revised bidding documents notified by Ministry of Power, Government of India on 05.03.2019, for procurement of power on long term basis under 'Design, Build, Finance, Own and operate (DBFOO) basis. The relevant provisions in the bidding documents are extracted below.

“The paragraphs 3.3.3 and 3.3.4 of the bidding guidelines deals with 'L1 matching', which is extracted below for ready reference.

“3.3.3 In the event that the Lowest Bidder withdraws or is not selected for any reason in the first instance **or the capacity required is not met by the Lowest Bidder (the “first round of bidding”)**, the Utility may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Lowest Bidder (the “second round of bidding”). If in the second round of bidding, only one Bidder matches the Lowest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Lowest Bidder in the second round of bidding, then the Bidder whose Bid was lower as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth lowest Bidders in the first round of bidding offer to match the said Lowest Bidder in the second round of bidding, the said third lowest Bidder shall be the Selected Bidder. It is hereby clarified that the Utility will not accept the entire capacity offered of the last Lowest Bidder in the order of progression, in the event the Capacity Required gets fulfilled by a part thereof.

3.3.4 In the event that no Bidder offers to match the Lowest Bidder in the second round of bidding as specified in Clause 3.3.3, the Utility may, in its discretion, invite fresh Bids (the “third round of bidding”) from all Bidders except the Lowest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are lower than the Bid of the second lowest Bidder in the first round of bidding.”

From the above it is clear that, there is no provision in the above bidding documents for procurement of power on long term basis by selecting bidders in the order of ranking at different tariff till the entire requisitioned capacity is met.

In the present petition, the proposed bid by KSEB Ltd is for procurement of power on long term basis for 25 years. Hence, KSEB is required to follow the selection criteria prescribed for long term procurement and have to follow the selection criteria, similar to the provisions in the bidding guidelines notified by the MoP, GoI for long term procurement of power.

Decision of the Commission

The Commission, reiterate its original decision that, in case bucket filling has to be resorted to, KSEB Ltd shall ensure that all contracts awarded are exactly at the same price as that awarded to L1 bidder. No additional price on any account shall be considered or awarded by KSEB Ltd in such contracts. The Commission once again orders that, in all the bidding process, KSEB Ltd shall strictly follow the above procedures if bucket filling is resorted to.

18. Earnest Money Deposit:

Since there is no bidding guidelines for procuring power from Solar PV Projects with capacity less than 5 MW, the Commission considered the bidding guidelines notified by the Ministry of Power, Government of India vide the notification dated 3rd August 2017 for procuring power from Solar PV

projects having size of 5MW and above through competitive bidding as reference document.

As per Clause 11.1 of the Standard Bidding Guidelines dated 3rd August 2017, 'Earnest Money Deposit (EMD) to be fixed by the Procurer shall not be more than 2% of the solar PV project cost, as determined by CERC, if any, for the financial year in which the bids are invited, or the estimated project cost. In the case of roof Solar PV project, Ministry of New and Renewable Energy (MNRE), Government of India, has been fixing the benchmark capital cost of roof top Solar PV projects in the Country.

The bench mark capital cost fixed by MNRE and issued vide the notification dated 16.07.2019 for Grid connected Solar Roof Top PV projects for the year 2019-20 is;

Rs 48/Wp for capacity 10kWp to 100 kWp and
Rs 45/Wp for capacity above 100kWp to 500 kWp.

Accordingly, as per the standard bidding guidelines, KSEB Ltd can fix the EMD upto Rs 960/kWp for Part-A category with capacity 11kWp to 100kWp and Rs 900/kWp for Par-B category with capacity above 100kWp. However, in the bidding documents KSEB Ltd fixed the EMD as Rs 100/- per kWp, more clearly the EMD fixed by KSEB Ltd in the bid documents is about 10.41% to 11.11% of the EMD that can be fixed as per the provisions in the bidding guidelines.

Decision of the Commission

The Commission is of the view that, by the reduction in EMD, many frivolous bidders without adequate financial capability may participate in the bidding process. Hence the Commission hereby clarify that, any risk associated with the reduction in EMD shall fall on the shoulder of KSEB Ltd. With this condition, KSEB Ltd can proceed with bidding process, solely for this bid, and it cannot be construed as a general relaxation granted by the Commission in other bids.

19. Performance Bank Guarantee:

As per the clause 11.2 of the standard bidding guidelines dated 3rd August 2017, the Performance Bank Guarantee (PBG) to be fixed by the procurer shall be a maximum of 4% of the solar PV project cost, as determined by CERC, if any, in case the site to be specified by the Procurer.

Hence, based on the benchmark capital cost for Grid Connected Roof Top Solar PV plants fixed by MNRE vide the notification dated 16.07.2019 as detailed under paragraph 18 above, the maximum Performance Bank Guarantee to be fixed by KSEB may be,

- (1) Rs 19.20 lakh per MWp for Part-A category with capacity 11 kWp to 100 kWp and,
- (2) Rs 18.00 lakh per MWp for Part-B category with capacity above 100kWp.

However, KSEB Ltd in the bid documents proposed the PBG @Rs 25 lakh/ MWp for the contracts awarded.

Decision of the Commission

Since the amount proposed by KSEB Ltd exceeds the MNRE specifications for PBG, the Commission here by grant approval to adopt the PBG as proposed by KSEB Ltd in this bidding process.

Power Purchase Agreement (PPA)

20. The Commission noted that, though KSEB Ltd has enclosed the draft PPA along with the tender documents, no prayer either for the approval of the PPA or for any deviation in the standard PPA terms and conditions have been sought for. Hence the approval of the PPA shall be considered only at the time of adoption of tariff based on a petition filed by KSEB Ltd after the conclusion of the bidding process. KSEB Ltd shall ensure that the general conditions of the contract, its terms and conditions and all accompanying documents in the bidding process are strictly in line with the standard PPA terms and conditions.

Decision of the Commission

The Commission hereby direct that, KSEB Ltd shall separately seek approval of the PPA with deviation if any, at the time of filing the petition for adoption of tariff after the conclusion of the bidding process.

Orders of the Commission.

21. The Commission, after examining the petition filed by KSEB Ltd for seeking approval for inviting bid for implementation of 60 MWp grid connected solar PV Rooftop systems in domestic/ Government/ Industrial/commercial/ institutional premises etc in the State under 'SOURA' scheme, as per the provisions of the Electricity Act, 2003, and KSERC (Renewable Energy and Net metering Regulations) 2020 and other relevant documents, hereby orders the following.

- (1) The first prayer of the petitioner is to 'Grant consent for tender process for inviting tender for 60MWp solar roof top systems with modifications in the approved bidding documents.

The Commission hereby orders that, KSEB Ltd may proceed with the tender process for implementation of 60 MWp grid connected solar PV Rooftop systems in domestic/Government/ Industrial/commercial/ institutional premises etc in the State under 'SOURA' scheme, **strictly complying the decisions of the Commission as given under paragraphs 11 to 19 of this order.**

- (2) The Commission herein reiterates that the relaxation granted applies only to KSEB Ltd proposal in this order and is not a general exemption order. This order cannot be quoted as a precedent for seeking any

further relaxation and such petition, if any filed shall be decided as per its merits.

- (3) The prayer of the petitioner is to grant permission to file separate petition for specific approvals for adoption of tariff upon conclusion of tender process is accepted.

As specified in the para-20 of this order, the Commission hereby directs that, immediately after finalizing the bids, KSEB Ltd shall file a separate petitions for the adoption of tariff along with the Approval of the PPA

- (4) The third prayer of the petitioner is to allow KSEB Ltd to avail credit of solar energy generated under SOURA Scheme towards fulfilment of its RPO target compliance.

The Commission hereby permits KSEB Ltd to credit the solar energy generated under SOURA scheme towards its RPO target compliance.

- (5) The fourth prayer of the petitioner to allow KSEB Ltd to make further addition/ alteration/ modifications of the petition as may become necessary is not agreed to. The Commission hereby clarify that, KSEB Ltd is not permitted to make additions/ alterations/ modifications in the Commission approved bidding documents without the prior approval of the Commission.

Petition disposed off as above.

Sd/-
S.Venugopal
Member

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C.R Satheesh Chandran
Administrative Officer
(In Charge of Secretary)