

LAW & POLICY UPDATE



Guidelines for Tariff-Based Competitive Bidding Process for Procurement Power from Grid Connected Solar PV Power Projects

- On August 02, 2023, Ministry of Power (**MoP**) introduced the Guidelines to enable procurement of solar power by procurers from grid-connected solar photovoltaic (**PV**) power projects (**Guidelines/2023 Guidelines**), with or without energy storage through tariff-based competitive bidding under Section 63 of the Electricity Act with the objectives of:
 - Promoting competitive procurement of electricity from solar PV power plants, by Distribution Licensees.
 - Facilitating solar PV capacity addition and fulfilment of Renewable Purchase Obligation (**RPO**) and Energy Storage Obligation (**ESO**) requirement of DISCOMs.
 - Providing a transparent, fair, standardized procurement framework based on open competitive bidding with appropriate risk-sharing between various stakeholders to enable procurement of power at competitive prices in consumer interest, improve bankability of projects and ensure reasonable returns to the investors.
 - Providing a framework for the inter-State or intra-State, long-term, sale-purchase of power as a further measure to de-risk the sector.
- The Guidelines aim to bring clarity with respect to various commercial concepts and also introduce a reference to already notified Rules by MoP, to avoid any ambiguity with respect to its application. It is necessary to point out that procurement of power through competitive bidding by the Distribution Licenses is expected to reduce the overall cost of procurement of power and facilitate development of power markets. Internationally, competition in wholesale electricity markets has led to reduction in prices of electricity, thereby resulting in significant benefits for consumers. The Guidelines cover solar PV power projects, with or without storage, having bid capacity of 10 MW and above for STU-connected projects, and bid capacity of 50 MW and above for projects connected to inter-State transmission system.
- Certain new terminologies that have been introduced by way of the Guidelines, including definitions of the following terms:
 - Solar**: A solar PV technology, or the power plant based on such technology, for the purpose of these Guidelines.
 - Solar power**: Power generated from solar power generating systems with or without Energy Storage Systems (**ESS**), as the case may be, for the purpose of these Guidelines.
 - Solar Power Generator (SPG)**: A person who is generator and supplier of solar power with or without energy storage system.
 - RE Park**: An area or park developed in compliance with the Guidelines for setting-up of renewable energy power projects, including solar-wind hybrid power projects, issued by the Central and State Governments.
- Vide the 2023 Guidelines, MoP has grand-fathered existing commercial concepts into legally binding contractual terms. Some of these are enumerated below:
 - Take or pay | Clause 6.5 of the 2023 Guidelines**: The Guidelines specify that in case the Procurer schedules power in the event of unavailability of the Transmission

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Infrastructure or any other eventuality, the penalty shall be specifically in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021, as amended from time to time.

- **Mechanism for excess generation | Clause 6.2(c) of the 2023 Guidelines:** In case of availability of excess power than specified in the CUF, the Generator shall have all the rights to sell it to any other entity subject to first right of refusal vests with the Procurer(s).
- **Payment security mechanism | Clause 6.3 of the 2023 Guidelines:** The 2023 Guidelines refer to the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 including amendments and clarification, if any, thereof, issued from time to time. The Intermediary Procurer can maintain a payment security fund in addition to the payment security provided by the rules mentioned earlier.
- **Penalty for DSM | Clause 6.2(g) of the 2023 Guidelines:** In case of any deviations from the schedule, Deviation Settlement Mechanism (**DSM**) shall be applicable as per the prevailing regulations. The DSM charges at the Generators end shall be settled by the WPG.
- **Mechanism for shortfall in supply | Clause 6.2(b) of the 2023 Guidelines:** In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the SPG will be liable to pay to the Procurer the penalty for the shortfall in availability below such contracted CUF level. The amount of such penalty will be equal to one and a half times of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA.
- **Repowering | Clause 6.1 of the 2023 Guidelines:** The Generator will be at liberty to upgrade or repower their plants during the PPA period at its own risk and cost to participate in subsequent bids to the extent of their untied capacity.
- **Change in Law | Clause 6.7 of the 2023 Guidelines:** Provisions for Change in Law shall be in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by MoP, including amendments thereof issued from time to time.
- **Performance Bank Guarantee (PBG) | Clause 11.2 of the 2023 Guidelines:** PBG shall be minimum 5% of the estimated project cost for the Financial Year in which the bids are invited or as per any other criteria as specified in the RfS.
- **Clause 16 of the 2023 Guidelines:** In the event of any deviation from the process defined in the Guidelines, the same shall be subject to approval by the Appropriate Government before the initiation of the bidding process itself.
- **Tariff adoption | Clause 10.5 of the 2023 Guidelines:** It is the responsibility of the Distribution Licensee or Intermediary Procurer, to approach Appropriate Commission for adoption of tariff under Section 63 of the Electricity Act. If such Appropriate Commission does not decide within 60 days of submission or within 120 days from the date of the Power Sale Agreement (**PSA**), whichever is more, scheduled commencement of supply date shall be extended accordingly.
- **Renewable Purchase and Energy Storage Obligation | Clause 19 of the 2023 Guidelines:** The solar power bought under these Guidelines shall be eligible for RPO compliance. The ESS capacity used in the project can be used for fulfilling the energy storage obligations as per the Government of India's orders or notifications.
- The generator shall be liable to commence supply of power, within a period of:
 - 24 months from the date of execution of the PPA, for project size not more than or equal to 1000 MW
 - 30 months from the date of execution of the PPA, for project size more than 1,000 MW (**Clause 13.2 of the 2023 Guidelines**)
 - If the SCSD period has to be kept shorter or extended longer than the specified period in the Guidelines, the same can be done by the procurer
- In addition to the above, the Guidelines now mandate that the bid-out tariff shall be the tariff at the delivery point, and all cost and consequence up to the delivery point shall rest with the SPG, which may include transmission charges or losses, DSM, etc. Consequently, all cost beyond delivery point shall be borne by the Procurer.

