Chapter III

Compliance Audit Observations relating to Power Sector Undertakings

Kerala State Electricity Board Limited

Non-adherence to Model Standard Bidding Documents

Purchase of power from other than lowest bidder disregarding the Model Standard Bidding Documents and guidelines issued by Ministry of Power led to non-accordance of final approval for the power supply agreements by the Regulator.

3.1 Ministry of Power (MoP), Government of India (GoI) issued (November 2013) new guidelines for procurement of electricity from thermal power stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis. MoP also issued Model Standard Bidding Documents[56] (MSBD) to be adopted by distribution licensees for procurement of electricity from power producers through a process of open and transparent competitive bidding based on the offer of the lowest tariff. As per the guidelines, any deviation from the standard bidding documents was to be done with the prior approval of GoI.

Kerala State Electricity Board Limited (KSEBL) floated (March/ April 2014) two[57] tenders for procurement of 450 MW (Bid-1) and 400 MW (Bid-2) for a period of 25 years on DBFOO basis. The power to be procured under Bid-1 and Bid-2 was to be drawn from 1 December 2016 and 1 October 2017 respectively.

- In response to Bid-1, 10 bids were received (opened on 31 October 2014) with tariff ranging between ₹3.60 per kWh and ₹7.29 per kWh in which Jindal Power Limited offered the lowest rate for 200 MW. Though KSEBL requested bidders L2 to L4 to match with the L1 offer for the remaining quantity (250 MW), the bidders refused to match with the L1 rate. KSEBL issued Letter of Acceptance (LoA) to Jindal Power Limited for 200 MW of power offered by them at the lowest rate of ₹3.60 per kWh and to Jhabua Power Limited for 115 MW of power offered by them at L2 rate of ₹4.15 per kWh.
- In response to Bid-2, 11 bids were received (opened on 14 November 2014) with tariff ranging between ₹4.29 per kWh and ₹5.95 per kWh in which Bharat Aluminium Company Limited offered the lowest rate for 100 MW.

[56] Model documents comprising of the Model Request for Qualification, the Model Request for Proposal and the Model Power Supply Agreement.
[57] KSEBL had, considering the energy shortage anticipated from the year 2016-17 and the risk of bearing the 50 *per cent* of fixed charges in the event of non-availability of transmission system, decided to invite two separate bids.

In order to tie-up for the remaining quantity (300 MW), KSEBL requested bidders L2 to L6 to match with the L1 rate and four bidders (L2 to L5) concurred to match with the L1 rate. KSEBL placed LoA on L1 to L5 bidders for the quantity of power offered by them (aggregating to 550 MW) at the lowest rate of ₹4.29 per kWh.

Accordingly, power supply agreements were entered into[58] for supply of 865 MW of power (315 MW under Bid-1 and 550 MW under Bid-2) for 25 years. In this regard, Audit noticed the following:

3.1.1 As per Para 3.3.1 of the Request for Proposal (RFP) issued by KSEBL in line with the Model Standard Bidding Documents and guidelines of MoP, the bidder who quoted the lowest tariff should be declared as the successful bidder. Para 3.3.3 provided that in the event that the lowest bidder withdrew or was not selected for any reason in the first instance (first round), the utility was to invite all the remaining bidders to match the lowest bidder (second round). Para 3.3.4 provided that in the event of no bidder offering to match the lowest bidder in the second round, utility was to invite fresh bids (third round) from all bidders except the lowest bidder of the first round or annul the bidding process as the case might be.

Audit observed that KSEBL did not comply with the RFP regarding acceptance of the lowest bid.

- In the case of Bid-1, since KSEBL accepted the offer from the lowest bidder, Jindal Power Limited ought to have been declared as successful bidder for the offered quantity of 200 MW and the bidding process closed. As the RFP did not permit KSEBL to undertake the second round of bidding process, it should have resorted to retendering for procuring the untied quantity (250 MW). Thus, inviting bidders L2 to L4 to match with the L1 rate (₹3.60 per kWh) was irregular.

  Further, KSEBL placed LoA on Jhabua Power Limited (L2) at their quoted rate (₹4.15 per kWh) on the plea that their rate was lower than the lowest rate (₹4.29 per kWh) of Bid-2. Placement of LoA on L2 bidder (Jhabua Power Limited) at their offered rate (₹4.15 per kWh) by comparing the rate obtained in another tender was irregular.

- In the case of Bid-2, KSEBL accepted the lowest offer received from Bharat Aluminium Company Limited for 100 MW. Hence, instead of inviting fresh tenders for procuring 300 MW, KSEBL's decision to invite bidders L2 to L6 to match with the L1 rate (₹4.29 per kWh) and subsequent placement of LoA on bidders L2 to L5 was not in order.

[58] Bid-1: Jindal Power Limited on 29/12/2014 for 200 MW and Jhabua Power Limited on 31/12/2014 for 115 MW. Bid-2: Bharat Aluminium Company Limited on 26/12/2014 for100 MW, Jindal India Thermal Power Limited on 29/12/2014 for 100 MW, Jhabua Power Limited 26/12/2014 for 100 MW, Jindal Power Limited on 29/12/2014 for 150 MW and East Coast Energy Private Limited on 02/02/2015 for 100 MW.

3.1.2 KSEBL floated (March/ April 2014) two tenders for procurement of 850 MW, *i.e*., 450 MW under Bid-1 and 400 MW under Bid-2, for a period of 25 years. Audit observed that KSEBL placed LoA for procurement of 865 MW as against the tendered quantity of 850 MW as under.

- Though KSEBL tendered for 450 MW under Bid-1, it could procure only 315 MW leaving a shortfall of 135 MW of power from this bid.
- In the case of Bid-2, as against the tendered quantity of 400 MW, KSEBL procured 550 MW resulting in excess procurement of 150 MW at ₹4.29 per kWh to offset the shortfall of 135 MW under Bid-1. As the bid was invited for procurement of 400 MW only and the RFP did not envisage procurement of any additional quantity, the procurement of 150 MW was irregular.

3.1.3 According to Section 63 of the Electricity Act, 2003, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the MoP. KSEBL executed (December 2014) power supply agreements with the two lowest bidders for 300 MW and four other than lowest bidders for 465 MW. The agreement entered into (February 2015) with one other than lowest bidder[59] (100 MW) was cancelled as the party failed to supply the power as agreed.

Audit noticed that Kerala State Electricity Regulatory Commission (KSERC) did not agree with the process of bidding by KSEBL and ordered (August 2016) that the approval of purchase of power from bidders other than lowest bidders would be considered on getting approval from GoI on the deviations from the guidelines. Although GoK and KSEBL approached (September 2016/ July 2019) MoP for approval/ advice, the MoP intimated (November 2016/ December 2019) that the deviations as pointed out by KSERC should have been got vetted and approved by GoI before issuance of bidding documents. MoP also stated that as per the guidelines, deviations on the provisions of bidding documents were approved, if necessary, and not the actions taken by the utility as per practice or precedence. Hence, MoP suggested GoK/ KSEBL to take appropriate action in consultation with KSERC**.** Due to deviations from the RFP and the guidelines issued by MoP, KSERC was yet to accord final approval for the power supply agreements with other than lowest bidders for 465 MW of power though these were provisionally approved[60]. Non-approval of the power supply agreements by KSERC would result in non-consideration of the expenditure amounting to ₹1,482.04 crore *per annum*[61] for Aggregate Revenue Requirement and recovery through tariff. KSERC allowed

---

[59] East Coast Energy Private Limited.

[60] In the case of Bid-1, KSERC provisionally approved (December 2016) the purchase of power from L2 bidder based on an order of GoK dated November 2016. In the case of Bid-2, KSERC provisionally allowed (December 2017) KSEBL to draw the contracted power in view of an order of GoK dated October 2017.

[61] ₹1,482.04 crore *per annum*, *i.e.*, 350 MW x 1,000 x 0.90 *per cent* availability x 24 hours x 365 days x 0.95 *per cent* injunction x ₹4.29 per kWh = ₹1,124.59 crore and 115 MW x 1,000 x 0.90 *per cent* availability x 24 hours x 365 days x 0.95 *per cent* injunction x ₹4.15 per kWh = ₹357.45 crore.

recovery of cost incurred for purchase of power against these power supply agreements through tariff till March 2022.

The GoK stated (November 2020) that the deviation was due to a glaring gap in the MSBD on the procedure to be followed when lowest bidder did not offer required quantity of power. Had KSEBL not procured 115 MW at L2 rate (₹4.15 per unit) under Bid-1, it would have contracted this quantity from Bid-2 at L1 rate (₹4.29 per unit) as the entire requirement of 850 MW was to be contracted before December 2014. In order to ensure transmission facility from October 2017, applications for the same were to be filed before December 2014. Hence, the additional quantum was contracted from Bid-2. Further, KSEBL does not find any reason for KSERC in not continuing to allow the recovery of cost beyond 2022.

The reply was not acceptable. The gap pointed out in the reply arose as KSEBL prescribed minimum quantity (25 *per cent* of the quantity tendered) to be offered by a bidder in RFP (clause 1.1.4) while the MSBD did not make it mandatory to prescribe such minimum quantity. This led to a situation where the lowest bidder did not offer required quantity of power. Since KSEBL prescribed minimum quantity, it would have been prudent on its part to approach MoP for revising the procedure for selection of bidders (clause 3 of RFP) before inviting the bids. Purchase of power at L2 rate was irregular as the RFP provided for purchase of power only at the lowest rate offered. The procurement of additional 150 MW under Bid-2 was not in order as the RFP did not provide for the same. KSERC stated (December 2017) that the approval to the power supply agreements would be accorded only after the GoK accorded final approval to the entire procurement of power under DBFOO which was under consideration of the GoK since October 2017.

Recommendation 3.1: Power procurement may be carried out complying with all the applicable guidelines/ procedures. Any modifications required in the applicable guidelines/ procedures may be taken up with the appropriate authority for its approval before initiating the tendering process.

Loss of revenue

Non-adherence to the provisions of an agreement with Carborundum Universal Limited resulted in loss of revenue of ₹2.08 crore

3.2 Kerala State Electricity Board Limited (KSEBL) entered into agreements with Carborundum Universal Limited (May 1991/ September 1995) and Indsil Electrosmelts Limited (December 1994) for wheeling[62] and banking[63] of electricity

[62] The operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity on payment of charges.

[63] Banking of power is the process under which the generating plant supplies power to the grid not with the intention of selling it to a third party, but with the intention of exercising its eligibility to draw back its power from the grid in future.

generated from their captive generating plants[64] for their industrial use. As per the agreements, if the energy so banked is not utilised during an accounting year, it shall not be carried over to the next accounting year and shall be treated as lapsed. The agreements also provided an option to sell the unused banked energy during an accounting year, if any, to KSEBL. KSEBL was to collect commission at the rate of one *per cent per annum* of the banked energy in addition to Transmission and Distribution loss and wheeling charges. The year of accounting for this purpose is reckoned from first day of July to thirtieth day of June.

Audit observed that KSEBL, based on a request (September 1996) from Carborundum Universal Limited[65] (CUL), amended the agreement and permitted (December 1996) banking of energy for a period of two years instead of one year as per the original agreement (September 1995). This allowed CUL to carry forward the balance of banked energy at the end of an accounting year to the next accounting year. Since the carried forward energy was available for use by CUL during the next accounting year, commission at the rate of one *per cent* was to be collected against the energy thus carried forward in addition to commission for the fresh banking of energy.

Scrutiny of the banking statement for the accounting years July 2012 to June 2019 revealed that CUL could not use the banked energy completely within the stipulated period of two accounting years during July 2014 to June 2017. Further, CUL did not exercise the option to sell the banked energy which was not used during the stipulated period of two accounting years to KSEBL. Though the agreement provided that unused banked energy at the end of two years should be treated as lapsed, KSEBL carried forward the unused energy of 14.48 lakh units from 2014-15 and 26.28 lakh units from 2015-16 to the third accounting year as given in Table (a) of ***Appendix 2.*** Thus, CUL used 40.76 lakh units beyond the stipulated two years banking period resulting in loss of revenue of ₹2.08 crore[66] to KSEBL.

Audit also conducted a test check of banking commission collected from CUL for the accounting years July 2012 to June 2019. It revealed that though KSEBL collected banking commission for the fresh banking during this period, commission on the quantity of energy that was carried forward from one accounting year to the next accounting year was not collected. This was not in line with the agreement which provided for collection of commission for the entire energy banked in each accounting year. The non-collection of commission in accordance with the agreement with CUL, thus, resulted in loss of revenue of ₹0.24 crore as shown in Table (b) of ***Appendix 2.***

The GoK stated (February 2019) that as per the banking statement during 2015-16 to 2017-18, previous year's banked energy was adjusted against consumption in the next year itself and the banked energy was zero in 2017-18. Thus, KSEBL has not

---

[64] Power plant setup by any person to generate electricity primarily for his own use.

[65] Government of Kerala allotted the Maniyar Hydroelectric Project to CUL for 30 years from the date of commissioning (June 1995).

[66] Carried forward energy: 40.78 lakh units x ₹5.10 being the tariff applicable for sale of power to extra high tension consumers.

carried forward unbanked energy from one banking period of two years to the next banking period.

KSEBL replied (July 2020) that as per the agreement with CUL and the Board Orders, the balance of banked energy outstanding at the end of the two-year period did not lapse, but was to be purchased by KSEBL[67]. The balance energy that remained at the credit of CUL at the end of two years was adjusted by KSEBL against the energy consumed by CUL in the following year. Such adjustment was equivalent to purchase of the balance of banked energy by KSEBL as provided in the agreement and hence, there was no financial loss to KSEBL. Regarding the short charging of banking commission, it was replied that the units corresponding to the alleged short charging was realised from the consumer by deducting the corresponding units from the existing banked units.

The reply was not acceptable. As per the agreement, if the energy banked was not utilised by CUL within the stipulated period of two years, it should not be carried over to the next accounting year and should be treated as lapsed. KSEBL's reply that it adjusted the unused banked energy at the end of banking period in the subsequent year indicated that CUL did not offer to sell any unused banked energy to KSEBL. Thus, it was evident that the unused banked energy was carried forward by KSEBL beyond the stipulated banking period which allowed CUL to use the same in the subsequent year. This assumed significance, particularly in the context that the agreement would be in force till 2025. Audit also noticed that Indsil Electrosmelts Limited, which also had similar arrangement with KSEBL, exercised (July 2015) the option to sell unused banked energy to KSEBL. Regarding the short charging of banking commission, though KSEBL adjusted the banking commission as pointed out by Audit, it did not rework and recover the banking commission for the period prior to July 2012.

Recommendation 3.2: Provisions in the agreement may be strictly followed and a mechanism may be put in place to ensure correct accounting of banked energy so as to avoid any loss of revenue. The accounting of banked energy for the period prior to July 2012 may also be reviewed and short recovery of banking commission, if any, recovered.

[67] At the rate at which it sells energy to Extra High Tension consumers in the same voltage class and also receives the energy from CUL.