

**Round Table to Discuss Issues
in the Merchant (Short Term)
Power Market and
Make Collective Recommendations**

**Perspectives of Regulators,
Generators, Discoms & Traders**

Date: 21 March (Friday), 2014
Venue: Casuarina Hall, India Habitat Center, New Delhi

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Some comments on the Merchant Power document:

- a) This is a techno-commercial matter; the Ministry of Power and other Government departments should keep out of it.
- b) The agreement should be simple and compact, not more than 20 - 25 pages.
- c) The focus of the agreement should be on dispute-free daily scheduling of power supply from the supplier to the utility, determination of charges and timely payment of the same, rather than on treatment of defaults.
- d) The starting point for RfP should be the base / typical daily pattern (MW vs hour) according to which the power would be scheduled by the utility. The utility may also specify the limits of variation from the above pattern. The bidders may then quote their capacity charge (in Rupees per MW per day) and energy charge (in Rupees per MWh) for the base daily pattern, along with formula for arriving at the charges if the day's schedule varies from the base pattern.
- e) If competitive bidding is being resorted to, the purchaser need not go into the actual cost of power generation. However, liabilities and compensation in case the supplier is not able to supply the requisitioned MW and / or energy would have to be negotiated and clearly specified in the agreement.
- f) What is the definition of 'merchant power'? In my reckoning, it is power supply not tied up and contracted long-term at the time of financial closure for a power plant. As and when contracted, it can be for short- or long-term, firm or infirm, as-and-when-available, etc., the key-word being flexibility.

-- **BhanuBhushan**
Former Member, CERC



Association of Power Producers

Ref: APP/DG/2013-14/184

7th March, 2014

Shri. Pradeep Kumar Sinha, IAS
Secretary,
Ministry of Power,
Government of India,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi - 110001

Sub: Comments on Draft Short Term Model RfP and PSA

Dear Mr. P. K. Sinha

We would like to thank you for giving this opportunity to provide our comments on the draft documents on short term power sale and procurement.

However, we find these documents to be significantly misaligned to the very nature of the short term transactions. **A short term market, as is commonly understood, is supposed to be a platform where the buyers and sellers meet their requirements which have arisen due to any uncertainty. However, the draft documents seem to negate this concept.** The framework for meeting short term requirements needs to be flexible, introducing the rigidities as proposed through the draft document only diminishes the importance of such framework. Further, the short term transactions are very different as compared to the medium and long term purchases and thus require different treatment. However, it is observed that the draft documents seem to lean extensively on the Model PPA for Long and Medium Term Power Purchase, in the construct as well as the concept.

We would also like to submit that the current short term process evolved over the years, has been quite successful. The growing volume of trade is a testimony to the same. The market participants, including procurers have understood the dynamics of the market and accordingly attuned themselves. **The current process based on the existing guidelines issued by MoP has been successful in ensuring that the power procurement is undertaken through a transparent mechanism. The current methodology offers flexibility to procurers to manage their load profile. The proposed draft attempts to significantly alter the existing model which would result in undoing of all the learning of the past. Further, the need for revising the short term procurement process was not felt by any participants including procurers, thus the objective of revising the document at this time is not comprehensible.**



The only apparent objective could be to allocate the fuel risk. However, for a short tenure the risk could be left on the sellers, particularly in a scenario when the process is functioning very well.

Therefore, the present exercise is avoidable. However, if MoP, ignoring the views of all the stakeholders – generators, traders and procurers, would like to introduce new documents, the key concerns of the Industry detailed below, would need to be addressed.

The concerns are:

1. **Change in Structure:** The draft documents have proposed a two part tariff structure which in turn introduces the concept of declaration of availability in short term. As short term market is considered to be the last resort, both for generators and buyers for meeting their unseen requirements, concept of declaring availability and revising the same is against the very intent of having a short term market. **Shifting to a two part tariff structure needs to be evaluated from the following perspectives too, before finalization of the draft documents.**

- a. **Complexities pertaining to scheduling:** The two part tariff structure necessitates an effective and responsive scheduling process. Presently, for carrying out any revision in the schedule a minimum of 2 days is required. The time limit is as per RLDCs and SLDCs who have said that for the volume of transactions in short term, they would require those many days. Thus, it appears that for short term market to operate under the two part tariff structure, the scheduling procedure has to undergo massive changes. Further, there are many small generators (CPP/Co-gen) which are scheduling power under short term basis. There are frequent STU grid disturbances which result in tripping of these plants. In case the scheduling process is made in line with long term scheduling, will RLDC be able to cope up with the frequent revision requests made by these small generators? Any delay in revising the schedule would make generators to pay for operational limitations of load dispatch centers. This would also need consequent changes in the following regulations:
 - i. Open Access in Inter-State Transmission regulations 2009
 - ii. Procedure for Short-Term open Access on bilateral
 - iii. Changes in IEGC
 - iv. Data for final settlement /REA would need to be amended by RPC/ RLDC, on monthly basis.

- b. International markets:** The more advanced international spot markets are also functioning on single part tariff, thus we don't have a successful example of two part tariff structure for Merchant Supply.
 - c. Alignment with future products:** It is expected that the forward market would evolve in Indian scenario also. The available products have been already tested in various international markets, which are based on single part tariff structure. Considering the Indian sector, there have been rounds of discussion to implement these after customizing it with the requirements. This sudden shift will nullify all the learning and would further delay the introduction of such products eventually restricting the development of the market.
 - 2. Restriction on use of concessional fuel:** The draft documents impose a restriction on usage of concessional fuel. While we appreciate the intent of the ministry to prevent any profiteering from the concessional fuel, it is important to note that the new case-2 structure has allowed usage of concessional fuel for third party sale subject to sharing of revenue. Thus, the Ministry has already ensured that the benefits are passed on to the procurers only. Therefore, restricting the same from entering the short term market would only impact the end consumers either through higher tariff as short term market would then be largely based on imported fuel /e-auction or making them to pay for fixed charges without actually utilizing the generation. Thus, such restriction is not advisable. Further, the restriction would have the following impact:
 - a. Distorted price discovery:** This would result in significant increase in the short term rate as the permissible generation sources would be largely based on spot or imported fuel. Thus, by restricting a large section of the generation sources, distorted prices would be realized in the short term market.
 - b. Sale of surplus power by the utilities:** Most of the purchases by utilities are from sources based on concessional fuel. Restriction on concessional fuel would essentially mean that the Utilities would not be able to sell power under short term merchant market. Since, these utilities have burden of paying fixed charges, not able to sell these in the short term market would adversely impact the health of Utilities.
- As short term bilateral trade is envisaged on competitive basis, the advantage of low price coal is already embedded in the price discovery and is to consumer's advantage.
- 3. Obligations relating to regulatory compliance:** The proposed draft Model Power Supply Agreement suggests that the generating stations whose tariff is determined by Appropriate Commission either under Section 62 or 63, is mandated to quote tariff not exceeding the tariff determined by Appropriate Commission. This would necessarily mean that such generating stations have nothing to gain by participating in the short term

market. In fact, such a proposition would rob the market of the competitive edge due to the fact that a majority of the bids would be quite predictable. It would be important here to note that tariff for those plants would have been determined under different conditions and also based on specific fuel. Asking bidders to commit on the same tariff under different conditions would not be appropriate. This would again adversely impact the prices discovered in the market.

Further, to equate short term and long term prices is against the well accepted economic principle.

4. **Qualification Criteria:** The draft RfP has proposed stern qualification criteria for Suppliers (Generators and Traders). For generators, the requirement is to own and operate at least twice the capacity invited by the procurer. Small captive generators and cheap sources would not be able to meet these requirements in most cases. Similarly, for traders, asking for three times the trading volume of proposed supply is in direct contravention to the CERC's regulation of Trading License, which has prescribed net worth requirement for undertaking a specific volume of trading. For eg. a category I trading license requires net worth of Rs. 50 Crores and can trade Unlimited volume of Power. However the proposed regulation limits the same to only 100 MW. Further, net worth requirement of Rs. 50 lakh/MW may nudge many trading licensees from participating in process where procurement is for higher MWs.

Fixing qualification criteria on the basis of "Capacity Invited by the Procurer" is flawed, especially when we see in the context of tenders in the range 800 MW – 1000 MW very often coming from Southern States. The above criteria would limit the competition and may result in no bidder or very limited Suppliers. **In short term sale, the qualification criteria for generators should be linked to the capacity offered under the tender and for traders on the basis of CERC Regulations.**

5. **The Process:** This draft, if adopted, will make the process of short term power procurement too cumbersome and prone to litigation. The requirements from utilities such as opening of escrow account, signing of deed of hypothecation etc within the suggested timelines will lead to regular defaults by procurers. MoP will appreciate that many procurers have not even fulfilled above requirements for Long Term Procurement and hence are most likely to default in Short Term Purchase. It is suggested to simplify the same and safeguard the interests of sellers through simpler and practically executable provision such as opening Letter of Credit in favour of supplier. Further, such stringent requirements may also force Utilities to limit their buying thereby leading to more load shedding. Also, a thirty-one day window for completing entire power purchase formalities, as suggested by MASP will lead to delay in power procurement, thereby making it impossible for utilities to procure emergency short term power say for next 15-30 days.



6. **Anti Competitive:** The proposed framework suggests that the procurers and generators should rely on power exchanges for their short term requirements. Though, the time-period for procurement is very different in both of these platforms but at the same time they are competitors for the same segment. There is no restriction on participation of concessional fuel based generation sources over the power exchanges. Further, there is no qualification requirement for the same generation sources and procurers for participating in the exchanges. Therefore, it appears that the proposed structure may result in reducing competition in the short term market.

To conclude, the draft documents introduces new rigidities in the existing process which would cause additional concerns and reduce the effectiveness of the short term market including distorting the process of price discovery. Should the documents be adopted; the prices in short term market would significantly increase making procurers/ consumers to pay significantly more, only on account of structural changes enhancing the risk perceptions and limitation of market participation. Also, the long and medium term documents have very recently undergone a change, thus those are also untested. The informal feedback from the bidders clearly shows that documents have not been well received by the industry.

Thus, it is requested that the current process be left unchanged and the need for aligning the same, if any, can be relooked in future depending upon the outcome of the long and medium term processes.

However, if MoP still believes that the proposed structure is in the interest of the sector, we would suggest that an expert committee be formed with representations of CEA, RLDCs/SLDCs/PTC/key buyers and suppliers to evaluate the same and suggest best possible ways to implement the two part tariff structure with consequential changes in the regulations as detailed above.

With Regards,

Yours Sincerely,

For Association of Power Producers

A handwritten signature in black ink, appearing to read 'Ashok Khurana', is written over a horizontal line.

**(Ashok Khurana)
Director General**

APP Comments on the Draft Model Agreement for Procurement of Power (Short Term power)

S.No.	Clause	Details of Clause	Comments / Rationale
1.	Overview of the framework of the Model Agreement		Draft MASP issued by MoP does not appear to be in line with the very concept of Short Term Power Purchase and in line with the relevant Regulations - The document is in line with the Model PPA for Long Term and Medium Term Power Purchase wherein a balance is made between the interest of the Supplier and the Utility/Consumer, making it a cost reflective agreement, protecting interest of the Supplier for the market developments like change in law, market fuel price, transportation charges, Exchange rate variation, change in Transmission Charges/Losses etc. This approach assures a reasonable return to the Supplier for a Long Duration and protects it from any unforeseen development in the market while protecting the interest of the Utilities and the Consumers through market competition. - Short Term Power purchase arises out of the basic nature of electricity that cannot be stored. A Distribution Licensee shall have wide variation in the demand during different hours of the day and different seasons making him surplus for RTC power during certain seasons / selected hours powers during some months as also short of RTC power during certain

S.No.	Clause	Details of Clause	Comments / Rationale
			months and short of power during selected hours and during different seasons. In the present regulatory framework, the two part tariff structure is unworkable and for its implementation, would need consequential changes in: i. Open Access in Inter-State Transmission regulations 2009 ii. Procedure for Short-Term open Access on bilateral iii. Changes in IEGC iv. Data for final settlement /REA would need to be amended by RPC/ RLDC, on monthly basis. Other concerns flowing out of these documents are detailed in the Covering Letter addressed to Secretary, Ministry of Power. In light of the industry's concerns, it is requested the current process be left unchanged and the need for aligning the same, if any, can be relooked in future depending upon the outcome of the long and medium term processes. However, if MoP still believes that the proposed structure is in the interest of the sector, we would suggest that an expert committee be formed with representations of CEA, RLDCs/SLDCs/PTC/key buyers and suppliers to evaluate the same and suggest best possible ways to implement the two part tariff structure with consequential changes in the regulations as detailed in Covering Letter.
2.	New Clause	Minimum off-take guarantee	The despatch of the power plant should not be below the technical minimum

S.No.	Clause	Details of Clause	Comments / Rationale
			operational limits of the station and minimum dispatch should be linked to the technical minimum levels of the Unit/s as specified by the OEM.
3.	1.2.1 (i)	Any reference to hour shall mean a period of 60 minutes commencing either on the hour or on the half hour of the clock.	Reference of an hour should not be limited in the way as it is being proposed. Since scheduling is based on 15 minute time block, hour reference may be in multiple of 15 minutes. E.g. - supply period may be from 00:15 hrs, 1 st March 2014 to 20:45 hrs, 31 st March 2014.
4.	1.2.1 (l)	Any reference to month shall mean a reference to a calendar month and week shall mean reference to a period of seven days from Monday to Sunday	Contract may not necessarily be for the full month and week may commence from any day depending the requirement of procuring utility and the billing cycle.
5.	1.2.1 (v)	Any agreement, consent, approval, authorization, notice, communication, information or report shall be valid and effective only if it is in writing under duly authorized representative of such party	Considering, the nature and volume of short term transactions, adhering to such process will be very difficult. For short term contract for a week or so, it may be cumbersome to follow such method. Generally, procuring utility/supplier/trader does provide the consent/approval by email, it is not clear whether such approvals would be considered as duly authorised. Also, since no. of short term contracts are very large in number, it would consume lot of time in executing the Model agreement and RFP. A rather simple process which is based on the MoP guidelines is most suited for such market. We suggest that adhering to such rigorous documents will not be possible if the contract period is for less than three months. In this way, the period of supply up to three months should be considered legal by way of accepting the LOI (issued by supplier/Utilities) against bid

S.No.	Clause	Details of Clause	Comments / Rationale
			submitted in tender.
6.	2.2.1 footnote 2	Contract Period to be fixed between 7 days to 365 days	This should be as per “MoP Guidelines” which is applicable for the contract period of 15 days and above. Any contract for supply period below 15 days should not be applicable for executing model agreement and model RFP.
7.	3.1.2 & 3.1.3	Timeline mentioned for condition precedent	The timeline of 15 days as mentioned would not be relevant if the contract period is less than 15 days. Appropriate clarity may be provided.
8.	3.1.3 (b) and (c)	Supplier shall have delivered to the Utility a legal opinion from legal counsel of the supplier	This is not required for supply of power under short term.
9.	3.1.3 (d)	d) procured access to the transmission system required for supplying electricity at the delivery point	It would not be always possible for the Supplier to ensure access to the transmission system within the timeframe specified in case of short term procurement. Therefore, for the purpose of Conditions Precedent, this may be reworded to indicate that the Supplier should have made an application as per the open access regulations for supplying electricity at the Delivery Point.
10.	3.2 & 3.3	Utility shall pay to the supplier damages in an amount calculated at the rate of 0.1% of performance security for each day of delay..... Supplier shall pay to the utility damages in an	Both the rate of daily payable damages and the ceiling for maximum damages should be symmetrical for both Utility and Supplier in case of delay in achievement of Conditions Precedent

S.No.	Clause	Details of Clause	Comments / Rationale
		amount calculated at the rate of 0.3% of performance security for each day of delay.....	
11.	Clause 4.1.4, Clause 10.3.1, Clause 10.3.2, Clause 10.5.1	• 4.1.4 - The Supplier shall ensure and procure Availability of the Contracted Capacity equivalent to at least 85% (eighty five per cent) thereof during [Peak Hours of] the Contract Period • 10.3.1 - The obligations of the Utility to pay Fixed Charges in any month shall in no case exceed an amount equal to the Fixed Charge due and payable for and in respect of the Normative Availability of 85% (eighty five per cent) [during Peak Hours] computed with reference to the Contracted Capacity • 10.3.2 - Pursuant to the provisions of Clause 10.3.1, the Supplier shall not, for and in respect of any day, be entitled to receive payment of Fixed Charge for Availability exceeding 85% (eighty five per cent) thereof • 10.5.1 - In the event that the Availability in any week exceeds the Normative Availability, the Supplier shall, in lieu of a Fixed Charge, be	In these mentioned clauses, it is observed that the period for which Availability being referred is inconsistent. The recovery of fixed charges should be linked to Normative Availability for the contract period as specified in clause 4.1.4. References to the daily, weekly and monthly Availability is not required particularly for recovery of fixed charges.

S.No.	Clause	Details of Clause	Comments / Rationale
		entitled to an Incentive which shall be calculated and paid at the rate of 50 % (fifty per cent) of the Fixed Charge for Availability in excess of Normative Availability	
12.	4.1.4	<i>Explanation:</i> Availability of the Power Station to its full capacity shall, in respect of any hour, mean the capacity of the Power Station to the extent it is offered by the Supplier for producing and supplying electrical energy equal to 950 kWh per megawatt of Contracted Capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses upto the Point of Grid Connection,	5% Auxiliary Consumption even excluding transmission losses is not achievable for capacity offered on coal. Further, whenever Supplier has to cross home state grid, central grid and receiving state grid to deliver power at delivery point, probably grid losses itself account for 5%. Also, the provisions need to be in conformance with the existing accounting and settlement procedures. As per the STOA regulation and scheduling procedure contracted capacity is at the regional periphery.
13.	4.4 & 4.5	“Transmission of electricity shall be undertaken solely at the risk and cost of the supplier”	The Short-term corridor is vulnerable to revisions by RLDC/NLDC due to system conditions, outage of lines/units, sudden demand growth/fall due to weather changes and it will be incorrect to make seller responsible for transmission of electricity. Any restriction imposed by the NLDC OR concerned RLDCs/SLDCs on scheduling of power supply due to transmission / Grid constraint should be construed as Force Majeure without any liability on either side, on certification of the same by

S.No.	Clause	Details of Clause	Comments / Rationale
			respective NLDC / RLDC / SLDC.
14.	4.5.2	Transmission Losses The supplier acknowledges agree and under takes that the product of such transmission losses and the tariff shall be due and payable by the supplier to the utility and shall be adjusted in the relevant weekly bill.	Any change in % of transmission losses after the bid date should be made pass through similar to transmission charges.
15.	4.5.2	The supplier represents and warrants that it has ascertained and assessed the applicable transmission losses from the Point of Grid Connection to the Delivery Point....	Similar to the provision for transmission charges in Clause 4.4, any difference arising in transmission losses after the Bid Date should be payable or recoverable, as the case may be.
16.	4.7	Use of Concessional Fuel The Supplier acknowledges, agrees and undertakes not to use any Concessional Fuel for production of electricity and supply thereof in pursuance of the provisions of this Agreement.	The existing system being followed by Utilities as per Guidelines for Procurement of Power on Short-term basis issued by Ministry of Power in May 2012 does not discriminate generators based on fuel and that should continue. This is detrimental to allowing competition in Short-term Open Access which is instrumental in keep short-term market power price competitive for utilities .This also goes against para 5.3.3 of National Electricity Policy which mandates that “ Open access has been introduced to promote competition amongst the generating companies who can now sell to different distribution utilities across the country .This should lead to availability of cheaper power .” It is further submitted that the existing system is working fine and the bilateral

S.No.	Clause	Details of Clause	Comments / Rationale
			short-term prices have stabilised. However discrimination of generators based on concessional fuel will lead to shortfall of available supply and higher market prices which goes against the interest of Distribution Utilities. The requirement of certification from the Seller of not using concessional fuel will only add up more complexities in the already highly complex power market and only tend to decay the investors' confidence in Indian Power Sector. In addition, it is submitted that there are lot of Distribution Utilities who are selling in both bilateral and Power Exchanges. Under such conditions, it would be impossible to verify whether such power sell conforms to Concessional Fuel or not. In the absence of clarity on such short-term power sale by utilities implementation of obligations relating to concessional fuel for IPPs are discriminatory and hence should not be implemented. Further, this rules out merchant generators for sale of power in short term. Only washery reject and E-auction coal based plants can be used. Most of the current plants will be excluded from merchant sale. This will lead to shortfall in power under merchant market and will ultimately impact the end consumer getting deprived from power. Debarring merchant generators from selling their power to Utilities will lead to force them to sell the same through Power Exchanges on day ahead, which may deprive huge merchant capacity available from sale of power leading to short fall of power in short term market. In view of the above, it is requested that discrimination of generators based on concessional fuel is as advised in para 4.7 is dropped.

S.No.	Clause	Details of Clause	Comments / Rationale
17.	4.8	Obligations relating to regulatory compliance	Refer to S.No.3 (Obligations relating to regulatory compliance) of the covering letter. Also, Tariff determined under sec. 63 of EA 2003 will vary from time to time depending on the time of the bid and the risk existing at the time of bid, hence there should not be any cap on quoted tariff. Payment should be made as per the bid evaluation and LOI issued hence article 4.8 (a) and 4.8 (b) should be omitted from PPA.
18.	4.10	All information provided by the supplier to the SLDC and RLDC as a part of its operating and reporting requirements under applicable laws including the grid code shall be provided to the Utility simultaneously	This clause should be done away with as this will make the procurement cumbersome. There is no requirement for this in the case of short term procurement.
19.	8.1.1	Performance Security: ... an irrevocable and unconditional guarantee from a scheduled bank for a sum equivalent to Rs. ** Crore (foot note) ... Foot Note: To be calculated @.10,00,000/ MW of contracted Capacity. This may be increased to Rs. 12,00,000/MW if Contracted capacity is less than 25 MW and Rs. 8,00,000/MW if Contracted Capacity is more than 50 MW.	The proposed Performance Security values are set at very high level for Short Term Sales. The current Performance Security value of Rs. 3 lakh is reasonable. The table below shows the ratio of Performance Security to estimated monthly revenue based on the recommended numbers. It can be seen that the ratio of PS/ monthly revenue is as high as 37% to 56%. Considering that the term of PPA is less than 1 year, the PS need not be so high.

S.No.	Clause	Details of Clause			Comments / Rationale		
		Contract Load	Performance Security	PS required	Expected sale in a month	Revenue @Rs. 3/ kWh	% of PS/ monthly Revenue
		MW	Rs. Lakh/ MW	Rs. Crore	MU	Rs. Crore	%
		20 MW	12	2.4 Crore	14.4	4.32 Cr.	56%
		40 MW	10	4 Crore	28.8	8.64 Cr	46%
		100 MW	8	8 Crore	72	21.6 Cr	37%
20.	8.1.2	Until the submission of the performance security is submitted bid security shall remain in force, after submission of performance security Bid security shall be released by utility to supplier			Time frame for returning of bid security after submission of performance security needs to be mentioned, which should ideally be within 7 days.		
21.	9.1	Contracted Capacity			The definition of Contracted Capacity may be specified to be at ex-bus value. This would promote energy efficiency and for fair assessment between different bidders.		
22.	9.2.1	whole or part of the contracted capacity for a continuous period of 24 hrs or more, it may, by a notice of at least 72 hrs prior to such period, specify the reduction in dispatch of the contracted capacity and for such reduction in supply, it shall be entitled to a rebate equal to the higher of 40% of the fixed charges payable for the availability thereof and the waived fixed charge			In the event that any part of Contracted Capacity is not utilised by the Utility or its nominees and the Supplier is not able to find Buyer for such Contracted Capacity, the full Fixed Charge due and payable for and in respect of such Contracted Capacity should be paid by the Utility irrespective of the period of notice given by the Utility. The Supplier needs to service its debt, hence the Utility should ensure the payment of Fixed Charge in the event Supplier is not in a position to tie up with a third party. If the sale to third party leaves a gap		

S.No.	Clause	Details of Clause	Comments / Rationale
			in Fixed Cost recovery then the Utility needs to reimburse the deficit in Fixed Cost recovery.
23.	9.5	The Utility has been given the right to increase the Availability during the off peak hours by giving notice of 30 days.	The provision that the Utility may, with a notice of 30 days, require the Supplier to increase the Availability during Off-Peak hours to a level of 85% would unreasonably restrict the Supplier from entering into a contract with other prospective buyers for Off Peak power and would make selling of power during off peak very uncertain. Owing to uncertainty of sale, Supplier has to factor the complete capacity charges and penal provisions into fixed charges, leading to the possibility of very high bids. If the Utility requires Availability of more than 20% during off-peak hours, this should be specified upfront during time of bidding. Any further increase in level of supply in off-peak hours, beyond the level as stipulated in the bidding documents, during the contract period should be strictly on mutual agreement basis and may be refused by the Supplier without financial implication if the Supplier has already tied up any other contracts with other parties for sale of Off Peak power.

S.No.	Clause	Details of Clause	Comments / Rationale
24.	10.1.1	The Utility shall pay to the Supplier tariff comprising the sum of Fixed Charge and Variable Charge payable by the Utility to the Supplier for Availability and for supply of electricity, as the case may be, in accordance with the provisions of this Agreement (the “Tariff”).	Refer to S. No. 1 (Change in Structure) of the covering letter.
25.	10.3.3	In case of non-availability arising as a consequence of deficiency in transmission then it will be deemed to available to the extent of 50% of the non-availability.	Deficiency in transmission between the Point of Grid Connection and Delivery Point is beyond the Control of the Supplier. The document acknowledges that but still the recovery is made to the extent of 50% only. It is suggested that 100% Fixed Charge should be paid in the event of non-availability of the transmission system.
26.	10.3.4	In the event that any shortfall in supply of electricity to the Utility occurs on account of Fuel Shortage, Availability shall be deemed to be reduced to the extent of reduction in generation of electricity and such reduction shall be deemed as Non Availability on account of Fuel Shortage	As, the basis of introducing two part tariff and this cumbersome process is to off take the fuel risk from developers, in the event that any shortfall in supply of electricity to the Utility occurs on account of Fuel Shortage for reasons beyond the control of Supplier, such shortfall shall be considered as deemed availability for the purpose of payment of Fixed Charge. Further, the non availability on account of delay in transportation should be considered as deemed

S.No.	Clause	Details of Clause	Comments / Rationale
			availability.
27.	10.3.3	Supplier can despatch the contracted capacity to the extent of non-availability to other buyer	This will lead to disputes among utility and supplier. If the generator enters in n number of contract for a quantum of say 500MW and n-1 number of contract are affected by non-availability of transmission corridor resulting in despatch of 400MW only against 500MW. If out of this 100MW undespatch quantum 50MW gets despatch to a buyer then it will be impossible to determine against which contract (n-1 number) this will be settled, which will lead to disputes among the utility and supplier.
28.	10.5.1 & 10.5.2	In the event that Availability in any month is less than the Normative Availability, the Fixed Charge for such month shall be reduced to the extent of shortfall in Normative Availability and in addition, any reduction below the Normative Availability shall be multiplied by a factor of 0.25 to determine the Damages payable....	The penalty should be applicable only if the availability falls below 80% At present, the penalty for availability in short-term contracts has been set at 80% and this has been working satisfactorily both for developers and Utilities. Hence, the present norms with respect to penalty could be continued in the new SBD as well. Further, under the new SBD, it has been mandated that neither

S.No.	Clause	Details of Clause	Comments / Rationale
			linkage coal provided by CIL (or) any other government dispensation be used for supply under Short-term. Under this scenario, where the developer has to arrange for fuel from open market sources, increasing the penalty levels from 80% to 85% is not advisable. Further, 25% damages is too high and may be restricted to 10% of fixed charges.
29.	10.5.2 & 10.5.3	10.5.2 – In the event that Availability in any month is less than the Normative Availability, the Fixed Charge for such month shall be reduced to the extent of shortfall in Normative Availability and..... 10.5.3 – The Parties expressly agree that within 3 days of the close of every week, the cumulative daily Availability for such week shall be determined and the Incentive or Damages, as the case may be, shall be computed with reference to Normative Availability for that week.	There is contradiction between the two clauses with regards to the time frame (month vs week).
30.	11.3 – Option II	11.3.2 ... For the avoidance of doubt, the Parties agree that the provisions of this Clause 11.3.2 shall apply even if the Fuel is transported by road instead of rail, and the cost of transportation hereunder shall always be computed as if the Fuel was transported by rail. The	Many new plants, especially for the coal procured from open market, are forced to convey coal by road because of non-availability of rail infrastructure, short-duration of the coal procurement contracts, etc. Further, considering the weaker availability of rakes for

S.No.	Clause	Details of Clause	Comments / Rationale
		Parties further agree that in the event Fuel is transported from a shorter distance compared to the location specified hereinabove, the cost of transportation will be reduced in proportion to the reduction in railway freight on account thereof.	auction coal, most of the coal is auctioned for transportation by road only. Hence, separate provisions should be made for transportation by road and rail. Also, in case coal is transported for a greater distance compared to the location mentioned, due to unavoidable reasons, then the transportation cost should be increased in the same proportion. Similar change should be made in all the options having transportation involved.
31.	11.3.2 option II	Name of the collieries to be mentioned from where fuel will be sourced	Please highlight how the colliery can be identified upfront in a short term sale.
32.	11.3.2 option V (hydro)	Fixed Charges equal to Variable charge	For hydro plant variable charges is minimal then how can fixed charges be equal to variable charges.
33.	11.3 Option VI 11.3.2		Provision may be added that any change in law or taxes occurring in the jurisdiction where the coal is being imported from shall be deemed to be a Change in Law as per Article 20
34.	11.4 footnote 17	In the event Clause 11.4 is to be retained, the provisions of Clause 11.3.2 in Option IV and Option V may be suitably modified by omitting the last sentence thereof	This may be read as Option VI and Option VII in place of Option IV and Option V

S.No.	Clause	Details of Clause	Comments / Rationale
35.	12.1.1	Default Escrow Account Utility and the supplier shall prior to the appointed date execute the escrow agreement with the utility bank where at least 30% of the utility monthly revenues are normally deposited.	Due to stringent conditions on Utility, they may avoid inviting short term bids. It is important to mention here that Utilities are not able to provide such security for long term, expecting Utilities to adhere to the same for short term transaction will only lead to litigation.
36.	12.1.1	Revenue equivalent to the fixed charges due and payable for a month shall be routed every month through the default Escrow Agreement	This should also cover variable charges payment.
37.	12.2.1	Utility to establish no later than 7 days prior to likely date of the appointed date an unconditional, revolving and irrevocable letter of credit for an amount equivalent to 50% of the maximum monthly payment	In case Supplier is not able to recover any unpaid amount through the LC, it can terminate the agreement. Upon occurrence of such an event, in addition to the due payment and liquidated damages, utility shall also pay all open access charges.
38.	12.2.2	The LC shall be procured by the Utility from a bank where at least 30% of the Utility's total Monthly Revenues are normally deposited.	Utility shall open Letter of Credit in the name of Supplier as a payment security mechanism for an amount equivalent to 100% of maximum monthly payment.
39.	12.3.3	Recovery from sale of contracted capacity: Supplier to resume supply to utility no later than 7 days from day on which the utility pays	In case of restoration of contracted supply to utility following charges to be borne by utility:- 1) Refund of Open access pertaining to revision of approved open access to be borne by utility. 2) Any under recovery

S.No.	Clause	Details of Clause	Comments / Rationale
			pertaining to fixed charges to be borne by utility
40.	12.5	If any amount is due and payable by the utility to supplier it may be set-off any sums payable to it by the supplier and pay the balance remaining	In case of set-off Utility should provide proper documentation such as bill no against which setoff is being done regarding set-off. Set-off will be done against the bill which has been raised by either party on each other.
41.	13.1.1	Utility may direct the supplier to despatch on its behalf, all or part of the contracted capacity in favour of third party from time to time.	In case Utility directs the Supplier to despatch contracted capacity to third party after Open Access is approved then charges pertaining to cancellation and booking of fresh Open Access will have to be borne by Utility.
42.	13.2.2	.90% of the revenues accruing from such UI charges, after deducting an amount equal to the Tariff payable for such electricity, shall be paid by the Supplier to the credit of the Utility and the balance remaining may be appropriated by the Supplier...	The variation between Scheduled and Actual Generation at the Delivery Point shall be accounted as per mechanism in the Grid Code. UI is a balancing mechanism and not a commercial mechanism. Revenue sharing from UI is against the regulations of CERC Further, UI Regulation has been replaced by Deviation and Settlement mechanism so this needs aligned with the same.
43.	13.4	Ramp up of despatch If utility despatches less than 2% of	As mentioned earlier, that there should be minimum offtake

S.No.	Clause	Details of Clause	Comments / Rationale
		contracted capacity at any time and requires ramping up of generation thereafter it shall be allowed a period 4 (four) hours to supplier for reaching availability.	commitment by the Utility in line with the technical limits of the units. Further, rate of ramp up despatch should be as per the existing prevailing technical norms.
44.	14.2 (a)	Insurance Cover: The supplier shall during Operations Period, procure and maintain Insurance cover including but not limited to the following:- a) Comprehensive third party liability insurance including injury to or death of the person of the utility or other caused by the contracted capacity.	This appears to be quite vague. It is not clear how Utility or Supplier will conclusively know/establish that the cause of death is through suppliers contracted capacity.
45.	14.2	Without prejudice to the provisions contained in Clause 14.1, the Supplier shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following: (a) comprehensive third party liability insurance including injury to or death of the person of the utility or other caused by the contracted capacity. (b) Suppliers general liability arising out of the Merchant supply contract	It would be difficult to determine if any injury or death has been caused by the Supplier's Contracted Capacity.
46.	14.3, 14.4	14.3 Within 15 days of obtaining any insurance cover the supplier shall furnish the utility, notarised true copies of the certificates of insurance copies..... 14.4 If supply fails to effect and keep in force all insurance for which it is responsible	These Clauses are not at all pertinent for a short term contract.

S.No.	Clause	Details of Clause	Comments / Rationale
		pursuant hereto, the utility shall have the option to either keep in force any such insurances, and pay such premia and recover the cost thereof from the supplier.	
47.	14.5	Waiver of Subrogation: Shall be included under insurance policies to be purchased by the Supplier	Many insurance companies do not agree to provide such coverage and should not be a part of the insurance coverage to be purchased by the Supplier.
48.	15	Accounts and Audit	Article 15 should be omitted considering the short period of the contract.
49.	16.2	Non-political Force Majeure event	Under force Majeure event we need to add: Any restriction imposed by RLDC / SLDC in scheduling of power due to Transmission / Grid constraint, contracted power shall be deemed reduced for the period of Transmission Constraint; however the non/ part availability of Transmission Corridor shall be certified by the concerned RLDC.

APP Comments on the Draft Request for Proposal for Procurement of Power (Short Term Power)

S.No.	Clause	Details of Clause	Comments / Rationale
1.	Clause 1.1 Introduction - Background	 For a period of “90 (Ninety) days (to be fixed between 7 (seven) and 365 (three hundred and sixty five) days.	As mentioned in the opening letter, the draft document is not suitable for the short term market. Further, to implement the same for contracts even for a period of 7 days is quite irrational. The current guidelines which is far simpler and implementable, is also for 15 days and above. The proposed framework is not appropriate for any contract less than a year. Bidding as per the given procedure is a massive exercise and is not worth going for Short Term Purchase up to 90 (ninety) days. . Further, model RFP doesn’t address emergency outage situation.
2.	Clause 1.1 Introduction – Background Foot Note 5	Trading Peak Hours of the day: Foot Note 5: The words in square parenthesis may be omitted in case procurement is not confined to Peak Hours.	The Clause/Foot Note may be deleted. In the real market, there is a shift in the conventional Peak Hours of Morning and Evening Peak. It varies widely from State to State. There are many cases that Day Time office hours (not fixed) are taken as Peak Hours of the Utility. It could be left to the Purchaser to take a view to purchase RTC Power or during the selected hours without using the words “Peak Hours” or “Off Peak Hours”.
3.	Clause 1.1 .4 Introduction - Background	 Bidders may bid for the capacity specified in clause 1.1.1, or a part thereof, not being less than 50% of such capacity.	The minimum bid quantum from a single source should be kept as 10% of the requisitioned quantum or 50 MW, whichever is higher, provided quantum requisitioned is at least 50 MW. In case the requisitioned quantum is lower than 50 MW, the

S.No.	Clause	Details of Clause	Comments / Rationale
			minimum bid quantum should be equal to the requisitioned quantum.
4.	Clause 1.2 Introduction –Brief Description of Bidding Process	Two Stage selection process - First stage pre-qualification of Bidder as per the RFP and the selection stage the evaluation of financial bid.... At this stage an evaluation will be carried out in accordance with the criteria specified in Clause 3.1. Based on this evaluation, a list of pre-qualified Bidders shall be prepared as specified in Clause 3.4. In the second stage, the evaluation of the financial offer of the aforesaid pre-qualified Bidders will be carried out as specified in Clause 3.5	It should be single stage process only as the power procured is for a shorter duration. Process should be such that it is simple and fast considering the tenure of power procurement.
5.	Clause 1.2.2 Introduction –Brief Description of Bidding Process	Bid to be valid for a period of not less than 60 days from the bid due date	As per RFP, Bid Validity has to be minimum 60 days. This is major concern and this shall lead to blockage of power and may lead to stranded cheap generation (against the spirit of merit order dispatch). There are situations when tenders appear at close interval and longer Bid Validity will block the power. Therefore, validity of the bid should not be more than 10 days from submission of bid.
6.	Clause 1.2.2 Introduction –Brief Description of Bidding Process	Cost of the RFP document has been kept between Rs.25,000/- and Rs. 75,00/- per 100 MW of the requisitioned capacity.	Cost of RFP document should not be on MW basis. Prior to bidding the Bidder shall pay to the Utility a sum of Rs. 5000/- as the cost of the RFP process. Short Term Power trading market is operating on very low margin. This kind of overheads would discourage wider participation. Ideally speaking, there should be no cost of RFP processing and the same should be part of the cost to be borne by the Utility as a part of their procurement process. However, a token fee of Rs. 5000/- could be kept, irrespective of the quantum of power.

S.No.	Clause	Details of Clause	Comments / Rationale
7.	Clause 1.2.4 Introduction –Brief Description of Bidding Process	Bidder is required to deposit along with its Bid, a bid security of Rs 1 lakh per MW of capacity offered by the bidder.	In general, Bid security, fees, payment security and performance guarantee must be in line with the existing provisions of the “MoP Guidelines”. Bid security has been increased from 30,000/MW to 1 Lakh/MW. For tenders for smaller duration 1-2 months, this shall increase cost of tendering substantially. Bid security should be kept as Rs. 30,000 per MW, as per existing bidding documents.
8.	Clause 1.2.4 Introduction –Brief Description of Bidding Process	Validity period of the demand draft or bank guarantee shall not be less than 120 days from bid due date inclusive of a claim period 60 days.	Validity of the bid security should be linked to bid validity. Additional 30 days towards claim period may be provided.
9.	Clause 1.2.5 Introduction –Brief Description of Bidding Process	Bids are invited on the basis of the tariff to be offered by a Bidder for and in respect of the contract. For the purpose of evaluation hereunder, the Fixed Charges and Variable Charges shall constitute the tariff for the availability and supply of electricity (the “Tariff”). (The cost of the Fuel, transportation thereof and the transmission losses shall form part of the Variable Charges). The contract period shall be pre-determined and specified in the Bidding Documents. In this RFP, the term “Lower Bidder” shall mean the pre-qualified Bidder who is offering the lowest Tariff	In our opening para, we have already submitted that the concept of declaration of availability is neither required nor appropriate in the Short Term Agreement. Therefore, if these documents are changed and the concept of availability is introduced then essentially the bids have to be on two part tariff structure. Under that scenario, it has to be clarified that Fixed Charges and Variable Charges and the Transmission Charges and Losses applicable up to the point of entry into the Utility’s State Transmission System shall be the criteria for evaluation. (The cost of fuel and transportation thereof shall form part of the Variable Charges.)
10.	Clause 1.3 Introduction – Schedule	complete process from issuance of RFP to signing of ASP 31/10 days depending the estimated value of procurement...	Complete process should be completed within 10 days from issuance of the RFP. Many a times utility have to procure the power on

S.No.	Clause	Details of Clause	Comments / Rationale
	of Bidding Process		short duration due to tripping of units or sudden rise in demand due to weather condition etc these exigency can't be predicted a month in advance.
11.	Clause 1.3.5 Introduction – Schedule of Bidding Process	Opening of Qualification Proposal - On Bid Due Date (at least 21 days from the date of RFP).	Provision should be: “Opening of Qualification Proposal and Financial Bid on Bid Due Date (at least <u>7</u> days from the date of RFP).” Since Letter Of Award is to be issued within 7 days, it would be necessary to open the Financial Bids on the same day.
12.	Clause 1.3.7 Introduction – Schedule of Bidding Process	Validity of Bids Sixty days of Bid Due Date	Validity of bids should be 15 days of Bid Due Date for purchase of power up to 183 days and 30 days of Bid Due Date for purchase of power from 184 to 365 days. The Bidders are required to keep the capacity blocked for the period of validity of the offer. To encourage wider participation, it would be desirable to keep the lower validity period. This argument is further validated by the provision that Letter Of Award is to be issued within 7 days of the Bid Due Date.
13.	Clause 2.2.2 Instructions to Bidder - Eligibility of Bidder	Eligibility of bidder (A) (i) In case of an owner of Power station, be a person who owns and operates a power station having a installed capacity equivalent to at least twice the generation capacity specified in Clause 1.1.1	As highlighted in our covering letter, refer to sl.4, the qualification criteria as proposed is very stern and needs to be changed. It is suggested that submission of Bid security, the details of the source of power, valid trading licensee should only be the eligibility criteria. The Supplier's capacity availability should be surplus as compared to the Supplier's bidding capacity. For providing power under short term there is no need of such stringent criteria. If the procurement by utility is for 1000MW then supplier has to have at least 2000MW installed capacity which is

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			impractical. Hardly, there is generation with such free capacity. This will restrict competition which is against the Electricity Act 2003 and public interest. Also, the qualification criteria for bidders shall be linked to the quantum they offer instead of the quantum asked by utility.
14.	Clause 2.2.2 Instructions to Bidder - Eligibility of Bidder	Eligibility of bidder (A) (i) In case of an owner of Power Station, be a person who owns and operates a power generating station (s) having an installed capacity to at least twice the generation capacity specified in clause 1.1.1. (ii) In case of trader, a person who has supplied electricity equivalent to 3 times the supply anticipated under Clause 1.1.1 during the financial year commencing on April 1 and ending on March 31 preceding the bid due date	All the generators having surplus capacity at 85% PLF equalling proposed generation capacity may be allowed to bid. The proposed eligibility condition will prevent lot of generators to bid as their surplus capacity has to be more than double of the proposed generation capacity which will eliminate competition. Further, for trades the limit should be as per the trading license as issued by CERC.
15.	Clause 2.2.2 Instructions to Bidder - Eligibility of Bidder	(B) Net worth equivalent to Rs. 50,00,000/- per MW of the offered capacity. Certified by the statutory auditors.	It is suggested that the conditions for traders should be as per CERC regulations of trading license where in for e.g. a category I trading license requires net worth of 50 Crores and can trade Unlimited volume of Power. However the proposed regulation limits the same to only 100 MW and hence can bid maximum of 80-100 MW.
16.	Clause 2.3.6 Instructions to Bidder - General Terms of Bidding	Appendix - II, Para No. 7 Bank Guarantee for Bid Security "In order to give full effect to this Guarantee, the Utility shall be entitled to treat the Bank as the principal debtor....."	This Clause may be deleted as Bank may not accept this clause.
17.	Clause 2.3.7 Instructions	The validity of the Bank Guarantee or Demand Draft, as the case may be,	As the procurement is for short term, it is suggested that the validity of

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	to Bidder - General Terms of Bidding	shall not be less than 120 (one hundred and twenty days) from the Bid Due Date, inclusive of period of 60 days.... The Bid security shall be refundable in not later than 60 (Sixty) days from the Bid Due Date....	Bank Guarantee/Demand Draft be reduced significantly. It is suggested to modify the clause as: “The validity of the Bank Guarantee or Demand Draft, as the case may be, shall not be less than 120 (one hundred and twenty days) from the Bid Due Date, inclusive of period of 60 days.... The Bid security shall be refundable in not later than 30 (Thirty) days from the Bid Due Date....” Further, since LOA is to be issued within 7 days of the Bid Due Date, there is no reason for Bank Guarantee or Demand Draft to remain valid for such a long time and a claim period of 60 days which should be limited to 30 days. Since this process is being suggested to be adopted for Short Term Power purchase of 91 days or more, the period of 120 days as given in clause 2.2.7 would be appropriate.
18.	Clause 2.10 Instructions to Bidder - Format & Signing of Bid	The Bidder shall prepare 1(one) original set of the Bid (together with originals / copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked “ORIGINAL”. In addition, the Bidder shall submit 1 (one) copy of the Bid, along with documents required to be submitted along therewith pursuant to this RFP, marked “COPY”. The Bidder shall also provide 2 (two) Soft copies on Compact Disc (CD)... ... The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink...	Short Term Power purchase being a small activity, it would not be desirable to increase the overheads for requiring of the original documents to be submitted that may need travel of the person from the headquarters of the Bidder to the Utility’s office. Even now, it is a common practice that photo copy or the scanned copy of the bid documents could be submitted on the due date and the original copy sent separately. This process could help the Bidders in use of their local office at the location of the Utility’s Office for submission of the bid documents, even if they are prepared at the headquarters of the Bidder. It is suggested to modify the clause

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			as: “The Bidder shall submit one hard copy and one soft copy on Compact Disk of the Bid Documents required to be submitted. Hard Copy could be in original. However, in the event that hard copy is submitted in the form of photo copy or the scanned copy, the original document shall be submitted within 5 days of the Bid Due Date.”
19.	Clause 2.14.1 Instructions to Bidder - Bid Due Date	Bid submission time of 1100 hrs has been specified	Prescribing the time of Bid Submission in the draft document is not required. It only creates difficulties for utility to manage its own process. Further, in the present formulation, if there are any changes to be made in the standard documents, utility essentially has to approach Ministry of Power. Thus, Bid submission time should be left to the Procurers. Also, bids should be invited through online mode with minimal requirement of visiting the Utility office. The bid submission time is dependent on different factors and therefore it should be left to the discretion of the Procurers. As such, Short term bids should be invited through online mode/ e-procurement platforms as far as possible.
20.	Clause 2.18.2 Instructions to Bidder - Rejection of Bid	The utility reserves the right not to proceed with the bidding process at any time, without notice of liability and to reject any bid without assigning any reasons	Utility can annul the bidding process and reject all bids however it should not have any right to reject any bid. If Utility annuls bidding at any time it should inform bidders the same at the earliest and return Bid Security Amount held by it immediately
21.	Clause 2.22.1 Instructions	Bid Security: The Bidder shall furnish as part of its Bid, Bid Security referred to in... ...and having the validity period of not	For completing the process in 10 days, LOA is to be issued within 7 days of the Bid Due Date therefore

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	to Bidder - Bid Security	less than 120 (one hundred & twenty) days from the Bid Due Date, inclusive of the claim period of 60 (sixty) days, and may be extended as may be mutually agreed by the Utilities and Bidders from time to time.	there is no reason for Bank Guarantee or Demand Draft to remain valid for such a long period It is suggested that the validity period for bid security shall be reduced to 90 days. An additional claim period of 30 days may be given. ..
22.	Clause 2.22.1 Instructions to Bidder - Bid Security	Bid Security: Save and except as provided in Clauses 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Utility, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Utility, and in any case within 60 (sixty) days from the Bid Due Date.	Provision should be: “Save and except as provided in Clauses 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Utility, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Utility, and in any case within 30 (thirty) days from the Bid Due Date.”
23.	Clause 2.23.1 Instructions to Bidder - Opening and Evaluation of Bids	Opening and evaluation of bids : The utility shall open the bids at 11:30 hrs on the bid due date	Prescribing the time of Opening of Bid in the draft document is not required. It only creates difficulties for utility to manage its own process. Further, in the present formulation, if there are any changes to be made in the standard documents, utility essentially has to approach Ministry of Power.
24.	Clause 2.23.1 Instructions to Bidder - Opening and Evaluation of Bids	Opening of Financial Bid has been kept at a later date	The technical requirements can be kept simple and both the technical and financial bids can be opened on the same day. As highlighted earlier, the procurement is for short term, the technical eligibility conditions may be kept simple so that the same can be checked and verified on the same day of opening of bid and facilitate the opening of financial bid on the same day. Keeping the option of opening of financial bid at a later date will increase the bidding cost, which ultimately would be priced in the tariff.

S.No.	Clause	Details of Clause	Comments / Rationale
25.	Clause 2.23.8 Instructions to Bidder - Opening and Evaluation of Bids	The Utility reserves the right not to proceed with the Bidding Process anytime without notice or liability and to reject any or all bids without assigning any reasons	Utility should not be given such blanket right. Specific reasons should be assigned for rejection of any bidder or discontinuation with the bidding process. In that case, the Bidder should also be allowed to withdraw from the process at any time before the opening of financial bids without any liability or assigning any reason. Equal rights and opportunities should be created for all the parties.
26.	Clause 2.26 Instructions to Bidder - Proprietary data:	Proprietary data: All documents and other information supplied by the Utility or submitted by a Bidder to the Utility shall remain or become the property of the Utility. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. <i>The Utility will not return any Bid or any information provided along therewith.</i>	Clause should be reworded as below... "All documents and other information supplied by the Utility or submitted by a Bidder to the Utility shall remain or become the property of the Utility. Bidders are to treat all information submitted by the Utility as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid."
27.	Clause 3.5.2 Evaluation of Bids	The model RFP incorporates second round of bidding in case the Lowest Bidder withdraws or is not selected. It is proposed that the remaining bidders would then be asked to match the lowest tariff and in case no one matches the lowest tariff, a third round of bidding will be conducted	It is not clear whether utility can accept offer from bidders other than the Lowest Bidder in case the quantum asked for has not been fulfilled. From the present draft it appears that the utility cannot. This needs to be clarified or suitably amended so as to allow utility to continue the process till its quantum is fulfilled. Thereby meaning, that Bidding would be restricted to single round. In case the requirement is not fulfilled by the Lowest Bidder, the utility should issue the LoA to other bidders at their quoted tariff, till the time the requirement of the utility is met provided the ceiling limit of the

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			tariff as approved by the commission is not breached. Also, the proposed mechanism has an inherent flaw. As the bidder knows that he will have the opportunity to match the Lowest Tariff at a later stage, he may not be willing to offer his best possible tariff at the first stage itself. Similar thinking across the board may even raise the “Lowest Tariff”. Furthermore, the tariff quoted by a bidder is dependent on various individual factors like fuel cost, fixed cost of the plant, transmission costs, etc. It may not be possible for the bidders to match the Lowest Tariff and having different rounds of bidding would be a futile exercise.
28.	Clause 3.5.2 Evaluation of Bids	In the event the two or more bidders quote the same tariff, utility shall identify the Selected Bidder by draw of lots between the tie bidders	In case of tie, the requisitioned quantum should be allotted on pro-rata basis among the bidders.
29.	Clause 3.7.2 Bid Parameter	Tariff comprising the bid shall be offered in accordance with the provision 3.7.2: Bid Parameters: a) Lumpsum tariff b) Coal from domestic market c) Gas from domestic source d) Gas from ONGC/GAIL e) Supply from Hydro-Electric Power station f) coal imported from international market g) Gas imported from international market	As stated earlier, two part tariff is not appropriate for a Short Term market. . Even if, a two part tariff structure is being contemplated, it is important to de-link the tariff from source of fuel. Also, evaluation of tariff should be done at the regional periphery making it in line with CERC (Sharing of inter State Transmission Charges and Losses Regulations 2010), where in quantum of power for the purpose of booking the corridor is seen at the Regional Periphery. It is suggested that in Short Term Power Procurement, the same point is taken as “Delivery Point” with all liabilities up to the Delivery Point to

S.No.	Clause	Details of Clause	Comments / Rationale
			the Supplier's account and all liabilities beyond the Delivery Point to the Utility's Account.
30.	Clause 5.1 Pre-Bid Conference	Only those persons who have purchased the RFP documents shall be allowed to participate in the Pre-Bid Conferences. Bidders who have downloaded the RFP document from the Utility's website (www.****) should submit a Demand Draft of [Rs. 50,000 (Rupees fifty thousand only)] in favor of ***** towards the cost of document, through their representative attending the conference.	There should not be any restriction regarding pre-bid meeting. All the generators and traders should be allowed to attend the pre-bid meeting without any cost. Decision to participate in the tender may be dependent on the outcome of the pre-bid meeting. Making it mandatory to pay the tender fee for attending pre-bid meeting will hinder valuable inputs for improvement in the tender documents. Further, Short Term Power trading market is operating on very low margin. This kind of overheads would discourage wider participation.
31.	Appendix – 1 Qualification Proposal	...	The Qualification Proposal is too lengthy and many of the requirements can be done away with. The Qualification Proposal may be made simpler by including just 1) Acceptance to the terms and conditions of the RFP 2) Details of the Bid Security and 3) Quantum offered. Also declaration regarding non-usage of concessional fuel may be included, separately if not mentioned in the RFP terms. The bid being for short term power procurement should be kept short and simple.
32.	Appendix I, Annex II, Form 1 & Form 2 Supply Capacity of Bidder	There is a requirement from Statutory Auditor to certify the information provided. Separate sheet for each contract is required to be filled. Form II:	The declaration by Bidder should suffice the purpose and certification from the Statutory Auditor may be done away with. Availability of Statutory Auditors would always be required especially in case the bidder is a trading licensee. The Statutory Auditors may not be readily available for certification.

S.No.	Clause	Details of Clause		Comments / Rationale																								
		<table><tr><th>Item</th><th>Particulars of supply during preceding Accounting Year</th></tr><tr><td>Name & Address of Purchaser</td><td></td></tr><tr><td>Source of supply</td><td></td></tr><tr><td>Quantum of electricity contracted (in MW/MUs)</td><td></td></tr><tr><td>Period of contract</td><td></td></tr><tr><td>Total quantum of electricity actually supplied (in million units)</td><td></td></tr></table>	Item	Particulars of supply during preceding Accounting Year	Name & Address of Purchaser		Source of supply		Quantum of electricity contracted (in MW/MUs)		Period of contract		Total quantum of electricity actually supplied (in million units)			Requirement of attaching separate forms for all contracts would make the bid bulky. This would also lead to increase in the time required for bid preparation. The format of Form II should be <table><tr><th>Item</th><th>Particulars of supply during preceding Accounting Year</th></tr><tr><td>Traded through bilateral contracts including Banking.</td><td></td></tr><tr><td>Traded through Exchange</td><td></td></tr><tr><td>Total quantum of electricity actually supplied (in million units)</td><td></td></tr><tr><td>Traded through bilateral contracts including Banking.</td><td></td></tr><tr><td>Traded through Exchange</td><td></td></tr></table> In case of Traders, details of all the trading carried out by them is in the public domain and available on their websites, as well as CERC website. For the purpose of qualifying requirement, total trading volume is	Item	Particulars of supply during preceding Accounting Year	Traded through bilateral contracts including Banking.		Traded through Exchange		Total quantum of electricity actually supplied (in million units)		Traded through bilateral contracts including Banking.		Traded through Exchange	
Item	Particulars of supply during preceding Accounting Year																											
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S.No.	Clause	Details of Clause	Comments / Rationale
			relevant to express the volume of business carried out by the Trader. In any case, the Utility will have the right to call for more information, as may be considered relevant.
33.	Appendix 3 Power of Attorney for signing of Bid	Power of Attorney for signing the bid: The format has been prescribed wherein Power of Attorney is to be obtained for each bid separately	In many cases, the Power of Attorney is given by the Competent Authority to appropriate person for signing of documents relevant to contracts and this delegation is of general nature. Even such delegation of power by the Competent Authority should be taken as reasonable document to check the authenticity of the signatory.
34.	General Suggestions	The model RFP complicates the procedure for power procurement under short term. The procedure leads to huge amount of paper work, formalities like certificates from auditors etc. to bid. Segregation of bids on the basis of fuel used for generation of electricity	The existing system which is being followed by Utilities for short-term power procurement can be continued with clause regarding non-usage of concessional fuel by Generators and power surplus Utilities (as power surplus utilities may also participate in the tender) added to the existing framework. The period being small, the risks involved are limited. The existing system being followed by Utilities especially after the Guidelines for Procurement of Power on Short-term basis issued by Ministry of Power in May 12 is working fine. The requirement of certification from the bidder (Generators and power selling Utilities) of not using concessional fuel can be added. The various provisions of the model RFP (as detailed in following rows) tend to decrease competition and increase the cost of participation for the bidder. This could lead to high prices of power.

Comments on Agreement for supply of Power (ASP)				
Sr. No	Clause No	Draft Model ASP	Suggestion	Rationale for change
The Merchant Supply Contract				
1	2.2.1	the utility hereby awards to the supplier the merchant supply contract set forth herein for supply of electricity to the utility for a period of 90 (to be fixed between 7 to 365 days commencing from the Appointed date	Contract period should be delinked from appointed date and should be as per the requirement of utility. Contract period should be for the period of delivery of power	Appointed date means the date on which all the condition precedent are achieved and every condition precedent is either satisfied or waived. Condition precedent needs to be fulfilled within 15 days from signing of agreement and includes procuring access for transmission system. Procuring access to transmission system is governed by STOA regulation so depending upon the period of the contract it may take 3-4 months. Any restriction due to transmission corridor will lead to restriction of competition. E.g. If the utility has floated a tender for a period say April'14 to June'14 and the supplier is the lowest period then contract period will be April'14 to June'14.
2	Foot note 2	While fixing the contract period the utility may take into account the likely availability of transmission corridors in accordance with the extant regulation.		
Condition Precedent				
3	3.1.2	condition precedent to be satisfied by Utility a) execution and procured execution of default escrow Agreement in accordance b) executed the deed of hypothecation in accordance with the provisions c) procured approval of the commission for payment of tariff by the utility to the supplier in accordance with the provision of this agreement	Establishing letter of credit should also be included in the condition precedent.	As the Letter of credit is part of payment security and needs to be in place before contract period starts.

4	3.1.3	condition precedent to be satisfied by Supplier a) Performance security to the utility b) delivery to the utility a legal opinion from the legal counsel of the supplier with respect to the authority of the supplier to enter in this agreement c) deposit a certified true copy of this agreement with the RLDC and SLDC having jurisdiction d) procured access to the transmission system required for supplying electricity at the delivery point	It should only include Performance security to be submitted to utility	1) Why do we require to submit the legal opinion from legal counsel when we are supplying power under short term and what's the importance of it? 2) It is practically impossible for a supplier to supply the copy of the agreement to RLDC and SLDC. These are unnecessary and cumbersome to implement hence needs to be omitted 3) Transmission open access should not be their in first place and if its to be included then it should be governed by prevailing STOA regulation . Also non availability of open access should be under force majeure.
Damage in case of delay by Utility and Supplier				
5	3.2 & 3.3	Utility shall pay to the supplier damages in an amount calculated at the rate of 0.1% of performance security for each day of delay.....Supplier shall pay to the utility damages in an amount calculated at the rate of 0.3% of performance security for each day of delay.....	Rate (%) for calculation of damage for utility and supplier should be equal i.e. either 0.1% or 0.3% . Supplier should also be able to terminate the contract moment the damage payable by the utility reaches the maximum value.	Level playing field for both utility and supplier
Obligation of the supplier				
6	4.1.4	The supplier shall ensure and procure availability of the contracted capacity equivalent to at least 85% thereof during the contracted period (Normative Availability)	Contracted capacity should be at Regional periphery. Minimum take-off limit also	As per the STOA regulation and scheduling procedure contracted capacity is at the regional periphery. And the RLDC shall prepare the schedule after application of the

7	Explanation	Contracted capacity over a period of one hour, after accounting for auxiliary consumption, and transmission losses up to the point of Grid connection..... If the contracted capacity is not available for production of electricity to its full capacity is not available for production of electricity to its full capacity during any hour, or part thereof, not being less than a quarter of an hour, such hour or part thereof shall , in the computation of availability, be reduced proportionate to the non availability during that hour.....	need to be their for utility as 85% of the contracted capacity	losses (POC losses Injection) which will be estimated on weekly basis. So it is not possible for the Supplier to provide the contracted capacity on hourly basis. This has to be inconformity with the existing regulation and accounting & settlement procedures. 5% Auxiliary + losses is not possible even in super critical technology. and short term contract should allow all types of technology to participants & it should be linked to net quantum
8	4.5.2	The supplier acknowledges agree and under takes that the product of such transmission losses and the tariff shall be due and payable by the supplier to the utility and shall be adjusted in the relevant weekly bill.	Loss are adjusted are in kind, so this should be deleted. Billing shall be done for quantum at delivery point which will take into account losses.	Billing will be done at the delivery point so we need not do the adjustment.
Obligation relating to regulatory compliance				
9	4.8	a) the tariff due and payable under this agreement has been determined by the appropriate commission in accordance with the provision of section 62 or 63 of the act, as the case may be, and the supplier shall no time demand, receive or appropriate any tariff in excess thereof	This clause should be done away with as such utility get the ARR approved from the commission.	This means commission will re-determine the tariff after bidding process or the commission has to approve the tariff? This has to be done prior to filling of Open application. If the tariff is re-determined by the commission and if it is unviable for the supplier to provide the electricity then supplier should have the freedom to exist the agreement without any liability what so ever.

Obligations relating to reporting requirements				
10	4.10-	All information provided by the supplier to the SLDC and RLDC as a part of its operating and reporting requirements under applicable laws including the grid code shall be provided to the Utility simultaneously	This clause should be done away with as this will make the procurement cumbersome. As such the supplier is providing the report to as per the IEGC.	We are entering in to short term contract and not long term contract, so this should be done away with.
Representation and warranties of the supply				
11		m) it has a good valid right to the contract capacity including an assured supply of fuel	Assured supply of fuel should be deleted.	Assured fuel supply needs to be defined? If the coal has to be procured from open market (e-auction or import) then all the risks of price and availability should be to supplier.
12	8.1.2	Until the submission of the performance security is submitted bid security shall remain in force, after submission of performance security Bid security shall be released by utility to supplier	Bid security shall be returned within 7 days from the submission of Performance guarantee by the supplier to utility	Time frame for returning of bid security after submission of performance security needs to be mentioned.
13	9.2.1	whole or part of the contracted capacity for a continuous period of 24 hrs or more, it may, by a notice of at least 72 hrs prior to such period, specify the reduction in dispatch of the contracted capacity and for such reduction in supply, it shall be entitled to a rebate equal to the higher of 40% of the fixed charges payable for the availability thereof and the waived fixed charge	In case the off-take is less than the minimum off-take guarantee than utility shall pay 100% capacity charges. Since utility has right on capacity and they have flexibility to pay 60% of the fixed charges only, this will lead to increase of bidding.	Flexibility

14	9.2.2	if part of the contracted capacity which is not utilised by the utility is utilised for production of electricity for sale thereof to any Buyer the fixed charge due and payable for and in respect of such contracted capacity shall be deemed to be waived and no fixed charges shall be due	In case the power sold to buyer is at lower tariff then that with the utility then the difference should be payable by the utility.	Loss of the supplier needs to be taken care off.
	Tariff			
15	10.1.1	Tariff comprising the sum of Fixed charge (FC) and Variable charges (VC)	It should be single part tariff only.	For shorter duration risk are less and can be hedged by stake holders thereby two part tariff is not required.
16	10.1.2	FC payable for availability of the contracted capacity to the extent of Normative availability i.e. 85%	Should be deleted in light of single part tariff and is contrary to OA regulation	In short term open access regulation there is no procedure of declaration of availability on daily basis and scheduling is as per the open access approval.
17	10.3.3	In case of non-availability arising as a consequence of deficiency in transmission then it will be deemed to available to the extent of 50% of the non-availability.	In case of Transmission non-availability 100 % fixed charge should be payable.	As the Transmission line availability is beyond the control of supplier.
18		Supplier can despatch the contracted capacity to the extent of non-availability to other buyer	How the utility will determine that supplier has sold the capacity to contracted to specific utility to buyer? while calculation of normative availability non-availability should be considered as force majeure excluded form calculation of penalty.	If a generator has n no of contract and n-1 are affected by grid constrained then how it will be determined which contracted capacity has been sold by the supplier ? Impractical to implement. What if supplier is not able to despatch the electricity to any other buyer?

19	10.3.4	If the shortage of fuel is due to force majeure than fixed charges are payable to the extent of 30% of the non-availability	It should be 100% rather than 30%.	As it is beyond the control of supplier?
20	10.5.1 Incentive	Availability in any week exceeds the normative availability the supplier shall be entitle to incentive paid at a rate of 50% of the fixed charges of the availability in excess of normative availability on to the extent of despatch	Same basis should be adopted for calculating the Incentive and damages either monthly or weekly. Damage should also be applicable for utility if the off take is less than minimum off take limited equivalent to 25% of the fixed charges on account of short fall.	Incentive to be calculated on weekly basis where as damage is getting calculated on monthly basis so both should be in tune with each other.
21	10.5.2 damage	Availability in any month is less than normative availability then fixed charges to be reduced to the extent of shortfall in normative availability. Additional any reduction below the normative availability will attract damages equivalent to 25% of the Fixed charges on account of shortfall.		
22	10.5.3	Three days after close of every week cumulative daily availability for such shall be calculated and the Incentive/ damage as the case may be computed.	This is contradictory to what is mentioned in the 10.5.2. Week needs to be defined.	
23	Clause to be added	Open access bill	Due date for open access bill will be 5 days from receipt of bill	
24		Surcharge for late payment	1.25% per month shall be leviable for each day of delay on all outstanding payments from 6th day from the receipt of bill (Energy/Open access bill).	

Variable charges				
25	footnote 12	Utility may retain the option of imported coal or Gas if part of the fuel is to be imported. In such case proportion electricity generated using such fuel needs to be specified in the bidding documents	Option for blending, no such provision in the formats of the bidding documents	
If Lumpsum Tariff				
26	footnote 13	bidder can bid under this category if the procurement is not exceeding 90 days or for procurement of non-conventional source.	Basis for limiting it to 90 days.	
27	11.3.1	Fixed Charges equal to Variable charge	Basis for keeping fixed charges equal to variable charges. Non workable or can lead higher tariffs	
28	11.3.2	variable charges to be revised to reflect the variation in WPI occurring between the last day of the month in which bid is submitted and the month immediately preceding the month for which such revision is under taken	Basis for linking it to WPI.	
If Coal from domestic market				
29	11.3.2	Name of the collieries to be mentioned from where fuel will be sourced	This portion should be deleted	How can supplier know on signing of this agreement from which coal mine he will be getting the coal sourced say after 5 month?
30	11.3.2	if the coal is transported from a shorter distance compared to the location specified then the cost of transportation will be reduced in the proportion to the reduction in railway freight on account their off	What if coal is transportation from greater distance compared to that of the location mentioned ? Then transportation cost should also be increased in the same	

			proportion. How it will be determined by utility that transportation of the coal is from other mine as specified in the 11.3.2?	
	If Gas from domestic market			
31	11.3.2	Name of the gas field/ LNG terminal to be mentioned from where fuel will be sourced	This portion should be deleted	
32	11.3.2	if the gas is transported from a shorter distance compared to the location specified then the cost of transportation will be reduced in the proportion to the reduction in freight on account thereof	What if gas is transported from greater distance compared to that of the location mentioned ? Then transportation cost should also be increased in the same proportion.	
33			How it will be determined by utility that transportation of the gas is from other gas field/LNG terminal as specified in the 11.3.2	
	If hydro electric			
34	11.3.1	Fixed Charges equal to Variable charge	For hydro plant variable charges is minimal then how can fixed charges be equal to variable charges.	

35	11.3.2	variable charges to be revised to reflect the 50% variation in WPI occurring between month immediately preceding the bid month and the month immediately preceding the month for which such revision is under taken	More clarity in the illustration is required with date	
If Coal is imported				
36	11.3.2	if the coal is transported from a shorter distance compared to the location specified then the cost of transportation will be reduced in the proportion to the reduction in railway freight on account their off	Transportation cost should be pass-through	What if coal is transportation from greater distance compared to that of the location mentioned ? Then transportation cost should also be increased in the same proportion.
37		cost of transportation by sea shall be deemed to be included in the cost of fuel and shall be borne by supplier	How it will be determined by utility that transportation of the coal is from other mine as specified in the 11.3.2	
38	11.4 Shipping freight	The shipping freight payable by the utility to the supplier shall be in addition to the variable charges payable under clause 11.2	This is contradictory to what is mentioned in the 11.3.2 for imported coal.	
39	12.1.1 Default Escrow Account	Utility and the supplier shall prior to the appointed date execute the escrow agreement with the utility bank where at least 30% of the utility monthly revenues are normally deposited.	Escrow account should be established before commencement of supply of power.	-
40	12.1.1	Revenue equivalent to the fixed charges due and payable for a month shall be routed every month through the default Escrow Agreement	This should also cover variable charges payment.	-
41		Execution of Deed of Hypothecation between Supplier and utility by Appointed date	This should be changed to date of signing of ASP	As the risk is not getting covered

42	12.2.1 Letter of credit	Utility to establish no latter than 7 days prior to likely date of the appointed date an unconditional, revolving and irrevocable letter of credit for an amount equivalent to 50% of the maximum monthly payment	This should be changed to commencement of supply. In case of non establishment of LC supplier can terminate the agreement, utility shall pay all open access charges payable and also pay liquidated damages as per the agreement.	
43	12.3.3	Supplier to resume supply to utility no later than 7 days from day on which the utility pays	In case of restoration of contracted supply to utility following charges to be borne by utility:- 1) Refund of Open access pertaining to revision of approved open access to be borne by utility. 2) Any under recovery pertaining to fixed charges to be borne by utility	-
44	12.5 Set-Off	If any amount is due and payable by the utility to supplier it may be set-off any sums payable to it by the supplier and pay the balance remaining	Set-off with proper documentation.	In case of set-off Utility shall provide the full document such as bill no against which setoff is being done regarding set-off. Set-off will done against the bill which has been raised by either party on each other.

45	13.1.1 Despatch of contracted capacity	Utility to instruct the supplier for production of electricity and despatch thereof for such period and such volume. On mutual understanding between Utility and supplier despatch can be in excess of contracted capacity. Utility may direct the supplier to despatch on its behalf, all or part of the contracted capacity in favour of third party from time to time.	Impractical and Should be deleted,.	As per the STOA procedure daily scheduling is not possible. Revision of OA is possible after 3 days from punching of request. In case utility directs the supplier to despatch contracted capacity to third party then this has to be done before Open application is filled. If any diversion is there after OA is approved then charges pertaining to cancellation and booking of fresh OA will be borne by utility.
46	13.1.2	Supplier shall plan the production and despatch of electricity and convey its availability for scheduling thereof by the SLDC or RLDC	Should be deleted	As per the STOA procedure daily scheduling is not possible and scheduling of power is as per the OA approval from nodal RLDC.
47	13.2.1 Settlement of UI charges	Any unscheduled interchange in terms of UI regulation shall be solely to the accounts of and borne by the supplier		UI regulation is replaced by deviation and settlement mechanism so this needs to be changed. Supplier will only bear unscheduled interchange charges pertaining to injection only. It is summation of all the contracts and can't be contract specific.
48	13.2.2	Utility first right to despatch, in the form of UI any surplus electricity generated from contracted capacity.....		
	13.3 Overriding powers of the utility			
49	13.3.3	Supplier to provide true copy of this agreement to RLDC/SLDC and obtain a receipt thereof.	This clause should be deleted.	
50	13.4 Ramp up of despatch	If utility despatches less than 2% of contracted capacity at any time and requires ramping up of generation thereafter it shall be allowed a period 4 (four) hours to supplier for reaching availability.	This clause should be deleted.	Current STOA regulation does not permit daily/hourly scheduling of power. Power is scheduled as per the approval issued by the Nodal RLDC. So this has to be in conformity with the STOA regulation and scheduling procedure.

Insurance				
51	14.2	Insurance cover The supplier shall during Operations Period, procure and maintain Insurance cover including but not limited to the following:-	Operations Period is not defined?	
52		a) comprehensive third party liability insurance including injury to or death of the person of the utility or other caused by the contracted capacity. b) Suppliers general liability arising out of the Merchant supply contract	This clause should be deleted.	How it will be determined that the cause of death is through suppliers contracted capacity?
Evidence of Insurance Cover				
53	14.3	Within 15 days of obtaining any insurance cover the supplier shall furnish the utility, notarised true copies of the certificates of insurance copies.....	This clause should be deleted.	This is unnecessary. We are selling power under short term and not under long term?
Remedy for failure to insure				
54	14.4	If supply fails to effect and keep in force all insurance for which it is responsible pursuant hereto, the utility shall have the option to either keep in force any such insurances, and pay such premia and recover the cost thereof from the supplier,		
Accounts and Audit				
55	15.1.1	The supplier Shall maintain books of accounts recording all its receipts including Tariff, revenues from sale of power to the utility, other distribution licensees and buyer , and all income derived/collected by its from or on account of the contracted capacity The utility shall have the right to inspect the records of the supplier during office hours and requires copy of relevant extracts of books of account duly certified by the statutory auditors , to be provided to the utility for verification	This clause needs to be deleted	As this will unnecessary complicate the procedure as well as put financial burden on the supplier which will get loaded on the tariff.

56	15.1.2	On or before the 15th day of each month the supplier shall provide to the utility, for the preceding month, a statement duly audited by its statutory auditors giving summarised information on a) receipts on account of tariff b) revenue for sale of electricity from contracted capacity c) such information as the utility may reasonably require		
57	15.2.1	The supplier shall appoint, and have during the subsistence of this agreement as its statutory auditor..... The utility shall have the right , but not the obligation to appoint....., another firm of chartered accountants to audits and verify all those matters expenses, cost, realisation and things statutory auditor are required to do.....		
58	16.2 New Clause to be added		Under force Majeure event we need to add Any restriction imposed by RLDC / SLDC in scheduling of power due to Transmission / Grid constraint. Contracted power shall be deemed reduced for the period of Transmission Constraint; however the non/ part availability of	

			Transmission Corridor shall be certified by the concerned RLDC.	
59			In case of force outage affecting the generator to be included as force majeure .	

Comments on Request for Proposal (RFP)				
Sr. No	Clause No	Draft Model RFP	Suggestion	Rationale for change
1	General	The model RFP complicates the procedure for power procurement under short term. The procedure leads to huge amount of paper work, formalities like certificates from auditors etc. to bid. Segregation of bids on the basis of fuel used for generation of electricity	The existing procedure followed by the utilities based on the SBD issued by MoP dated 16.05.2012 should be continued.	As the period for procurement of power is short, so the risk associated with it are limited. The various provisions proposed in the draft model RFP restricts the competition which will lead to higher prices in the short term market.
2	1.1.4	 Bidders may bid for the capacity specified in clause 1.1.1, or a part thereof, not being less than 50% of such capacity	We suggest minimum bid quantum should be 10% of the tendered quantum. In case of procurement is below 100 MW then minimum bid quantum should 25MW.	The minimum bid quantum of 50% of the requisitioned quantum is on higher side. If the utility invites tender of say 800MW then the minimum offered capacity has to 400MW which is too high and will restrict competition which is against Electricity Act 2003 and public interest. For more competition we have suggested lower limits.
3	1.2.1	Two Stage selection process First stage pre qualification of Bidder as per the RFP and the selection stage the evaluation of financial bid	It should be single stage process only as the power procured is for a shorter duration.	Process should be such that it is simple and fast.
4	1.2.2	Bid to be valid for a period of not less than 60 days from the bid due date	Validity of the bid should not be more than 10 days from submission of bid.	In case of longer bid validity generator may remain un-despatch as he is restricted to participate in other tenders. This will restrict the competition and further increase the tariff which will be against the consumer interest.
5	1.2.4	Bidder is required to deposit along with its Bid, a bid security of Rs 1 lakh per MW of capacity offered by the bidder.	Bid security should be kept as Rs 30,000 per MW	Higher bid security will increase financial cost.

6	1.2.4	Valid for 120 days from bid due date inclusive of a claim period 60 days	Validity of the bid security should be linked to bid validity. Additional 30 days towards claim period may be provided.	Bid security of 120 days will block the limits of the bidder.
7	1.2.5	, the fixed charges and variable charges shall constitute the tariff for the availability and supply of electricity.....	Tariff should be single part only.	For shorter duration risk are less and can be hedged by stake holders thereby two part tariff is not required.
8	1.3	complete process from issuance of RFP to signing of ASP 31/10 days depending the estimated value of procurement	Complete process should be completed within 10days from issuance of the RFP	Many a times utility have to procure the power on short duration due to tripping of units or sudden rise in demand due to weather condition etc these exigency can't be predicted a month in advance.
9	2.2.2	Eligibility of bidder (A) (i) In case of generator- Installed capacity of the power station should have the twice the generating capacity for which tender is called for . Certificate from statutory auditor regarding the electricity supplied in the previous year. In case of trading licensee it should have supplied 3 times the supply anticipated.	Submission of Bid security, the details of the source of power, Valid trading licensee should only be the eligibility criteria	For providing power under short term we need not have such stringent criteria. If the procurement by utility is for 1000MW then supplier has to have atleast 2000MW installed capacity which is impractical. Hardly there is generation with such free capacity. This will restrict competition which is against Electricity Act 2003 and public interest.
10		(B) Net worth equivalent to Rs. 50,00,000/- per MW of the offered capacity. Certified by the statutory auditors.	This clause should be deleted.	For short term if procurement is for 500MW then net worth requirement would be Rs 250 Crore which is too high. This will restrict the competition which is against Electricity Act 2003 and public interest.
	3.5.2	In the event the two or more bidders quote the same tariff, utility shall identify the Selected Bidder by draw of lots between the tie bidders	In case of tie, the requisitioned quantum should be allotted on pro-rata basis among the bidders	Success in a bid should not be left to chance and based on rational basis.

11	3.7.1	Tariff comprising the bid shall be offered in accordance with the provision 3.7.2		
12	3.7.2	a) Lumpsum tariff b) Coal from domestic market c) Gas from domestic source d) Gas from ONGC/GAIL e) Supply from Hydro-Electric Power station f) coal imported from international market g) Gas imported from international market	Tariff should be de-linked from source of fuel from which power is generated. It should be single part tariff may be for the period or month wise.	For shorter duration risk are less and can be hedged by stake holders & hence two part tariff is not required.

Comments from IL&FS Energy Development Company Ltd.

Sl.No.	Ref .	Comments
1.	RFP Clause 2.2.2 <i>Prequalification Criteria – in case of Generator, should have installed capacity twice the contracted capacity and</i> <i>in case of trader, must have supplied equal to 3 times energy anticipated under the contract during last financial year</i>	<i>what happens in case of new traders? In case of traders, the source generator should satisfy the QR.</i>
2.	RFP Clause 3.5 Evaluation of Financial Proposal & Selection of Bidder	1) <i>Successful Bidders should be 'paid as bid'. Not be asked to match the lowest bidder.</i> 2) <i>Utility should not be allowed to annul the bidding process/Rebidding should not be allowed.</i>
3.	PPA Clause 3.2 LD for delay in fulfilment of CPs by Procurer – 0.1% of performance security per day of delay	<i>This translates to only 5 paise/unit. In case delay in fulfilment of CPs results in delay in commencement of supply, the contracted energy will have to be sold in day ahead/ spot market resulting in significant losses.</i>
4.	PPA Clause 8.1 Performance Security	<i>Performance Security should be as a %age of the estimated contract value rather than of Rs./MW basis being a short term contract</i>
5.	PPA Clause 10.3 Computation of fixed charge- <i>In case of unavailability of transmission network, availability for the purpose of payment of FC, be deemed to be availability to the extent of 50% of the non-availability</i> <i>In the event of non-availability arising as a consequence of shortage of fuel caused by Force Majeure, availability for the purpose of payment of FC, be deemed to be availability to the extent of 30% of the non-availability</i>	<i>Under Force Majeure conditions, the Supplier should realise complete fixed charges. Incentives and Damages for exceeding/not being able to meet the Normative Availability both should be done away with.</i>
6.	PPA Clause 10.3 Computation of variable charge for projects where coal is imported from international market- <i>shall be linked to monthly avg. of Coal Price Indices API4, Coalfax and Global Coal or any substitute that the parties may mutually agree upon.</i>	<i>The indices should be fixed in the tender stage</i>
7.	PPA clause 16.1- <i>Force Majeure shall mean FM event in India.</i>	<i>For tenders based on imported coal/gas, FM event in the fuel source country should be covered</i>

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