



National Electric Power Regulatory Authority Islamic Republic of Pakistan

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No. NEPRA/Advisor(CTBCM)/RFP-13/ 3109-13

February 29, 2024

Chief Executive Officer,
K-Electric Limited (KEL),
KE House, Punjab Chowrangi,
39 – B, Sunset Boulevard, Phase-II,
Defence Housing Authority
Karachi.

Subject: **Decision of the Authority in the matter of RFP Document Submitted by K-Electric Limited for the Development of a 150 MWp Solar Power Plant at Malir Karachi**

Enclosed please find herewith the subject Decision of the Authority (total 21 pages) in the matter of RFP Document Submitted by K-Electric Limited for the Development of a 150 MWp Solar Power Plant at Malir Karachi.

Enclosure: As above

(Engr. Mazhar Iqbal Ranjha)

Copy to: (alongwith Copy of Subject Decision)

1. Secretary, Ministry of Energy (Power Division), 'A' Block, Pak Secretariat, Islamabad.
2. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
3. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.
4. Secretary, Ministry of Inter Provincial Coordination, (Secretariat of Council of Common Interests), Government of Pakistan, Cabinet Block, Cabinet Secretariat, Islamabad.
5. Chief Executive Officer, Central Power Purchasing Agency Guarantee Limited (CPPA-G), Shaheen Plaza, 73-West, Fazl-e-Haq Road, Islamabad.
6. Managing Director, National Transmission & Despatch Company Limited 414-WAPDA House, Lahore.

Decision of the Authority
in the matter of the RFP Document submitted by K-Electric Limited for the Development of a 150
MWp Solar Power Plant at Malir Karachi

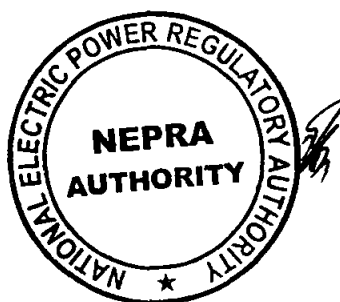
- (1). The Authority notified the NEPRA (Electric Power Procurement) Regulations, 2022 (the “Procurement Regulations”) on December 06, 2022. Under relevant provisions of the Procurement Regulations, K-Electric Limited (“KEL” or “the Petitioner”) submitted a Request for Proposal (“RFP”) on April 19, 2023, for the approval of NEPRA. The said RFP was developed and submitted to conduct competitive bidding for the development of a 150 MWp solar PV project at Malir Karachi (“Project”). The Petitioner requested NEPRA for the reverse bidding with a Benchmark Tariff, to be determined by NEPRA.
- (2). Subsequently, KEL vide its letter dated July 14, 2023, received on July 18, 2023, proposed a Benchmark Tariff of US Cents 4.5772/kWh. In the said letter, the Petitioner also requested USD indexation on 100% of the proposed Benchmark Tariff. KEL explained this indexation request has been made due to the ongoing economic and financial challenges in the country, which has resulted in a significant surge in country risk premiums. According to KEL, the said indexation is likely to attract maximum interest from the prospective bidders for the development of the Project, which will ultimately result in competitive tariff bids.
- (3). The Authority had admitted the RFP and decided to hold a public hearing in the matter, which was conducted on September 07, 2023. The hearing was attended by KEL, Central Power Purchasing Agency Guarantee Limited (“CPPAGL”), the Government of Sindh (“GOS”), the Private Power & Infrastructure Board (“PPIB”), the Energy Department of GoS, and other relevant parties.
- (4). Later, KEL through its letter dated October 16, 2023, requested the Authority to allow open competitive bidding under Regulation 9(5) of Procurement Regulations. Additionally, the Petitioner requested to allow the same concessions and incentives being offered by the Federal Government to upcoming solar projects, which the Authority has also approved vide its decision dated September 06, 2023, in case of RFP for the development of 600 MWp solar power project, to be set up at Muzaffargarh. Essentially, KEL asked for 80% of the tariff to be linked with the value of the USD during the operations of the Project. It also requested variations in SOFR and KIBOR to be applied on a certain percentage of the tariff, to be decided by the Authority. Furthermore, the Petitioner requested a one-time exchange rate adjustment for the remaining 20% of the tariff at the Commercial Operation Date (“COD”) of the Project.



- (5). In justification of its request for open competitive bidding, KEL submitted that this method would be a more prudent approach in current challenging circumstances. This would present an opportunity for investors to assess the market conditions and accordingly make representations about the expected cost/returns, which according to KEL, will lead to greater participation. KEL emphasized that in current times of diminishing investment in Pakistan, the open bidding mechanism would be the befitting approach to attract investors and also to ensure fast-track implementation of the Project.
- (6). The Authority considered the request of KEL and decided to conduct another public hearing on the matter, which was held on November 14, 2023. This hearing was attended by various stakeholders both in-person and online via Zoom, including representatives of KEL, NTDCL, the Sindh Energy Department ("SED"), and the public at large. The advertisement for the hearing was published on November 04, 2023, and separate notices of hearing were sent on November 06, 2023.
- (7). The following paragraphs contain the discussions on each issue framed for the proceedings. This discussion includes the submissions/responses of KEL, and comments of stakeholders, followed by Observations/Findings and Decisions of the Authority.

Whether the request of KEL for open competitive bidding under the Procurement Regulations is justified?

- (8). KEL in its latest communication requested NEPRA to allow open competitive bidding, rather than the earlier proposed reverse auction with Benchmark Tariff. The Petitioner submitted that any Benchmark Tariff fixed by the Authority may not adequately reflect the rapidly changing market conditions, and could lead to minimal participation in the bidding process. KEL mentioned the significant global disruptions, including economic, financial, geopolitical, and COVID-related challenges, particularly the economic fallout from the Russian-Ukraine war and the Pandemic to support its request. KEL explained that these factors have caused an unprecedented increase in commodity prices, heightened volatility, and unpredictability in the global market. Talking about the local situations, KEL pointed out that the drastic devaluation of the local currency and rising inflation in the last couple of years have increased uncertainty for investors. In view of these reasons, KEL submitted that adopting open competitive bidding would be a more prudent approach, which will allow investors to factor in the prevailing uncertainties of global and local market conditions, and make a more informed representation of different parameters of tariff. In this regard, KEL also referred to the decision issued by the Authority whereby the RFP in respect of the 600 MWp solar PV project was approved, wherein the open competitive bidding was allowed by NEPRA. KEL also submitted that the Procurement



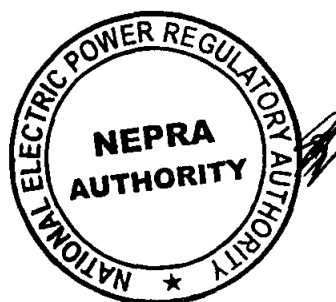
Regulations do not restrict the Independent Auction Administrator (“IAA”) or Supplier of Last Resort (“SOLR”), as the case may be, to only reverse bidding with Benchmark Tariff.

Observations/Findings and Decision of the Authority:

- (9). The Authority has observed that Regulation 9(5) of the Procurement Regulations allows the SOLRs to adopt any method of competitive bidding, subject to the approval of the Authority. It is noted that the Authority approved open competitive bidding for the 600 MWp solar PV project, due to the prevailing economic and financial challenges being faced both globally and locally. Therefore, considering the arguments presented by KEL, the Authority agrees that KEL's request to conduct open competitive bidding is justified and hereby approved. However, with open competition, the Authority reserves the right to reject the bids, if considered imprudent. KEL is directed to make this condition a part of RFP documents, before floating the same to prospective bidders.

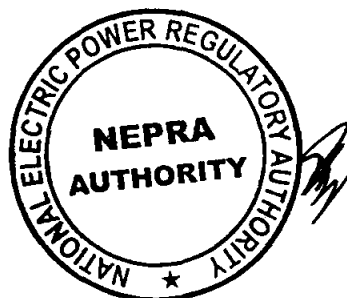
What would be the mechanism for assessment and approval of prudent tariff for the project after processing the project under open competitive bidding?

- (10). KEL during the hearing explained that all bids received will be initially evaluated as per the stipulated technical criteria. Then the financial bids of technically qualified bidders will be opened for evaluation. The bidder having the lowest tariff will be declared as successful. The Petitioner added that the selection of the successful bidder will be subject to the approval of the Authority of the Auction Evaluation Report. KEL emphasized that competitive bidding is generally considered to be the most effective mode for price exploration, and the completion of an effective and independent process with sufficient participants, will itself ensure prudence of tariff and price competitiveness. The Petitioner informed that it has pre-qualified twelve bidders for the Project, therefore, it anticipates healthy competition which will ensure that the lowest bid price is received for the Project.
- (11). In addition to the above, KEL submitted that in its capacity as the Auction Administrator for the Project, it will be including the following assessment in its Auction Evaluation Report for the consideration of the Authority:
- An independent assessment of the lowest bid received which will be based on the then prevailing market prices and macro-economic conditions.
 - Reduction in the generation cost of KEL by the addition of projects through the expected displacement of generation on expensive fuel.



Observations/Findings and Decision of the Authority

- (12). The Authority noted that while approving the RFP for the 600 MWp solar PV power project of PPIB at Muzaffargarh, it had outlined the following conditions to assess the prudence of the tariff;
- “...in case of open competitive bidding, the Authority has decided that for this purpose the bid evaluation report submitted by the Petitioner will include analysis on whether the lowest bidder's tariff aligns with the government's given Framework Guidelines and objectives of other applicable documents in consultation with CPPA-G and NTDC for displacement of expensive based on a current or fresh iteration of the IGCEP by NTDC. The declaration of Successful Bidder after fulfillment of condition in the bid evaluation report may be approved by relevant government forum(s).”*
- (13). The approval of the 600 MWp solar PV power project was made in light of the Framework Guidelines, for which the Government Agency, i.e. Private Power & Infrastructure Board (“PPIB”) approached NEPRA. One of the primary objectives of these Framework Guidelines was the displacement of expensive fuel. Consequently, the Authority established specific criteria for the evaluation of the prudence of tariff. That is, it was required that a current or fresh iteration of the Indicative Generation Capacity Expansion Plan (“IGCEP”) be carried out, to ascertain whether the ultimate objective (displacement of expensive electricity) shall be fulfilled on the successful bid tariff. To have an additional layer of scrutiny, the declaration of the successful bidder was also required to be approved by the relevant Government Forum(s).
- (14). On the other hand, KEL is a private utility, hence, the requirement for the declaration of successful bidders by any relevant Government Forum (as specified in the 600 MWp case) may not be applicable in this instance. The Authority further noted that the current generation basket price of KEL is relatively more expensive than that of CPPAGL, therefore, the sole criterion of displacement of expensive fuel would not suffice the purpose, as any bid lower than the energy purchase price of KEL would make the case for procurement.
- (15). In view thereof and given the submissions of KEL, the Authority decided that the Petitioner shall conduct a comprehensive assessment of the successful bid, considering the then prevailing macroeconomic and market conditions. This shall include assessing the successful bid while considering the prevailing cost of modules and other equipment. The cost of funds and other parameters, as considered appropriate, shall also be considered for that purpose. Additionally, the assessment and analysis of displacement of expensive electricity shall also be carried out, to essentially check and



confirm the basis on which this capacity was optimized in the IGCEP and included in the Power Acquisition Program ("PAP"). The lowest number obtained from any of the criteria mentioned will be used as a benchmark for determining the prudence of the tariff. KEL shall be having powers for the rejection of that bid in case it is found imprudent. In the event of an acceptance of a successful bidder by KEL, the assessments as highlighted above shall be made a part of the Auction Evaluation Report, which is to be submitted to the Authority for approval.

Whether optimization in an iteration of IGCEP mean confirmation of the signing of PPA even if there is a possibility of the project not being optimized in subsequent years in IGCEP because of low demand/low GDP?

- (16). The criterion for Committed Projects under the Procurement Regulations, is as follows:

"Regulation 3(5) of the Procurement Regulations: "A project is classified as committed when the SOLR enters a legally binding commitment to procure electric power with the approval of the Authority. Committed projects are not subject to optimization and are considered as firm in subsequent IGCEP iterations."

- (17). To start with, KEL suggested that the criteria for projects becoming committed should be changed for KEL. The Petitioner proposed that to the amended criteria should include projects for which a Letter of Intent ("LOI") has been issued by KEL and a Performance Guarantee has been submitted by the project developer, as KEL does not issue a Letter of Support. According to KEL, the execution of a legally binding Energy Purchase Agreement ("EPA") may take some time, after the completion of the competitive bidding process and selection of the successful bidder, therefore, LOI issuance should be the criteria to define a project as committed in the case of KEL.
- (18). Secondly, KEL submitted that the issue of non-optimization is not expected to arise for the Project, since a renewable capacity of 1,400 MW has already been optimized for KEL in the approved IGCEP-2022-31, including 1,050 MW solar PV projects. KEL highlighted that even after considering the cumulative renewable RFPs of 640 MW, currently under consideration of the Authority, there is still sufficient cushion left for the capacity that has been optimized. KEL further emphasized that the Project has also been included in its PAP as firm procurement, with expected commissioning in 2025.



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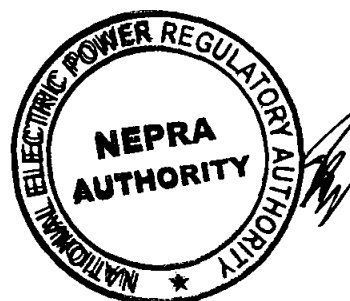


Observations/Findings and Decision of the Authority

- (19). The Authority hereby clarifies that the submissions made by KEL concerning the change in criteria for projects to be categorized as committed are deemed to be outside the scope of the present case and may be raised in a separate proceeding. Further, the Authority noted that a significant quantum of solar PV capacity has been optimized in IGCEP and included in KEL's PAP, primarily with the consideration of displacing the existing expensive generation of the utility. Hence, the submissions of the Petitioner hold value that the factors of low demand/GDP may probably require the removal of certain power plants, but not necessarily all of them. With this consideration, the Authority decides to approve the competitive bidding for the Project, however, this procurement shall remain subject to the provision of optimization as stipulated in the Procurement Regulations.

Whether the proposal of KEL to hold upto 49% of equity share in the Special Purpose Vehicle ("SPV") prudent and in compliance with Regulation 9(1) of the Procurement Regulations?

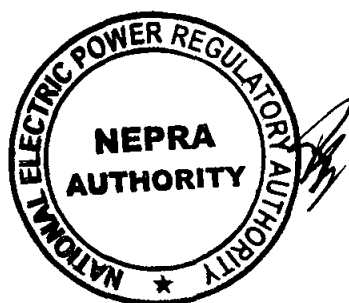
- (20). KEL submitted that it will hold up to 25% of the equity in the SPV, instead of up to 49% as earlier stated in the RFP. KEL submitted that the Procurement Regulations read with the NEPRA Act, do not contain any restriction or prohibition on KEL from conducting a competitive bidding process and having minority equity shareholding in the Project while being the power purchaser as long as it has obtained all the necessary authorizations and/or approvals required as part of its licensed activities for generation, transmission, distribution and supply under the applicable laws. Further, the Petitioner submitted that under Regulation 9(1)(b) of the Procurement Regulations, KEL is entitled to conduct a competitive auction on its own, because KEL intends to participate only as a minority shareholder in the Project. KEL in support of equity participation also shared legal opinion from a law firm namely RIAA Barker Gillette.
- (21). CPPAGL submitted that the equity holding of KEL in the SPV may raise the conflict of interest situation regarding the processing of the financial invoices. It added that KEL may consider itself in an awkward situation to decide the matters specifically related to the calculations of Forecasting Error and Non-Project Missed Volume ("NPMV") in the EPA. CPPAGL stated that KEL, being the equity holder, will watch its rights and avoid any Forecasting Error Rebate that may be triggered under the EPA, rather than passing its benefits to the consumers. Likewise, the NPMV mechanism can also be mishandled during the projects' operations, when the claimant is the verifier.



- (22). KEL in response to the concerns raised by CPPAGL submitted that NEPRA, being the Regulator, shall approve the EPA to be signed between KEL and power producers. It explained that all the costs paid to power projects are claimed by KEL in its consumer end tariff, which is reviewed and verified by the Authority, before allowing the same for the recovery. This eliminates all the risks of any expensive claims by KEL. About the Forecasting Error and NPMV calculations, KEL responded that these computations shall be done following the standard mechanism as given in the EPA.
- (23). During the hearing held on November 14, 2023, it was also discussed the equity share of KEL should be clearly defined upfront so that the prospective bidders would have a clear idea regarding how much equity amount they have to arrange. Secondly, it was debated whether it should be left to the discretion of the investors to get the participation of KEL in the equity share, or it should be on the demand of KEL. The representative of Bridge Factor submitted that the participation of KEL in the SPV should be at the discretion of the successful bidders. He further added that in case the Authority decides to allow KEL, at its discretion, for equity participation, then a percentage should be decided upfront rather than allowing it to negotiate the same at the time of formation of the SPV. This will give a clear picture to the prospective bidders regarding the amount of equity to invest and would also help them to negotiate better indicative term sheets with the financial institutions, commercial banks, etc. One of the commentators namely Mr. Arif Bilwani said that equity participation of KEL should be allowed as it may lead to better cost of capital.

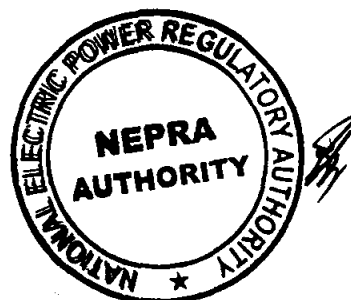
Observations/Findings and Decision of the Authority

- (24). The Authority noted that there are no legal restrictions on KEL's equity participation in the SPV under the Procurement Regulations, or any other laws and related NEPRA regulatory framework. Additionally, the Competition Commission of Pakistan ("CCP") or the Public Procurement Regulatory Authority ("PPRA"), did not object to this KEL's proposal subject to requisite approvals when comments were obtained by NEPRA on similar RFP being processed by KEL i.e., Winder, Bela Sitfes. The only consideration in this proposal is the concern about the conflict of interest. That is KEL, being both the shareholder of the SPV and power purchaser, would implement certain terms of the EPA in its favor, instead of passing on the benefits thereof to the consumers. CPPAGL during the proceedings has also advanced its comments highlighting the concerns of conflict of interest.
- (25). KEL responded that the conflict of interest should be managed, instead of disallowing the transactions on this basis. In this regard, KEL talked about the verification and approvals of the Authority for EPAs



and quarterly adjustments, to negate the point that it can somehow benefit itself with equity participation in the SPV.

- (26). The Authority considered the above submissions and noted that KEL is a vertically integrated utility and possesses the Generation License, and therefore it can set up its generation facilities. This means that KEL is not barred from establishing plants with 100% equity of its own. The issues (invoicing, NPMV, etc.), being highlighted by CPPAGL under the pretext of conflict of interest with KEL's equity participation (up to 25% in the SPV), would be manifold with plants developed on 100% equity of KEL. Since the establishment of KEL's owned generation plants is not prohibited, therefore, it is considered that this matter of non-controlling equity participation requires management of possible conflicts, instead of rejecting this proposal. In this relation, the Authority considers that the approvals of EPA and then verifications of quarterly adjustments by NEPRA shall reduce the possibility for KEL to benefit itself from this arrangement. For specific contentions of CPPAGL, the Authority thinks that the claims of NPMV and Forecasting Error (or any other issue about EPA), shall be approved subject to verification from NEPRA. If necessary, the Authority may consider appointing an Independent Auditor for this purpose, with the decision to be made while approving the EPA. Therefore, the Authority decides to allow KEL to hold equity in the SPV. This participation of KEL in the SPV shall be up to 25%, non-controlling, and the terms and conditions thereof shall be specified in the Share Purchase Agreement ("SPA"). The SPA will be included as part of RFP documents when it is floated to the potential bidders. Further, KEL shall seek approval of the Authority for this transaction, as required under its licenses and relevant provisions of the applicable documents.
- (27). Notwithstanding the above, it was also deliberated whether the discretion for equity participation should be vested with the successful bidder or KEL. The Petitioner submitted that it intends to participate as a shareholder in the SPV, at its sole discretion, with a potential holding of up to 25% equity. A few commentators opposed the discretion of KEL and submitted that this option should be left with the successful bidders. Given that the responsibility of constructing, operating, financing, etc. of the Project is with the successful bidder, the Authority found it appropriate that this option should also rest with them. The bidders should take this decision while considering the value KEL participation is going to bring for project execution, financing, and other aspects. The Authority also considers that with more bidders (including both who shall have the intent of KEL's equity share and who shall not) participating in the competitive bidding, this arrangement will foster healthy competition, which would ultimately lead to competitive rates. For clarity, KEL is directed to communicate upfront, while floating the RFP,



its desired level of equity participation percentage (a fixed number) with a maximum limit of 25%. This will enable the bidders to have certainty regarding the remaining amount they have to arrange, in case they plan for a share of KEL's equity participation.

Whether the proposed BOOT regime for the development of the project is justified?

- (28). SED submitted that it has arranged the land for the Project from the GoS at concessionary rates. Additionally, it has undertaken development works for the Project, including land site development, project feasibility studies, preparation of associated documents, etc. through the Sindh Solar Energy Project ("SSEP") under approved PC-I funding. Therefore, in the interest of the public sector, SED has requested a Build Own Operate Transfer ("BOOT") regime for the Project against the provision of land concessions and other services, so that the benefits are transferred back to the public sector at the end of the term of the EPA.

Observations/Findings and Decision of the Authority

- (29). In this regard, the Authority has observed that in the 600 MWp Solar project, it has allowed the BOOT mechanism on the request of the relevant agency i.e., PPIB. The Authority noted that in the instant case, SED has informed that it has provided the land in addition to the development of the site. In the Authority's opinion, such a provision is likely to reduce the quoted tariff for the bidding. It was also observed that the impact on the tariff in BOOT model versus BOO is negligible. In view thereof, the Authority allows the Project to be developed on a BOOT basis.

Whether the technical and financial evaluation criteria as proposed in the RFP is justified?

Technical Evaluation:

- (30). Concerning the technical evaluation, KEL submitted that two mandatory conditions would be considered as knockoff criteria, i.e. (i) Compatibility of the complex and equipment with technical standards of Grid Code, Distribution Code, and other applicable documents; and (ii) Yield — greater than 21.5%. It further submitted that the bidders being successful from the knocking-off criteria would be technically and financially evaluated. The bidders scoring above 75% marks during the technical evaluation will be eligible for financial evaluation. KEL submitted that the technical criterion in the RFP is as per prudent norms and has also been developed in line with the criteria approved by the Authority for the 150 MWp Winder and Bela solar PV projects.



Observations/Findings and Decision of the Authority

- (31). The Authority has noted that KEL, under the technical evaluation, is assessing the performance standards of the equipment i.e. solar panels, inverters, mounting structures, the balance of plant, SCADA and telecommunication system, O&M methodology, HSE, Plant performance, execution timelines, and contribution to developing local community, etc. However, the Authority has noted that KEL has not included the installation of Tier-1 modules in its mandatory conditions, therefore the Authority hereby directs KEL to include this in its knockoff criteria. Further, the Authority directs KEL to also evaluate the bidders on their contribution to support the local industry, for which local material sourcing and initiatives of Corporate Social Responsibility ("CSR") may be assessed.

Financial Evaluation:

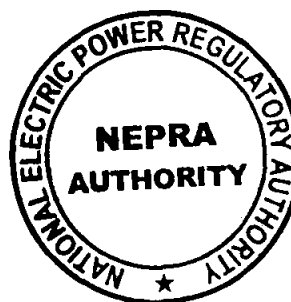
- (32). Regarding the financial evaluation criteria, KEL in its RFP has submitted that selection will be based on the lower Bid Tariff. The Authority considers that the same is justified. However, it is also important to explain here the tariff scheme, which is being approved in this decision. The bidders submitting the financial bids shall only state a single tariff number, which shall be considered for financial evaluation. The bidder offering the lowest tariff shall be considered successful, though subject to subsequent KEL's assessment and approval of the Authority. If declared/approved as successful, this tariff number shall remain applicable throughout the control period, subject to indexation at COD and then quarterly during project operations, following the indexation mechanism as given in this decision. The actual debt servicing period, financing mix, or any other factor, shall not change the structure of the tariff.

Whether the proposed construction period is justified?

- (33). KEL in its RFP has proposed a construction period of twelve (12) months for the development of the Project. The Petitioner has requested that due to practical delays including the opening of Letter of Credits ("LCs") and procurement of equipment and other matters, the construction period may be considered as twelve (12) months.

Observations/Findings and Decision of the Authority

- (34). The Authority has observed that in the past construction time of ten (10) months had been allowed for solar PV projects having nearly similar size. Therefore, the Authority has decided to allow 10 months in the instant case also.



Whether the proposed cost of land in the RFP justified?

- (35). The solar park fee was initially proposed to be PKR 30,000/acre/year for land parcels (District Malir Karachi and District Malir) by SED. As per the SED, the land parcels are located within the city of Karachi where the market price of land is very high, and acquisition of land is challenging, hence the proposed price of PKR 30,000/acre/year is at a significant discount to the market price. Subsequently, SED revised the solar park fee to PKR 65,000/acre/year, i.e. USD 1,105/MW for Malir Karachi and USD 867/MW for District Malir. According to KEL, this charge is payable in USD. The argument for this increase as put forth by SED is that the model for utility-scale solar parks is envisioned to be replicated going forward, therefore, the solar park fee should be closer to or be reflective of the market price. To support this revision, SED submitted that the average market price determined by the Scrutiny Committee of the GoS of both land parcels is significantly higher than the proposed price.

Observations/Findings and Decision of the Authority

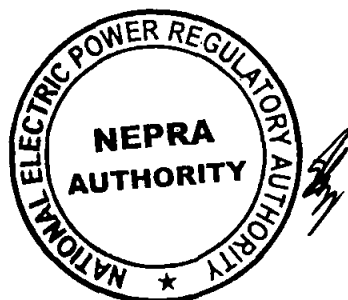
- (36). The Authority has observed that this particular issue was initially framed when KEL submitted the RFP for competitive bidding with a Benchmark Tariff. However, with the shift to an open bidding process, it would be more appropriate for the bidders to account for this cost, either upfront or periodic payments, in their bids, based on a final agreement with GoS. However, it is clarified that no separate indexation on land cost on account of USD to PKR shall be allowed except for the indexation on the awarded tariff being approved in this decision.

Whether the proposed indexation mechanism is justified?

- (37). KEL in its latest submission dated October 16, 2023, has requested the Authority to approve the following mechanism for tariff indexation:

$$\text{Revised AT} = \text{AT} * Kx\% \left[\frac{\text{Rev KIBOR}}{\text{Ref KIBOR}} - 1 \right] + \text{AT} * Sx\% \left[\frac{\text{Rev SOFR}}{\text{Ref SOFR}} - 1 \right] + \text{AT} * 80\% * \left[\frac{\text{ER Rev}}{\text{ER Ref}} - 1 \right] + \text{AT} * 20\% * \left[\frac{\text{ER Rev (one time)}}{\text{ER Ref}} - 1 \right] + \text{AT}$$

- (38). The exchange rate adjustment has been claimed on 80% of the tariff, with 20% of the tariff to be adjusted one-time at the time of COD due to the change in parity. It has also been requested to allow SOFR and KIBOR variations on certain percentages of tariff, which are to be specified by the Authority. In essence, the indexation mechanism as approved by the Authority in the matter of PPIB's RFP for 600 MWp solar PV power project has been requested by KEL.



- (39). Justifying its proposed tariff indexation mechanism, KEL reiterated the current financial and economic challenges being faced both locally and globally. The Petitioner additionally presented the statistics that PKR has witnessed devaluation at an annual rate of 32% against USD since 2021, while the inflation rate stands at 31.4% over 2022. Stating these contentions, KEL submitted that it believes that the approval of an appropriate indexation mechanism is very critical to maximize investor participation in the bidding process and to safeguard the investor returns during project execution and operations.

Observations/Findings and Decision of the Authority

- (40). As mentioned, KEL has requested a tariff indexation mechanism similar to one approved by the Authority in the RFP of the 600 MWp solar PV project. The Federal Government rectified the said mechanism while approving the Framework Guidelines. It is worth noting here that earlier the Federal Government opted for parity variations on the lesser percentage of tariff. According to PPIB, the investors, among other reasons, did not opt to bid under the earlier scheme due to prevailing economic conditions. As a result, the Federal Government later decided to introduce a relatively incentivized scheme instead. KEL has also presented arguments revolving around financial and economic challenges to justify its request for the said tariff indexation mechanism. The Authority considered these points in detail and found the request of KEL justified. Based on these considerations, the Authority has decided to approve quarterly indexation mechanism, which is detailed in the Order part of this decision.

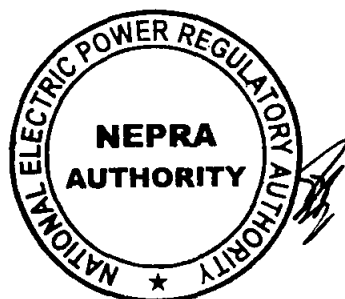
Whether the treatment of the income tax, if applicable, as proposed in the RFP is justified?

- (41). KEL has proposed income tax as a pass-through item in the RFP stating that the same is in line with the determination of the Authority in the matter of Winder and Bela solar projects. The Petitioner submitted that this will not only ensure that investor interests are protected but will also pass on any future concessions of income tax on solar generation companies to the consumers. The commentators submitted that the imposition and applicability of taxes by the relevant authorities be allowed as pass through in the tariff.

Observations/Findings and Decision of the Authority

- (42). The Authority has noted that as per 18.3 (a) of the subject RFP, tax on income is placed under pass through item list which is required to be reimbursed by KEL to the successful bidder. The relevant extract from RFP is given below:

18.3 (a) If the Successful Bidder is obligated to pay any tax on its income from electricity generated from the Project, or any duties or taxes not being of refundable nature are imposed



on the Successful Bidder, the exact amount paid by the Successful Bidder on these accounts will be reimbursed by KEL and on production of original filing documents.

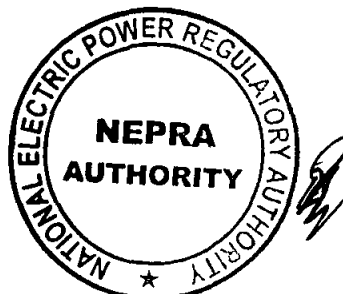
- (43). The Authority noted that AREP, 2019 indicates that the renewable energy projects are Exempted from corporate income tax.
- (44). In view thereof, the Authority has decided that income tax on these projects shall be considered as pass through in accordance with applicable policy. The Authority shall approve the amount of income tax, to be reimbursed to the qualified bidder, through a separate decision on the application to be filed by the company.

Whether the instant project is included in PAP and is in compliance of Regulation 6(5) of the Procurement Regulations?

- (45). KEL submitted that the Project is included as firm procurement in FY 2024-25 in the PAP, which is under consideration and approval of the Authority. The Petitioner informed that the pre-qualification for the Project has been completed in May 2023. Additionally, KEL has assured that a 220-kV transmission line spanning approximately 20km will be constructed to facilitate the evacuation from the Project, for which cost has already been accounted for in its investment plan.

Observations/Findings and Decision of the Authority

- (46). Regarding compliance with Regulation 6(5) of the Procurement Regulations, the Authority has observed that the PAP submitted by KEL is at advanced stages of proceedings. In this regard, a public hearing has also been held on October 19, 2023, wherein no objections were raised regarding the Project by any of the stakeholders. However, National Power Control Centre ("NPCC") and another commentator namely Mr. Arif Bilwani argued that capacity available in national grid should be supplied to KEL, instead of adding more generation in KEL system, which will decrease the cost of the overall system. In this regard, the Authority considers it relevant to mention that as per the Power Procurement Agency Agreement ("PPAA"), a firm supply of 1,000 MW to KEL from CPPAGL has been agreed, with supply of additional power, subject to certain criteria. The peak demand of KEL system touched to the level of 3,800 MW in 2023, which warrants operations of power plants in KEL system, in addition to supply from CPPAGL. As mentioned above, the energy cost of the KEL's existing generation fleet is quite expensive. In light of these considerations, the Authority is of the view that there is a strong case for the implementation of the Project, which would lead to a reduction in



electricity costs for KEL consumers, and consequent reduction in tariff differential subsidy provided by Government of Pakistan.

Whether the timelines to be followed for auction are in accordance with the approved PAP as per Regulation 8(2) of the Procurement Regulations?

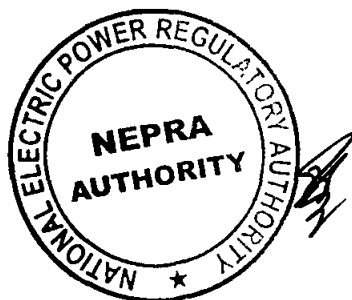
- (47). KEL inter alia, submitted that (a). the competitive bidding process was initially being undertaken by the SED and the RFP was submitted to the Authority in February, 2023, however, the Authority vide its letter dated April 06, 2023 directed KEL to run the process as per the Procurement Regulations; (b). thereafter, KEL took over the process and the RFP documents were accordingly submitted in April, 2023 with complete feasibility study; (c). the PAP has been submitted to the Authority in March 2023 which is still under approval process of the Authority; and (d). KEL has provided a detailed timeline which it intends to follow in order to conclude the competitive auction. In view of the said, KEL requested the Authority to approve the RFP and PAP at the earliest as the achievement of financial close for the project is expected to take at least 10-12 months from approval of RFP, while the construction is expected to take additional 10-12 months for project commissioning.

Observations/Findings and Decision of the Authority:

- (48). Upon review of Regulation 8(2) of the Procurement Regulations, the Authority has observed that SOLR is required to complete the auction process in accordance with the timelines provided in the approved PAP. In this regard, the Authority has noted that KEL in its PAP has provided year-wise new capacity from FY 2024-FY 2030. As per the timelines provided in the PAP, the Project is to be installed in the year 2025. KEL has proposed time of four months to achieve financial close from the approval of tariff. The construction period of ten months has been allowed in this decision. Based on anticipated bidding process and tariff approval time of eight months, it is quite likely that the Project shall be able to achieve COD by the end of 2025.

Whether as per Regulation 8(3) of the Procurement Regulations, the investment for connection and infrastructure development are approved in TSEP investment program?

- (49). KEL submitted that the investment for connection and infrastructure development for evacuation of power from the Project is part of KEL's Investment Plan which has been submitted to the Authority. The investment pertaining to the Project was also made part of TSEP submission made earlier by KEL in April, 2022 to NTDC.



Observations/Findings and Decision of the Authority

- (50). The Authority has observed that Regulation 8(3) of the Procurement Regulations stipulates that the connection and power evacuation infrastructure required for any project approved in the PAP shall be duly accounted for in the TSEP, network expansion plan(s), and concerned distribution licensees' investment program, as the case may be. In this regard, the Authority has noted that the investment for connection and infrastructure development for evacuation of power from the Project is part of the investment plan, submitted by KEL for approval of the Authority, which is at the final stage of the regulatory proceedings. Hence, this issue is considered to be settled.

Whether KEL has complied with the principles for competitive auctions as stipulated in Regulation 12 of the Procurement Regulations?

- (51). During the hearing, KEL submitted that the principles of competitive auctions as specified in Regulation 12 of the Procurement Regulations have been covered in the RFP. The Petitioner has also submitted an Annexure, providing compliance against each sub-regulation of Regulation 12 of the Procurement Regulations and also mentioned the relevant section of RFP against each requirement.

Observations/Findings and Decision of the Authority

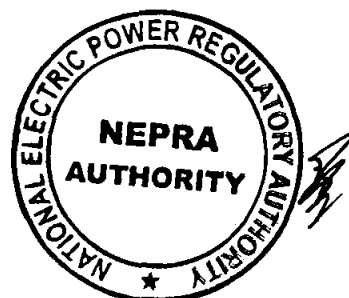
- (52). Upon careful review of Regulation 12 of the Procurement Regulations and the contents of RFP, it is evident that KEL has adhered to the principles governing competitive auctions. KEL's responses and comments, submitted in compliance with the regulation, are found to be in accordance with the prescribed standards and are found justified.

Whether the eligibility criteria for pre-qualification of the bidder is justified and in compliance with Regulation 13 of the Procurement Regulations?

- (53). Earlier, the SED submitted the RFP for the approval of the Authority on reverse competitive auction, however, the Authority directed KEL to conduct the auction for the Project under the Procurement Regulations. KEL shared the list of the pre-qualified bidders and informed that the GoS had independently conducted the pre-qualification process, the key details of which are explained below:

Financial Criteria:

- (54). The financial criteria for applicants, whether individual or part of a consortium, aimed to assess financial stability, performance, and liquidity, to ensure the capability of undertaking a USD 100 million project. This was including the checks of (i). average net worth over the past three years should



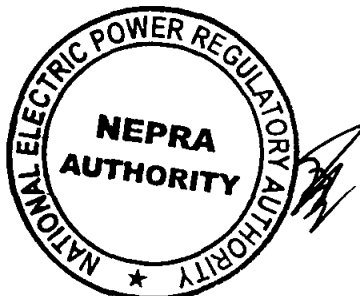
exceed USD 45 million, factoring in a 70:30 debt to equity ratio for a USD 100 million project, (ii). minimum average annual turnover of USD 45 million is mandated, with adjustments made to optimize interest, (iii). the average net profit for the consortium/applicant in the previous three years must be at least be USD 4 million, considering a 5% net margin on sales. Additionally, liquid assets, comprising cash, cash equivalents, and various investments, must total at least USD 25 million.

Technical Criteria:

- (55). The technical criteria were developed to assure that the applicant/consortium or the parent company has the sufficient experience required to build, operate and maintain the utility-scale solar park(s) going forward, however, the minimum size of power plant connected to the grid has been kept at 50 MW to ensure wider participation. Since the development and operations of the thermal utility scale plants is more complex than solar plants, experience of thermal scale utility plants was also considered. Further, the requirements also include experience of complete development, ownership and successful commissioning of renewable energy project(s) and/or thermal utility scale IPP project(s) with a cumulative capacity of at least 50 MW which has/have been developed, commissioned and operated anywhere in the world over the last 10 years provided that at least one project should have a minimum capacity of 30 MW, demonstrated experience of operating at least one (1) power project of not less than 50 MW which is connected to high-voltage local/municipal grid system for a minimum of three (03) years.

Observations/Findings and Decision of the Authority

- (56). In this context, the Authority is of the view that a thorough review of Regulation 13 of the Procurement Regulations, reveals that the Request for Quotations (RFQ) satisfies the pre-qualification criteria outlined in the Procurement Regulations. However, the pre-qualification process was carried out on a reverse competitive auction, whereas, KEL is now going to conduct open competitive bidding. In view of the open competitive bidding, the Authority believes that more market players may express interest in participation, preferring open bidding over the reverse competitive auctions. Therefore, the Authority directs KEL to republish the RFP document and conduct prequalification process again. However, the previously prequalified bidders may not be required to undergo the prequalification process again. The pre-qualification process must be finished within two months, and the entire competitive auction process is to be completed within five months. These timelines are to be reckoned from the date of issuance of this decision.



Whether the contents of RFP are compliant with Regulation 15 of Procurement Regulations?

- (57). Regulation 15 of the Procurement Regulations provides detailed mechanism regarding contents of RFP which mainly include requirements pertaining to (i) identification of SOLR, (ii) project technical parameters, (iii) financial strength of bidders, (iv) contents of RFQ/prequalification documents, (v) list/information of prequalified bidders, etc.

Observations/Findings and Decision of the Authority

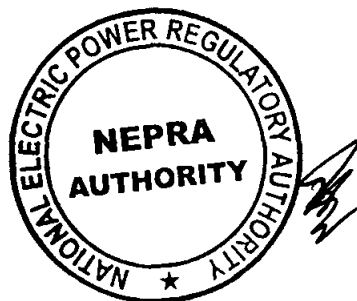
- (58). The Authority has noted that KEL has submitted the detailed document/response in compliance against each sub regulation of Regulation 15 of the Procurement Regulations, and the response/documents submitted by KEL are found to be in substantial compliance.

Whether the proposed auction and evaluation committees are compliant with Regulation 17 of the Procurement Regulations?

- (59). KEL in its RFP submitted constitution of the Auction and Evaluation Committee which include (i). two (02) representatives from SSEP consultants (having technical and financial expertise); (ii). one (01) representative from the SSEP team; (iii). four (04) representatives from the power purchaser; and (iv). two (02) independent representatives, each having relevant technical or financial expertise and meeting the criteria specified under relevant provisions of the Procurement Regulations.

Observations/Findings and Decision of the Authority

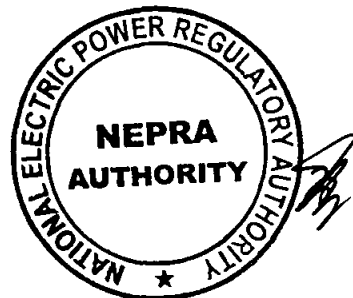
- (60). The Authority has observed that in Regulation 17 of the Procurement Regulations, it is mentioned that where the competitive auction is being conducted by the SOLR on its own, the SOLR shall constitute auction and evaluation committee comprising of at least four (04) members, two (02) of whom shall be independent members. Regulation 17 further stipulates that Auction and Evaluation Committee shall prepare the bidding documents, prequalify the prospective bidders and evaluate the bids. In this regard, the Authority is of the view that constitution of the Auction and Evaluation Committee proposed by KEL is justified and acceptable. Further, considering the fact that the bidding documents were prepared prior to promulgation of the Procurement Regulations, therefore, the requirement of preparation of the bidding documents by the Auction and Evaluation Committee is hereby relaxed.



Order of the Authority:

(61). Given the foregoing, the Authority has decided and directed as follows:

- (i). **Open Competitive Bidding:** The Authority allows KEL to hold open competitive bidding (without Benchmark Tariff), in accordance with Regulation 5 of the Procurement Regulations.
- (ii). **Criteria for Prudence and Assessment of Bid:** KEL will evaluate the prudence of the successful bid based on prevailing equipment cost, combined with the cost of funds. Additionally, the analysis for the confirmation of displacement analysis as per IGCEP and PAP shall also be carried out. KEL shall have powers for the rejection of the bid in case it is found imprudent, based on mentioned criteria. If the bid is found to be prudent, these assessments will be included in the Auction Evaluation Report, to be submitted for approval to the Authority.
- (iii). **Optimization in an iteration of IGCEP:** The Authority decides to maintain the optimization conditions of the IGCEP, in accordance with the Grid Code and Procurement Regulations. This means that any project optimized in the approved IGCEP will not be subject to re-optimization in the next iteration of the IGCEP, only when it has met the subsequent requirements and milestones, as specified in the Procurement Regulations.
- (iv). **Equity Participation of KEL:** KEL is allowed to hold a non-controlling equity share in the SPV. However, the successful bidder will decide if they want KEL to be part of the equity shareholding in the SPV. For clarity, KEL shall declare upfront its desired equity share percentage, capped up to 25%. Furthermore, KEL shall specify the terms and conditions in the SPA, and the same shall be made part of RFP documents when floated to the potential bidders.
- (v). **Development Regime:** The Authority allows the development of the Project under the BOOT, i.e. upon the completion of the control period, the Project shall be transferred to the Government of Sindh.





- (vi). **Technical and Financial Evaluation Criteria:** The Authority decided to approve KEL's proposed technical and financial evaluation criteria, with inclusion of assessment of modules and local economy contribution
- (vii). **Construction period:** The Authority hereby allows a construction period of ten (10) months.
- (viii). **Treatment for Cost of Land:** The qualified bidders shall account for the cost of land in their bids.
- (ix). **Indexation mechanism:** The Authority has approved the following quarterly tariff indexation mechanism;

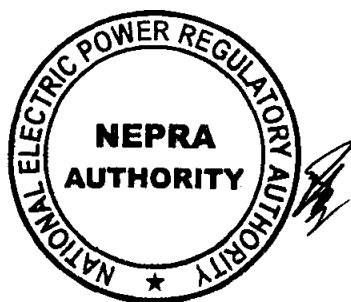
Revised AT	=	$AT * Kx\% \left[\frac{Rev\ kibar}{Ref\ Kibar} - 1 \right] + AT * Sx\% \left[\frac{Rev\ sofr}{Ref\ sofr} - 1 \right] + AT * 80\% * \left[\frac{ER\ Rev}{ER\ Ref} - 1 \right] + AT * 20\% * \left[\frac{ER\ Rev\ (one\ time)}{ER\ Ref} - 1 \right] + AT$
AT	=	Awarded Tariff
Kx%	=	Percentage of AT to be indexed with KIBOR variation which in the instant case is 8%
Sx%	=	Percentage of AT to be indexed with SOFR variation, which in the instant case is 7%
Rev KIBOR	=	Quarterly revised 3-month KIBOR, as on the last day of the preceding quarter
Rev SOFR	=	quarterly revised Term or Daily SOFR, as the case may be based on GoP policy decision on the transition from LIBOR to SOFR, as on the last day of the preceding quarter
Ref KIBOR	=	21.28%
Ref SOFR	=	5.3671%
ER Ref	=	288.65 Rs. /USD
ER Rev	=	The revised exchange rate as of the last day of the preceding quarter



ER Rev (one time)	=	The revised exchange rate is average of the exchange rates of each day during the maximum construction period of 10 months, starting from the date of Financial Close.
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Note: 1st adjustment shall made will be for the quarter in which the COD occurs. This adjustment will be applicable from the COD until the end of that quarter. The subsequent adjustments will be applicable for the entire quarters.

- (x). **Treatment of Income Tax:** The Authority decides to consider income tax as a pass-through item in accordance with the applicable policy.
- (xi). **Compliance with Regulation 6(5) of the Procurement Regulations:** The Authority has noted that the RFP is compliant with Regulation 6(5) of the Procurement Regulations.
- (xii). **Compliance with Regulation 8(2) of the Procurement Regulations:** The Authority is of the view that the RFP is compliant with Regulation 8(2) of the Procurement Regulations.
- (xiii). **Compliance with Regulation 8(3) of the Procurement Regulations:** The Authority considers that the RFP is compliant with Regulation 8(3) of the Procurement Regulations.
- (xiv). **Compliance with Regulation 12 of the Procurement Regulations:** The Authority has noted that KEL adheres to the principles of auctions provided in Regulation 12 of the Procurement Regulations;
- (xv). **Eligibility Criteria for Prequalification:** In accordance with Regulation 13 of the Procurement Regulations and request of KEL for open competitive bidding, the Authority hereby directs KEL to conduct the prequalification process again, excluding the bidders who have already been prequalified. The pre-qualification shall be completed within two (02) months and the overall competitive auction process shall be concluded within five (05) months from the date of issuance of this decision.
- (xvi). **Compliance with Regulation 15 of the Procurement Regulations:** The Authority has noted that the contents of RFP documents are compliant with Regulation 15 of the Procurement Regulations;
- (xvii). **Auction and Evaluation Committee:** The Authority hereby decides to relax the condition of preparation of bidding documents by the Auction and Evaluation Committee considering the fact that RFP documents were prepared before the enactment of the Procurement Regulations. The Authority further decides to approve the Auction and Evaluation



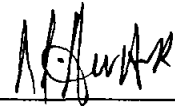
Committee proposed by KEL. Additionally, the Authority directs KEL to comply with the criteria stipulated in Regulation 17(1)(b) of the Procurement Regulations for selection of independent representatives.

AUTHORITY



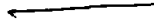
Rafique Ahmed Shaikh

Member



Engr. Maqsood Anwar Khan

Member



Mathar Niaz Rana (nsc)

Member



Amina Ahmed

Member



Waseem Mukhtar

Chairman

