

JOINT ELECTRICITY REGULATORY COMMISSION  
FOR THE STATE OF GOA AND UNION TERRITORIES  
GURUGRAM

CORAM

Ms Jyoti Prasad, Member Law

Petition No.: 57/2021  
Date of Hearing :11.01.2022  
Date of Order: 24.06.2022

**In the matter of:**

The Petition for approval of agreement for “Supply of Power Purchase through DG Set to deliver 1 MW Power on round the clock basis to the 11 KV indoor bus for Swaraj Dweep for a period of three year” from M/S Express Gensets Consortium Pvt. Ltd. under section 86(1) (b) of the Electricity Act, 2003.

**And in the matter of:**

The Electricity Department,  
A&N Administration, Vidyut Bhavan,  
Port Blair -744101.

..... Petitioner

**Present**

**For the Petitioner**

1. Sh Karuna Jaydhar, Superintending Engineer
2. Smt Rizwana, Executive Engineer
3. Sh Pran Kumar Mistry, Assistant Engineer (Procurement)
4. Smt Usha Kapoor, Assistant Engineer (Planning)

**ORDER**

1. The Petitioner through this Petition sought the Commission’s approval for Power Purchase Agreement (PPA) executed between the Electricity Department, Andaman & Nicobar Administration and M/s Express Gensets Consortium Pvt. Limited.
2. The Petitioner’s submissions in brief are as under
  - i. That existing power requirements in Swaraj Dweep are met through Swaraj Dweep Power House installed with 3.2 MW (4x0.808 MW) DG Capacity with peak generation of 2.4 MW.

- ii. That with the onset of summer and influx of tourists & escalation of Tourism related activities, the peak load demand is expected to rise to 3.1 MW. It is imperative to mention here that Swaraj Dweep Power House is a standalone system and augmentation of DG Set is essential not only to meet the growing demand but also to have sufficient redundancy.
- iii. That the concerned Divisional Office proposed for procurement of 1 MW power on round the clock basis to indoor bus of the existing Swaraj Dweep Power House to meet the added demand.
- iv. That a tender notice for "Purchase of Power through containerized DG Sets to Deliver 1 MW Power to 11 KV Indoor Bus of Swaraj Dweep Power House with targeted monthly generation of 6.5 Lakh Units & minimum guaranteed unit delivery of 5.0 Lakh Units per month" was issued vide Tender No. EL/PR/124A/T-01/2020/460 dated 28.01.2020 with date of Opening of Tender on 24.02.2021. Due to administrative reasons the due date & time of bidding and opening of tender was extended till 02.03.2020.
- v. That in response to the above tender notice, the following 4 firms submitted their offer: -
  - a) M/s Perennial Technologies Pvt Ltd.
  - b) M/s Express Gensets Consortium Pvt Ltd.
  - c) M/s Agreko Energy Rental India Pvt Ltd.
  - d) M/s Modern Energy Rental Pvt. Ltd,
- vi. That the Technical Evaluation Committee has found that the following three firms have qualified technical bid:
  - a) M/s Express Gensets Consortium Pvt. Ltd.,
  - b) M/s Aggreko Energy Rental India Pvt. Ltd and
  - c) M/s Perennial Technologies Pvt. Ltd qualifies technical bid
- vii. That M/s Modern Energy Rental Pvt. Ltd do not fulfil the pre-requisites i.e. Experience, ITR and Profit & loss statement etc.
- viii. That the price bid of three (03) technically qualified firms were opened on 08.03.2020 and two out of these three firms namely M/s Express Gensets

Consortium Pvt. Ltd. and M/s Perennial Technologies Pvt. Ltd quoted same rate per unit i.e. Rs 1.04 Per Unit and stood L1.

- ix. That the Tender Evaluation Committee in accordance to GFR proposed that both the L-1 bidders be called for negotiation of their offered rates on different tables to conclude awarding of tender. However, due to COVID-19 Pandemic both the firms were asked to submit their negotiated rates in sealed cover through post before 01.05.2020. Only one firm M/s Express Gensets Consortium Pvt. Ltd. submitted its negotiated bid and the other firm requested for return of Earnest Money Deposit (EMD).
- x. That as per the provision of bid document, bid validity expired on 16.06.2020.
- xi. That due to outbreak of corona and thereafter resurgence of pandemic, nationwide lock down was imposed by Government of India and several restrictions were imposed in UT of Andaman & Nicobar Island as well, in order to prevent wide spread of corona in the islands.
- xii. Due to Covid 19 restrictions during 2020 the normal functioning of the Electricity Department was badly hampered and work was carried out by bare minimum staff. As such, further process on the bid and award of the contract during the said period could not be undertaken. The process was resumed in the end of December, 2020 and after the advice of internal Accounts Department the willingness of the Firm for extension of bid validity was sought on 28.12.2020. The bid validity was extended by M/s Express Gensets Consortium Pvt. Ltd. on 04.01.2021 for a period till 31.03.2021.
- xiii. That on receipt of bid validity extension, the negotiated single bid of M/s Express Gensets Consortium Pvt. Ltd. was opened on 12.01.2021. The negotiated rate was 0.93 paise per Unit. Details of L1 bidder is submitted below:

| Name of the Firm                        | Description  | Rate per unit (Rs.) |
|---|--|---------------------|
| M/s Express Gensets Consortium Pvt Ltd. | inclusive of operation & maintenance charges, lub oil, taxes & duties but excluding the cost of HSD oil) | 0.93/-              |

- xiv. That A&N Administration vide its Order No. 2167 dated. 16.10.2021 conveyed the approval of the competent authority for acceptance of L1 rate offered by M/s Express Gensets Consortium Pvt. Ltd.
- xv. That performance guarantee of 10% of the total value of the contract in the Tender Document is reduced to 3% of the total value of the contract in the PPA is in accordance to the No. F.9/4/2020-PPD Dated 12.11.2020 issued by the Ministry of Finance, Gol.
- xvi. That as per Clause 2.1.23, the HSD required for power generation will be supplied by the Electricity Department, Andaman & Nicobar Administration.
- xvii. That Cost benefit analysis is being done with the projected generation from the hiring power plant:

| Generation | Unit Cost as per agreement (Rs./KWh) | Total Unit Cost (Rs.) | Required SFC as per the agreement | HSD (Ltr) | HSD Cost (Rs./L) | Total HSD Cost (Rs.) | Grand Total (Rs.) | Total Unit Cost (Rs./KWH) |
|------------|--------------------------------------|-----------------------|-----------------------------------|-----------|------------------|----------------------|-------------------|---------------------------|
| 1          | 2                                    | 3 = 1x2               | 4                                 | 5= 1/4    | 6                | 7= 5x6               | 8=3+7             | 9=8/1                     |
| 650000     | 0.93                                 | 604500                | 3.7                               | 175675.7  | 77               | 13527027             | 14131527          | 21.74                     |

From the above it is evident that the total unit cost from Hiring Power Plant is much less compare to the Average cost of supply/unit of Rs. 29.51/KWh .

- 3. The Commission has considered the submissions of the Petitioner. It has examined the Power Purchase Agreement and additional information placed on record by the Petitioner. The Commission has also examined the relevant provisions of the Electricity Act, 2003 and Rules & Regulations made thereunder.

- I. Section 63 of Electricity Act, 2003 provides that:

*Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."*

II. Section 86(1)(b) of Electricity Act, 2003 provides that:

(1) The State Commission shall discharge the following functions, namely: -

*b) Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

4. The Commission has observed that the Electricity Department, Andaman & Nicobar Administration has issued a tender notice vide Tender No. EL/PR/124A/T-01/2020/460 dated 28.01.2020 with date of Opening of Tender on 24.02.2021. Due to administrative reason the due date & time of bidding and opening of tender was extended till 02.03.2020.
5. The price bid of three (3) technically qualified firms were opened on 08.03.2020 and two (02) out of these three (03) firms namely M/S Express Gensets Consortium Pvt. Ltd. and M/s Perennial Technologies Pvt. Ltd. quoted same rate per unit i.e. Rs 1.04 per unit and stood L-1. Finally M/S Express Gensets Consortium Pvt. Ltd. offered its negotiated rate i.e. Rs 0.93 per unit in sealed cover through post before 01.05.2020.
6. The Commission has noted that due to sudden outbreak of Covid -19, Pandemic nationwide lock down was imposed by Government of India on 23.03.2020 and several restrictions were also imposed in UT of Andaman & Nicobar Islands, particularly in Port Blair. The normal functioning of the Electricity Department was badly hampered and only essential work could be managed. Further process for award of the Contract for L1 bidder was delayed and was resumed only in the end of Dec., 2020 after the advice of Internal Accounts Department. The willingness of M/s Express Gensets Consortium Pvt. Ltd. for extension of bid validity was sought on 28.12.2020.
7. The Commission has further noted that as per the provision of bid, its validity expired on 16.06.2020. On the request of Electricity Department, Andaman & Nicobar Administration the validity of the bid was extended by M/s Express Gensets Consortium Pvt. Ltd. on 04.01.2021 for a period up to 31.03.2021. The negotiated single bid of M/s Express Gensets Consortium Pvt. Ltd. was opened on 12.01.2021. The quoted rate was Rs 0.93 per unit.

8. The Commission has examined the Power Purchase Agreement and noted as under:-
- i. That performance guarantee of 10% of the total value of the contract in the Tender Document is reduced to 3% of the total value of the contract in the PPA is in accordance to the No. F.9/4/2020-PPD Dated 12.11.2020 issued by the Ministry of Finance, Gol.
  - ii. That as per Clause 2.1.23, the HSD required for power generation will be supplied by the Electricity Department, Andaman & Nicobar Administration.
9. The Commission noted that the method adopted by the petitioner for Comparing Generation cost per Unit with Average Cost of Supply per Unit is not prudent and directs the Petitioner to maintain DG set wise HSD consumption, Generation and O&M expenses etc so that Generation cost of Hired Power Plant and own DG Set can be Compared at same level.
10. The Commission noted that the procurement of power by the Petitioner is not in accordance with the transparent process of bidding as per the guidelines issued by the Central Government under Section 63 of the Electricity Act, 2003. In this context, the Commission has further noted that in Energy Watchdog Versus. Central Electricity Regulatory Commission & Others and other related Appeals ( (217) 14 SCC80) ,the Hon'ble Supreme Court observed that

*“..... In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79 (1) (d), Section 79 (1) (b) is a wider source of power to “regulate” tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79 (1) (b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the*

*Commission's general regulatory powers under Section 79 (1) (b) can then be used."*

11. It is clear from the above that where the guidelines issued by Central Government under Section 63 covers the situation, the Central Commission shall exercise its regulatory powers under Section 79 (1) (b) in accordance with the guidelines.

However, where there are no guidelines or the guidelines do not deal with a given situation then the Commission's general regulatory powers under Section 79 (1) (b) can be used. Extending the said principle in case of JERC, it emerges that where there are no guidelines or guidelines issued under Section 63 do not cover a situation, the Joint Commission shall exercise its regulatory powers under Section 86 (1) (b) along with Section 63 for approval / adoption of tariff and procurement process of distribution licensee.

12. In the present Petition, the Commission has noted that the guidelines issued by the Central Government under Section 63 of the Electricity Act does not cover the procurement of power from the DG Sets. In the light of the principle enunciated in Energy Watchdog judgement, the Commission approves / adopts the tariff discovered through the tendering process carried out by the Electricity Department, Andaman & Nicobar Administration under Section 86 (1) (b) read with Section 63 and approves the Power Purchase Agreement between the Electricity Department, Andaman & Nicobar Administration and M/s Express Gensets Consortium Pvt. Ltd. under Section 86 (1) (b) of the Electricity Act, 2003.

13. In the light of above discussion, the Commission is of the considered view that till such time the requisite guidelines for procurement of power from DG Sets under Section 63 of the Electricity Act, 2003 are issued by the Central Government for any future procurement of power through DG Set, the Petitioner is directed to develop a uniform procedure containing the terms & conditions for procurement through the tendering process and get the same approved from the Commission.

14. Ordered accordingly.

Sd/-  
**(Jyoti Prasad)**  
**Member Law**

**Certified Copy**

**(Rakesh Kumar)**  
**Secretary, JERC**