

**Abstract**

Non - participation in tenders of E&M works of SHEPs in KSEBL – Modifications of Tender Conditions - Sanctioned - Orders issued.

**Corporate Office (SBU-G/E)**

B.O. (DB)No. 396 /2020 (D(GE)/G2/Genl/Tender /2020-21) Thiruvananthapuram. Dated: 08 - 06 - 2020

- Read:-
1. Note No. D(GE)/G2/Genl/Tender/2019-20 dated 30-10-2019 of the Chairman and Managing Director to the Board of Directors.
  2. Proceedings of the 50<sup>th</sup> Meeting of the Board of Directors held on 07-11- 2019 (Agenda Item No. 25- 11/2019).
  3. B.O. (DB)No. 194 /2020 (D(GE)/G2/P.Muzhy/2019-20) dated 17-03-2020.
  4. BO. (DB)No. 195/2020/ (D(GE)/G2/P.Sagar /2019-20) dated 17-03-2020.
  5. Letter No.129/AE4/2018/CE(PED)/24 dated 08-04-2020 of the Chief Engineer (Gen & PED).
  6. Note No. D(GE)/G2/Genl/Tender/2020-21 dated 13-04-2020 of the Director (GE&SCM) to the Full Time Directors (Agenda item No. 25/4/20).
  7. Letter No.129/AE4/2018/CE(PED)/77dated 23-04-2020 of the Chief Engineer (Gen. &PED).
  8. Note No. D(GE)/G2/Genl/Tender/2020-21 dated 12-05-2020 of the Director (GE&SCM) to the Full Time Directors (Agenda Item No. 26/5/20).
  9. Note No. D(GE)/G2/Genl/Tender/2020-21 dated 20-05-2020 of the Chairman and Managing Director to the Board of Directors.
  10. Proceedings of the 53<sup>rd</sup> Meeting of the Board of Directors held on 25-05-2020 vide Agenda No. 16- 05/2020.

**ORDER**

In the Pre-Qualification Committee meeting of E&M works of Peruvannamuzhy (2x3MW) SHEP held on 27-09-2019, it is opined that, there has been lack of interest in participation of e- tenders floated for the execution of E&M works for the Hydro Electric Projects. In this regard, it was directed to enquire the reasons/hurdles being faced by the prospective bidders that is preventing them from participating in the tenders. Also it was directed to verify the prevailing tender conditions followed in NHPC and other Government Companies.

Subsequently, the concerns of prospective bidders both from a technical as well as commercial angle were sought and some of the prospective bidders had requested for the modification in certain commercial conditions. Also the prevailing tender conditions of NHPC and other companies were verified. Based on the tender conditions in NHPC, UJVN Ltd. etc., the Chief Engineer (Gen.& PED) had requested some modifications in tender conditions viz; Limitation of liability, performance guarantee clause in ARTICLE XI of agreement format and Qualification Criteria for Technical Capability, in anticipation of increased participation of bidders and there by increased competition.

As per Note read as 1<sup>st</sup> above the requested modifications were placed before the Board of Directors and it was directed to obtain legal opinion in this regard from the internal as well as a reputed external law firm. Accordingly, legal opinion was obtained from Adv. Sakthidharan Nair (external law expert) as per letter dated 16-12-2019 and the LA&DEO as per Note dated 03-03-2020.

Meanwhile, the revised Administrative Sanction were obtained as per B.O. read as 3<sup>rd</sup> and 4<sup>th</sup> above for the E&M works of Peruvannamuzhy and Pazhassisagar SHEPs and tenders were invited with the existing commercial & technical conditions with last date of bid submission as 07.05.2020 & 11.05.2020 respectively. However, even after the last date of bid submission, no bidders are seen participated. It is reported that during the period of bid submission, some of the prospective bidders had requested to modify the qualification criteria of technical capability ie; 10 years instead of 7 years and to modify the commercial condition for Limitation of Liability. The Chief Engineer (Gen. & PED), has recommended for the above mentioned modification so that the same can be incorporated in future tenders. Even though the E&M works of both the Peruvannamuzhy & Pazhassisagar SHEPs were tendered several times, the tender could not be finalised due to poor participation of bidders. The civil works at both the projects are progressing and hence the finalisation of E&M works is needed for the early completion of the projects. Most of the prospective bidders are requesting for the modification of the above mentioned clauses so as to ensure their participation and the proposed modifications are being followed in major utilities like NHPC, UJVNL etc.

As per Note read as 8<sup>th</sup> above, the existing clauses for commercial and technical tender conditions for the E&M works of both the Peruvannamuzhy (2x3MW) & Pazhassisagar (3x2.5MW) SHEPs for which modifications are requested by most of the prospective bidders along with proposed modifications and remarks obtained from external law expert and the LA & DEO were placed before the Full Time Directors. It was also recommended to approve the following proposed modification of commercial and technical conditions.

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Modification Requested on	Existing Clause	Proposed modification
1. Limitation of Liability (Volume 2 - Conditions of Bid and contract)	Except in case of criminal negligence or wilful misconduct,  a) the Contractor shall not be liable to KSEBL, whether in Contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to KSEBL, and  b) <u>the aggregate liability of the Contractor to KSEBL, whether under this Contract, in tort or otherwise, shall not exceed the total Contract Price,</u> provided that this limitation shall not apply to the cost of repairing or replacing defective goods or to any obligation of the Contractor to indemnify KSEBL with respect to patent infringement. For the purpose of this clause, wilful	Except in case of criminal negligence or willful misconduct, a) the Contractor shall not be liable to KSEBL, whether in Contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to KSEBL, and  b) the aggregate liability of the contractor to KSEBL under this contract, whether in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective goods or to any obligation of the contractor to indemnify KSEBL with respect to infringement of patent rights.

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Modification Requested on	Existing Clause	Proposed modification
	<p>misconduct shall include, but not limited to, <u>not responding within 10 days of written intimation of the defect by KSEBL</u> or not rectifying the defect within the agreed duration.</p>	
<p>2. ARTICLE XI of agreement format PERFORMANCE GUARANTEE: (Volume 2 - Conditions of Bid and contract)</p>	<p>During the performance guarantee period of Three years from the date of taking over by the KSEBL, the contractor shall repair at free of charge, any accessory transported or installed by the contractor which fails or proves unsatisfactory under normal operations due to his faulty material handling or workmanship.</p> <p>However during the guarantee period, if the contractor fails to rectify the defects if any, in reasonable time, <u>a fine equivalent to compensate the loss in generation for the delayed period</u> as per the scheduled monthly generation plan of the KSEBL based on the average cost of purchase of energy prevailing at that time will be charged and will be recovered from the amount kept for ensuring performance guarantee. The KSEBL shall decide the reasonable time for rectification taking into account various aspects. In case the contractor does not respond after the reasonable time, the work will be arranged through a separate agency and the additional expense incurred will also be recovered from the amount kept for ensuring performance guarantee in addition to the penalty.</p> <p>On the expiry of the guarantee period, the amount kept for ensuring performance guarantee will be released after deducting the amount as above, if any.</p>	<p>During the performance guarantee period of three years from the date of taking over by the KSEBL, the contractor shall repair at free of charge, any accessory transported or installed by the contractor which fails or proves unsatisfactory under normal operations due to his faulty material handling or workmanship.</p> <p>However during the guarantee period, if the contractor fails to rectify the defects if any, in reasonable time, <u>a fine equivalent to compensate the loss in generation, in each case, limiting to the total contract price, for the delayed period</u> as per the scheduled monthly generation plan of the KSEBL based on the average cost of purchase of energy prevailing at that time will be charged and will be recovered from the amount kept for ensuring performance guarantee. The KSEBL shall decide the reasonable time for rectification taking into account various aspects. In case the contractor does not respond after the reasonable time, the work will be arranged through a separate agency and the additional expense incurred will also be recovered from the amount kept for ensuring performance guarantee in addition to the penalty.</p> <p>On the expiry of the guarantee period, the amount kept for ensuring performance guarantee will be released after deducting the amount as above, if any.</p>
<p>1. Qualification Criteria for Technical Capability</p>	<p>The bidder shall be an established manufacturer of hydraulic turbines who has designed, manufactured, supplied, erected and commissioned a</p>	<p>The bidder shall be an established manufacturer of hydraulic turbines who has designed, manufactured, supplied, erected and commissioned a</p>

1	2	3
Modification Requested on	Existing Clause	Proposed modification
(Volume1 Pre Qualification Bid)	turbine of similar type and capacity, as a bidder, during the last <u>seven years</u> as on the date of notice inviting bid and the same shall be in successful operation for a minimum period of two years. He can also be a turnkey contractor with experience of similar SHP works. In case of Consortium, all partners combined need to meet the requirement. However a consortium partner's experience/ capability in his specific area of work/service will be considered only if it is in his scope of work as per the consortium agreement.	turbine of similar type and capacity, as a bidder, during the last <u>ten years</u> as on the date of notice inviting bid and the same shall be in successful operation for a minimum period of two years. He can also be a turnkey contractor with experience of similar SHP works. In case of Consortium, all partners combined need to meet the requirement. However a consortium partner's experience/ capability in his specific area of work/service will be considered only if it is in his scope of work as per the consortium agreement.

The matter was considered by the Full Time Directors in the meeting held on 15-05-2020 and it was resolved to place the same before the Board of Directors of KSEBL. Accordingly, the matter was placed before the Board of Directors as per Note read as 9<sup>th</sup> above.

The Board in its meeting held on 25-05-2020, decided that the tender for E&M works can be invited from manufacturers/contractors that provide E&M equipment including turbine and generators indigenously. After discussion the Board

Resolved to approve the proposed modifications in the commercial and technical conditions, which are being followed in major utilities like NHPC, UJVNL etc.

Resolved further to accord sanction to the Chief Engineer (Gen. &PED) for inviting tenders for the E&M works of both Peruvannamuzhy & Pazhassisagar SHEPs and all future tenders for the E&M works with the above modified commercial and technical conditions so as to get more participation of prospective bidders.

Orders are issued accordingly.

By Order of the Director Board,  
Sd/-  
Lekha G  
Company Secretary (In charge)

To

The Chief Engineer (Generation & PED), Moolamattom.  
The Deputy Chief Engineer (Projects-Electrical Designs).

Copy to:

The Financial Advisor/ The Chief Internal Auditor/The Company Secretary.  
The Deputy Chief Engineer (IT)/ The RCAO/The RAO.  
The TA to Chairman & MD/ Director (GE&SCM)/ Director (GC)/ Director (Trans.&SO)/ Director (D&HRM)/Director(Planning &Safety).  
The PA to Director (Finance).

Forwarded / By Order  
*Suresh Kumar*  
Asst. Exe. Engineer

DESPATCHED

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09.06.20