



**National Electric Power Regulatory Authority
(Electric Power Procurement) Regulations, 2022**

NOTIFICATION

Islamabad, the day of _____, 2022

S.R.O. _____ In exercise of the powers conferred by section 47 of the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (XL of 1997) read with all other enabling provisions thereof, the National Electric Power Regulatory Authority, hereby notifies the following regulations, to lay down the principles, rights and obligations for power procurement by electric power suppliers.-

PART - I

Title, Commencement and Definitions

1. Title and Commencement.— (1) These regulations may be called the National Electric Power Regulatory Authority (Electric Power Procurement) Regulations, 2022.

(2) These regulations shall come into force at once.

(3) These regulations shall be applicable to new procurement of electric power and changes in the existing electric power procurement contracts.

2. Definitions and Interpretation.— (1) In these regulations unless there is anything repugnant in the subject or context,—

- (a) "Act" means the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997);
- (b) "applicable documents" means the rules, regulations, terms and conditions of any licence, registration, authorization, determination, any codes, manuals, directions, guidelines, orders or notifications issued or approved under the Act;
- (c) "Application" means an application filed in accordance with these regulations;
- (d) "Auction Committee" means the committee constituted by the Independent Auction Administrator under regulation [25] for conducting a Competitive Auction;

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- (e) "Auction Evaluation Report" means the report submitted to the Authority by the Independent Auction Administrator after completion of a Competitive Auction in accordance with the Request for Proposal (RFP) and any other bidding document approved by the Authority, and in compliance with provisions in these regulations;
- (f) "Auction Information" includes the Auction Evaluation Report, supporting documents, accounts, reports, records, data or estimates of any description used in the evaluation and award of the Competitive Auction;
- (g) "Award Price" means the price of a power procurement contract(s) awarded through a Competitive Auction, including indexation formula and mechanisms, when and if applicable;
- (h) "Benchmark Price " means the price(s) calculated by the Authority for the purpose of acting as a cap to the bids and results of a Competitive Auction;
- (i) "bidding documents" means the documents approved by the Authority for a Competitive Auction, including templates of contract(s), RFP(s), and any other supporting document that will be signed or agreed by a bidder upon the award as a result of the auction;
- (j) "Commercial Code" means the commercial code prepared and maintained by the market operator pursuant to sections 23A and 23B of the Act and approved by the Authority;
- (k) "Competitive Auction" means a competitive process to obtain bids and award of electric power procurement bilateral contracts for suppliers of last resort organized and carried out by an Independent Auction Administrator;
- (l) "competitive supplier" means a person licensed under Section 23E of the Act to supply electric power to consumers who are located in the service territory specified in its licence and who meet the consumer eligibility criteria laid down by the Authority;
- (m) "deemed licensee" means a person falling within purview of proviso to sub-section (1) of section 23E of the Act;
- (n) "electric power supplier" means electric power supplier as defined in the Act and shall include a competitive supplier and a supplier of last resort;
- (o) "IGCEP" means the latest Indicative Generation Capacity Expansion Plan prepared by the system operator and approved by the Authority;
- (p) "Independent Auction Administrator" means any entity registered with the Authority to provide the services of organization and administration of

competitive auctions for electric power procurement by suppliers of last resort;

- (q) "import" means purchase of electric power from generation facilities located in any territory where the Act does not apply or a foreign country;
- (r) "market participant" means any person who is registered with the market operator through a market participation agreement in accordance with the Commercial Code;
- (s) "Power Acquisition Programme" means the procurement needs and plan submitted by a supplier of last resort for approval by the Authority to enable new power purchase contracts by the supplier of last resort;
- (t) "Registrar" means the officer of the Authority appointed to perform the functions of the Registrar, as laid down in these regulations;
- (u) "request for proposal" or "RFP" means the document approved by the Authority that includes the necessary information, benchmark price, parameters, terms, conditions, and bid evaluation criteria for interested bidders to participate in a Competitive Auction;
- (v) "supplier of last resort" means a person who holds an electric power supply licence for the service territory specified in its licence and is obligated to supply electric power to all consumers located in that service territory at the rates determined by the Authority, and is also obligated to provide electric power supply to the consumers, located within its service territory, of any competitive supplier who defaults on its obligations of electric power supply;

(2) Words and expressions used but not defined in these regulations shall have the same meaning as in the Act.

PART-II

Duties of Electric Power Supplier

3. Obligation to plan in advance and update the business plan.— (1) Each electric power supplier shall be responsible for protecting the security of supply at economic prices for its consumers, by planning in advance power procurement in adequate quantity and conditions, with the following considerations and requirements:

- (i) procure sufficient power to meet the demand of its consumers with prudent demand forecasts with the best of available information, to avoid unnecessary under or over contracting;
- (ii) adopt adequate power procurement strategy and risk mitigation mechanisms; and

- (iii) maintain the financial strength and sufficient payment capacity to be considered credit worthy, and timely comply with its power procurement and use of system charges payment obligations.

(2) Before the start of each year, each electric power supplier licensee shall submit to the Authority an updated business plan demonstrating that the licensee continues to comply with the requirements of prescribed eligibility criteria, the requirements in other applicable documents.

Provided that a deemed electric power supplier licensee shall submit the first business plan as supplier of last resort within [] months after notification of these regulations.

(3) The updated business plan shall cover information on the previous twelve (12) months, and projections for a horizon of three (3) years in the case of competitive suppliers, and five (5) years for suppliers of last resort. The business plan shall include at least the following:

- (i) number and type of consumers, and monthly / annual demand (energy and capacity, by type of consumer and total);
- (ii) existing power purchase contracts, contracts that will expire during the business plan period and plans for new contracts, if any;
- (iii) description of procedures and mechanisms for consumer services and management of complaints; and
- (iv) financial statements.

4. Power acquisition programme and new power procurement.— (1) Together with the business plan, each supplier of last resort shall submit to the Authority its power acquisition programme to demonstrate compliance with the advance contracting regulatory requirements, including description of current contractual position and expected need for new procurement and its justification.

(2) The Power Acquisition Programme shall be prepared by the licensee keeping in view its demand forecast for short, medium, and long-term.

(3) The business plan with the proposed power acquisition programme of each supplier of last resort shall include the following:

- (a) demand (energy and peak demand) of its supply consumers, actual during last twelve (12) months and projections for next (3) years, provided that demand forecast should demonstrate consistency with demand in the supply tariff determinations, where applicable, and differentiate demand of BPCs buying or that have submitted a one (1) year notice in accordance with section 22 of the Act to the supplier of last resort;
- (b) existing contracted energy and capacity;
- (c) gap (positive or negative) between demand forecast and contracts already signed;

- (d) expected required new power procurement during next [24 months] and indicative procurement for the subsequent [36 months], showing planned advance procurement and risks of contracting excessive or inadequate capacity, if any;
- (e) demonstrate that the planned or expected new power procurements correspond to prudent and economic procurement of supply and complies with requirements of these regulations;
- (f) any other information that the supplier of last resort considers relevant and necessary to explain and justify the proposed power acquisition programme.

(4) The Authority while reviewing the proposed power acquisition programme, may require additional information or clarifications as deemed necessary.

(5) After adequate and sufficient information has been provided by the supplier of last resort, the Authority may approve the power acquisition programme of a supplier of last resort allowing to enter into power purchase contracts.

Provided that the Authority may require a supplier of last resort to suitably modify the power acquisition programme if deemed in the public interest.

(6) The approved power acquisition programme will be definitive for the initial three years and indicative for the further two (2) years to guide new power procurement.

5. New power procurement.— (1) The expansion in generation capacity shall only be on competitive and least-cost basis except as provided in regulation 7 of these regulations.

(2) Competitive auctions for new power procurement (new power purchase contracts) of a supplier of last resort shall be organized and carried out in a timely manner, in consistency with the timing in the approved power acquisition programme by the Authority

(3) Prior to each new competitive power procurement process and Competitive Auction, the supplier of last resort shall submit an application to the Authority for its review and approval. The application shall contain information regarding the proposed energy and/or capacity to be procured in the Competitive Auction, the Independent Auction Administrator that will administer the auction, and the justification of the new procurement requested, such as to comply with its supply regulatory obligations, and obligations imposed as a Market Participant in accordance to the Commercial Code such as capacity obligations.

(4) The application shall include all necessary documentation, in particular information demonstrating consistency with the power acquisition programme or, in case of any difference, the justification and the update of the power acquisition programme including update of the demand forecast if applicable.

(5) Two or more suppliers of last resort may apply to procure in a combined auction administered by the same Independent Auction Administrator. In that case, the application

for new power procurement may be submitted by the Independent Auction Administrator in accordance with the requirements and procedures in these regulations.

(6) To protect the interest of the consumers of the suppliers of last resort, the Authority shall assess the prudence of the power procurement request (to avoid the risk of insufficient procurement while also avoiding the risk of over contracting), as well as the obligations that result from participation as suppliers in the market in accordance with the approved Commercial Code. The Authority may require additional information or clarifications from the relevant supplier(s) of last resort and/or from the Market Operator as needed.

(7) After adequate and sufficient information has been provided and if the request is prudent and necessary, the Authority will approve the new auction for power procurement establishing the energy and/or capacity to be contracted by each supplier of last resort and, in the case of a joint auction, the total amount of energy and capacity to be auctioned:

Provided that, the quantities approved by the Authority for auction(s) may be different than those submitted in the application by the suppliers of last resort or the Independent Auction Administrator.

(8) The Authority may, based on the assessment reject the new power procurement application if the information provided fails to demonstrate that it is necessary and prudent to carry out an auction at the dates proposed. In such case, the Authority may recommend an alternative date and/or require for a new application for a Competitive Auction within a specified period.

6. Obligation of advance competitive procurement.– (1) The supplier of last resort shall, in accordance with these regulations, prudently contract in advance sufficient energy and capacity to protect the supply of its consumers.

(2) The supplier of last resort shall inform the Authority immediately on any constraint or condition that delays complying with its advance contracting obligation and with its approved power acquisition programme, explaining the cause(s) and justification of the delay.

(3) In the event supplier of last informed the Authority as required under sub-regulation (2) and if:

- (a) the supplier of last resort demonstrates that the cause(s) is outside its control, the Authority shall instruct measures to address the cause(s), and report progress in its implementation; or
- (b) the Authority considers that the cause(s) of non-compliance are due to faults or inefficiencies, or lack of effective demand forecasting and procurement planning by the supplier of last resort, it will be considered non-compliance with its license conditions and these regulations and shall be subject to applicable legal proceedings and action.

(4) Procurement of new power purchase contracts by a supplier of last resort shall be the result of a competitive auction process administered by an Independent Auction Administrator. Contracts awarded through a competitive auction in accordance with these regulations shall be construed as allowed power purchase costs in the determination of the consumer tariffs of the supplier of last resort.

(5) Power or energy purchase agreements signed prior to these regulations shall be deemed to be in compliance with these regulations until the pre-existing purchase agreement expiration date, subject to those agreements being in compliance with policies, rules and regulations applicable at the time. Any modification of a pre-existing purchase agreement shall require submission to the Authority for prior approval, with adequate and sufficient justification.

7. Exceptions to allow negotiated prudent procurement.— (1) If under special circumstances adequately justified and in accordance with the applicable policies of the Federal Government, a supplier of last resort wants to request an exemption to a competitive auction to procure electric power, the supplier of last resort shall submit an application, duly signed by its authorized person, to the Registrar with the following information and documents:

- (a) the prudence of the request, in particular avoiding over contracting, and the benefits compared to other procurement opportunities;
- (b) consistency with the approved power acquisition programme or, in case of any difference, the justification and the update of the power acquisition programme including update of the demand forecast if applicable;
- (c) the adequacy of the distribution system to receive and deliver the energy from the proposed contract;
- (d) if the request corresponds to a direct sale from a small generation connected directly to the distribution network, a letter of interest to sell by the owner of the generation, including information on the name of the proposed seller, generation type(s) (technology and fuel resource), size, location and connection point(s), quantities (energy and/or capacity), start date and duration and type of contract, initial estimates on prices, commitment by the seller to comply with the Distribution Code and the Grid Code as applicable, and any other information to describe the proposed power procurement;
- (e) if the request corresponds to a direct purchase from an import through an interconnection point in the distribution or transmission facilities, a letter of interest to sell by the exporter (or the electric power trader representing the exporter) identifying the proposed person or entity that will act as exporter, and the information describing the import, location and interconnection point(s), quantities (energy and/or capacity), adequacy of the system to receive the energy, start date and duration and type of contract, initial estimates on prices, commitment by the exporter to comply with the Distribution Code and the Grid Code as applicable, and any other information required to describe the proposed import;
- (f) demonstration that the impact of the proposed power procurement does not have an adverse impact on the consumer tariffs of the supplier of last resort.

(2) The application shall be submitted with the corresponding non-refundable application fee. The application shall be deemed to be filed only when all the required information has been submitted, and the Registrar may return the application if the required information is not submitted.

(3) The Registrar shall, after being satisfied that all the required information has been provided, present the application to the Authority within seven (7) working days of the date of filing:

Provided that the Authority may seek any other information or document which, in the opinion of the Authority, is material and necessary for arriving at an informed decision.

(4) The Authority will review the application and may consult relevant stakeholders before allowing or rejecting the application of the supplier of last resort to proceed to negotiate the new contract.

(5) While deciding application of the supplier of last resort to proceed with the power purchase contract negotiation without an auction as provided under sub-regulation (4), the Authority may issue instructions to protect the interest of the consumers, including among others on process, and maximum prices (or pricing methodology):

Provided that any negotiated purchase contract shall ensure that the contract price remains below or equal to the least cost determined by the Authority.

Provided further that in case of a strategic project, if price of generation does not meet the least cost set by the Authority, any positive difference in the contract price and the least cost determined by the Authority shall be paid by the concerned sponsoring government and shall not be passed onto consumer tariff.

8. Negotiated power purchase contract.— (1) Before executing a negotiated power purchase contract, the supplier of last resort shall file its proposed power purchase contract with the Registrar for its approval by the Authority.

(2) The supplier of last resort shall file the proposed power purchase contract accompanied with documents and a statement providing justification of the rates, terms and conditions under the proposed power purchase contract.

(3) The Registrar shall record the filing of the proposed power purchase contract by the supplier of last resort in its register and present the proposed power purchase contract duly supported with the information required under these regulations for decision by the Authority [within fourteen (14) working days] of its filing date.

(4) The Authority shall consider the proposed power purchase contract application with the information and forms provided at the time of filing of request, and such other information as may be filed by the supplier of last resort at the direction of the Authority.

(5) While deciding an application under this regulation, the Authority shall consider, amongst other, following aspects:

- (a) whether the contract is consistent with the requirements in the Commercial Code;
- (b) whether the allocation of risks and impact on consumers of the supplier of last resort;
- (c) whether the prices and indexation mechanisms are compliant with these regulations and below the average basket price of generation or the least cost determined by the Authority whichever is less;
- (d) in the event the prices and indexation mechanisms are not below the average basket price of generation or the least cost determined by the Authority, whether the sponsoring government is agreed to pay any positive difference in the contract price, and the least cost determined by the Authority shall be paid by the concerned sponsoring government and shall not be pass onto consumer tariff;
- (e) any other aspect as may be relevant to assess the prudence of the request.

(6) After detailed examination, the decision of the Authority in respect of a proposed power purchase contract shall be communicated to the supplier of last resort within sixty (60) days of the admission of the proposed power purchase contract by the Authority.

Provided that the purchase costs of power purchase contracts that are not the result of a Competitive Auction will be subject to review on prudence and reasonability of quantities contracted and power purchase cost in each supply tariff determination of the supplier of last resort.

(7) After decision of the Authority, the parties may enter into power purchase contract in accordance with the determination of the Authority.

(8) No modification of the Power purchase contract shall be agreed by the supplier of last resort prior to the Authority's approval. The application and review process shall have similar procedure as for the initial approval process.

PART-III

Competitive Auctions and Duties of the Independent Auction Administrator

9. Conditions.— (1) A Competitive Auction, for the purposes of these regulations, may only be conducted by an Independent Auction Administrator registered with the Authority for such purpose.

(2) Subject to meeting the qualification requirements specified in the RFP, the Competitive Auction will be open for participation by generation companies, investors committing to new generation projects, and electric power traders representing generation or imports.

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(3) The Independent Auction Administrator may carry out site specific, site neutral, technology specific, and/or technology neutral Competitive Auctions in its Bidding Documents subject to approval of the Authority.

(4) All Competitive Auctions shall be designed to include at least the following stages:

- (i) notice of auction and publication of Bidding Documents, including the RFP;
- (ii) period for interested bidders to submit comments and requests for clarification to the Bidding Documents, including any material issues or concerns on the terms and conditions of the template power purchase contract or any other agreement in the Bidding Documents;
- (iii) period for response to comments and clarifications: After the end of the period of the previous stage, the Auction Administrator shall respond to all comments and clarification requests received in a document published on its website together with the Bidding Documents, available to all interested bidders but without disclosing the party that submitted the comment or request for clarification. The response document will be considered an explanatory schedule of the RFP. Additionally, the Independent Auction Administrator may apply for the Authority's approval any modifications to the Bidding Documents, including modification to the template power purchase contract(s), to address issues or concerns raised by bidders;
- (iv) prequalification of interested bidders (if applicable as per the approved Auction Process);
- (v) bidding;
- (vi) evaluation;
- (vii) award of contracts.

(5) Subject to the conditions and principles for Competitive Auctions established in these regulations, the Independent Auction Administrator may adopt any method of Competitive Auction, including sealed bid, descending clock, multistage, two envelopes, hybrid method, combinatorial, two sided, or any other Competitive Auction method as may be approved by the Authority and specified in the RFP:

Provided that any Competitive Auction conducted for a public sector supplier of last resort shall be compliant with the relevant procurement rules or regulations of the concerned government, if applicable.

10. Other Services by an independent auction administrator.— (1) The Independent Auction Administrator may offer its competitive procurement services to competitive suppliers.

(2) Where an Independent Auction Administrator offers its competitive procurement services to competitive suppliers under sub-regulation (1), the parties may mutually agree on the processes and modes of auction different from the process provided in these regulations.

11. Reporting.— (1) The Independent Auction Administrator shall submit a report to the Authority at the end of each year on its activities and performance. The information in the report should be sufficient for the Authority to monitor compliance with its registration conditions and these regulations and other applicable documents, in particular performance of its function and transparency and independence in its processes.

(2) The report shall include any issue identified in implementing Competitive Auctions and recommendations of improvements in the process and requirements.

(3) The Authority may consider the report as part of its monitoring activities, and may require additional information or clarifications from the Independent Auction Administrator.

(4) The Independent Auction Administrator may propose any changes in these regulations in the report submitted under sub-regulation (1) with suitable justification in the interest of consumers for consideration of the Authority.

12. Principles for Competitive Auctions.— (1) In designing, organizing and administering a Competitive Auction, the Independent Auction Administrator shall take into consideration the following principles:

- (a) the advertisement for expression of interest to participate in the auction shall be published in local and international news media, to be made public to potential interested bidders and the public in general;
- (b) ensuring all potential and interested bidders have the same access to information. The Bidding Documents, the information during the auction process and all information on the award shall be made public to the interested bidders on the website of the Independent Auction Administrator;
- (c) the design of the auction shall maximize the interest and participation of uncontracted or new generation;
- (d) the Bidding Documents should clearly define qualification requirements and the criteria and methodology for the evaluation of bids, award and allocation of bilateral contracts among the suppliers of last resort that participate as purchasers in the auction;
- (e) bids shall be invited, received and processed transparently in accordance with the terms laid down in the RFP approved by the Authority;
- (f) the process shall ensure that bidders comply with technical, operational and financial qualifications defined in the Bidding Documents. The Independent Auction Administrator's pre-qualification process, if applicable as per the approved auction design, shall be uniform, consistent, transparent and non-discriminatory in its application to all prospective bidders;
- (g) the award criteria and evaluation shall minimize total power purchase costs considering bids by qualified bidders. Except when authorized otherwise by the Authority, the Competitive Auction will allow bidders to offer part of the total energy or capacity auctioned (partial offers), to award contracts to more than one bidder, while totalling the auctioned quantities as the sum of energy and/or capacity in awarded contracts;

- (h) the auctions will have at least [two/three (2-3)] qualified bidders, where each bidder does not have commercial interest in the other bidders
- (i) full compliance with these regulations, applicable laws, and other applicable documents.

(2) The Independent Auction Administrator may establish an electronic auction platform linked to its website for the purpose of access to Bidding Documents and auction information, as well as to receive bids and the bidding mechanism.

13. Application for a Competitive Auction.— (1) Prior to any Competitive Auction, the Independent Auction Administrator shall submit to the Authority the application for approval of the auction process. The application shall include the following information:

- (a) identification of the supplier(s) of last resort that will be the purchaser(s) of the bilateral contracts to be awarded through the auction, including the document(s) demonstrating that the Independent Auction Administrator is representing those suppliers of last resort and that each supplier of last resort has agreed to the proposed auction;
- (b) the period (duration of the contracts) to be auctioned;
- (c) the quantities (energy and/or capacity) required by each supplier of last resort during that period disaggregated by hour, day and/or month as applicable, including a document where each supplier of last resort confirms agreement with its quantities and consistency with the approved Power Acquisition Programme or, in case of any difference, the justification and the supplier of last resort submitting the update of the Power Acquisition Program including demand forecast update if applicable;
- (d) the total maximum quantities proposed to be auctioned (energy and/or capacity) disaggregated by hour, day and/or month as applicable, which will be not less than the aggregated quantities required by the suppliers of last resort. The Independent Auction Administrator, with the corresponding justification, may apply for quantities greater than the aggregated total required by the suppliers of last resort informing how the additional quantities will be allocated among the suppliers of last resort:
Provided that if the Independent Auction Administrator requests an auction for quantities greater than the aggregated quantities required by the suppliers of last resort, the Authority may require additional information demonstrating prudence of the request, in particular on avoiding over contracting;
- (e) the planned timetable for the auction;
- (f) the proposed auction design, such as if the auction will be only for new generation, or the auction will be only for existing generation, or the auction will allow the participation of both new and existing generation; type of auction etc.;
- (g) any requirements or constraints on types of generation technologies and fuel resources that will be allowed to participate;
- (h) others types or requirements as applicable, in particular to demonstrate consistency with energy policies for generation.

(2) The Authority will consider the application to determine if the auction is justified and for this purpose the Authority may require additional information and clarifications from the Independent Auction Administrator and/or the suppliers of last resort.

(3) In deciding the application for a Competitive Auction, the Authority may:

- (a) include instructions on maximizing competition, the minimum content of RFP and scope of Bidding Documents in addition to the requirements in these regulations;
- (b) provide guidance on targeting and design of the auction taking into consideration energy policies and/or national energy plan approved by the Federal Government, including environmental policies and any policy or target on alternative energy and clean generation, indicative generation capacity expansion plan, and regional imports where applicable; and
- (c) Guidance on consistency with a least cost supply in accordance with the applicable energy policies and system reliability and security constraints, including as applicable transmission constraints or available transmission capacity informed by the System Operator or Transmission Licensees.

14. Auction Committee.— (1) As soon as the Authority approves the Competitive Auction, the Auction Administrator shall constitute the corresponding Auction Committee chaired by an authorized representative of the Independent Auction Administrator and including the following members:

- (a) at least one representative of each supplier of last resort participating in the auction as power purchasers of the bilateral contracts;
- (b) at least two independent members, that have no commercial relationship with the Independent Auction Administrator or the supplier of last resort or its affiliates: (i) one technical expert with knowledge of generation technologies and maintenance operators; and (ii) one financial expert with experience in financing capability required for generation:

Provided that the Independent Auction Administrator may appoint a reputable consultant, having such qualification and experience as may be determined by the Authority, who fulfils the independence requirement, to be an independent member.

(2) The Auction Committee will act as advisor to the Independent Auction Administrator in the preparation of the Bidding Documents, agreeing the actions to inform and disseminate the auction to potential bidders, and assisting in the prequalification and evaluations as established in these regulations. With this purpose, the Auction Committee will have internal rules that guarantee and cover code of conduct, transparency, non-discrimination, sharing of responsibilities and disclosure of information.

(3) Through the Auction Committee, each and all the suppliers of last resort participating in the auction will share with the Independent Auction Administrator the responsibility of compliance with the internal rules, these regulations and any instruction issued by the Authority regarding the auction.

15. Evaluation Committee.— (1) The Independent Auction Administrator will constitute the evaluation committee for the award and evaluation of bids and pre-qualification in the auction process, in accordance with the Bidding Documents approved by the Authority, instructions issued by the Authority and these regulations and cap or limits on the auction price determined by the Authority.

(2) The evaluation committee may include the members of the Auction Committee and at least one independent member having expertise in financial matters and/or bid evaluation and/or the specific characteristics and requirements of the auction;

Provided that the Independent Auction Administrator and the suppliers of last resort shall disclose past associations with the external member, directly or through its affiliates that could create potential conflict of interest.

Explanation:— for the purpose of clause (2), a person fulfils the 'independence requirement' if the person is not an officer or employee of the Independent Auction Administrator, or any of its affiliates, and does not have a direct or indirect interest, financial or otherwise, with the Auction Administrator or any of the bidders.

Part-IV

Approval of Bidding Documents - RFP

16. Requirement of RFP.— (1) The Independent Auction Administrator shall prepare a Request for Proposals in accordance with the requirements in these regulations for the purpose of inviting interested bidders and administration of pre-qualification (if applicable) and bids.

(2) The Independent Auction Administrator shall develop the RFP and auction design to provide a transparent process of bidding to ensure promotion of competition.

17. Contents of RFP.— Subject to the type of auction design and the requirements and principles in these regulations and instructions by the Authority, the RFP shall include, as applicable, at least the following:

- (a) identification of the suppliers of last resort that will be the purchasers of bilateral contracts to be awarded, and summary description of the Evaluation Committee;
- (b) the auction design;
- (c) maximum quantities of energy (in MWh) and/or capacity (in MW) proposed to be procured through the Competitive Auction;
- (d) description of the type(s) of generation technologies or project(s) that can bid in the auction, including any requirements with respect to:
 - (i) technology and when applicable fuel type;
 - (ii) availability;
 - (iii) generation plant maximum allowed size;

- (iv) if a template connection agreement is included in the Bidding Documents, possible locations for new generation projects and the network company to be connected; and
- (v) capability to provide ancillary services;
- (e) connection point(s) with commercial metering systems where electric power is to be delivered;
- (f) technical and operational qualifications and prior experience to be met by the bidders, including to comply with the relevant standards and requirements in the Grid Code;
- (g) financial requirements to be met by bidders, including minimum net-worth, revenues, etc., with necessary proof of the same;
- (h) timetable of the auction process, from request for interest, qualifications, bidding and up to award, with plan for each stage;
- (i) expected date of commencement of supply (commencement of sales in the power purchase contracts);
- (j) price structure of bids and bench mark price (if applicable);
- (k) minimum period of validity of offer of bidders;
- (l) bidding methodology, and bid evaluation criteria and formula;
- (m) bid bond or other bidding security instrument which the Independent Auction Administrator may require to be posted by the bidder;
- (n) required contract performance guarantee, if any;
- (o) commitment by bidders not to require changes to the provisions in the template power purchase contract after award;
- (p) requirement upon all the bidders to support their respective bids with an affidavit as to correctness of the information and assumptions stated therein along with a statement as to not concealing any material information in their bids or any supporting documents;
- (q) in case the bid is for a new generation project, construction milestones to be specified by the bidders, and requirement to submit a statement on affidavit regarding readiness to execute the project unconditionally;
- (r) any such additional information as may be applicable to the bidding process; and
- (s) any other information as may be required by the Authority or the Independent Auction Administrator.

18. Content of Bidding Documents.— Subject to the type of auction design and the requirements and principles in these regulations, the Bidding Document shall include in addition to the RFP:

- (a) template of power purchase contracts to be awarded through the Competitive Auction, which shall be fully consistent with requirements for contracts in the Commercial Code;
- (b) if the Competitive Auction allows participation of different generation technologies, the Bidding Document may include different template contracts depending on the proposed generation technology;

- (c) template of the Market Participation Agreement, for the bidder, if not already a Market Participant, to become a Market Participant if awarded the contract;
- (d) any other document of the security package, as applicable.

19. Approval by the Authority.— (1) Before initiating an auction, the Bidding Documents including the RFP shall be approved by the Authority. The Independent Auction Administrator shall submit to the Registrar the proposed Bidding Documents, along with the RFP for approval of the Authority.

(2) The Registrar, if satisfied that the submitted documents fulfil requirements of these regulations, shall place the same before the Authority within seven (7) days of receipt thereof for its consideration:

Provided that the Registrar may return the RFP or any part of the Bidding Documents if it is deficient or not in conformity with these regulations.

(2) The Authority if satisfied that all the requirements of these regulations and other applicable documents are met, may with or without modification approve the RFP.

(3) The Authority while approving the RFP may also determine the Benchmark Price, if deemed appropriate, for the purposes of Competitive Auction.

(4) While determining the Benchmark Price, the Authority may require that the benchmark price shall be made public or alternatively the Authority may require that the benchmark price shall be put in a sealed envelope that shall not be opened until after the opening of financial proposals or bids, or for reverse auctions to set the initial auction maximum price:

Provided that the Independent Auction Administrator may or may not disclose the Benchmark Price subject to the approval of the Authority.

(5) The auction process shall be conducted by the Independent Auction Administrator in accordance with the RFP approved by the Authority and in coordination with the Evaluation Committee.

(6) No changes in the RFP shall be made without prior approval of the Authority.

(7) Any deviation from the RFP approved by the Authority shall render the entire auction process void, unless prior approval of the Authority to such deviation has been obtained:

Provided that the Auction Committee may issue clarifications and response to any queries raised by the interested bidders and any such clarification or comments shall not be considered a deviation from the RFP, as long as these do not contradict or amount to a change in the scope of RFP.

Provided further that in case of any modification in the RFP approved by the Authority after it has been published for interested bidders, the Independent Auction



Administrator shall allow the bidders additional time to submit their prequalification and bids or a new Competitive Auction may be invited.

Part-V
Pre-Qualification of Bidders

20. Notice of Auction.— After approval of the Bidding Documents, including the RFP, notice of invitation to participate in the auction shall be published by the Independent Auction Administrator in local and international newspapers having wide circulation and on website(s) of the Independent Auction Administrator under intimation to the Authority.

Provided that the Independent Auction Administrator may take such steps as are reasonable to bring the bidding process to the attention of all those who may possess the qualifications and wish to submit bids.

21. Pre-Qualification.— (1) The Independent Auction Administrator shall, in coordination with the evaluation committee, pre-qualify prospective bidders in accordance with this Part of the regulation, prior to opening financial proposals or initiating participation in the auction.

(2) The Independent Auction Administrator shall provide in the RFP all the information required for pre-qualification including as applicable instructions for preparation and submission of the pre-qualification documents, list of documentary evidence required by prospective bidders to demonstrate their respective qualifications and any other information that the Independent Auction Administrator deems necessary to verify qualifications.

(3) The Auction Administrator shall pre-qualify prospective bidders based on:

- (a) technical and operational capability and relevant prior experience;
- (b) history of legal and regulatory compliance;
- (c) financial capability
- (d) whether the applicant, or any officer, director or owner thereof, has been in substantial noncompliance of the terms and conditions of prior generation projects or power purchase contracts; and
- (e) any other factor that is specified in the RFP.

(4) The Prequalification may be designed as,

- (a) a two-step process: first a request for qualification from interested bidders to respond to the RFP, and then as a second step request of financial proposals or price bids for the auction process by the qualified bidders; or
- (b) a single step with two envelopes submitted as proposals by each interested bidder: a proposal on qualification and a financial or bidding proposal. The Independent Auction Administrator shall first open only

the qualification proposals to assess the bidders that qualify. The financial proposal of bidders that do not qualify shall be returned to the bidders without opening the envelope.

(5) The Independent Auction Administrator shall promptly notify each interested bidder whether or not it has been pre-qualified and shall make available to any person directly involved in the pre-qualification process, upon request, the names of all successfully qualified bidders.

Provided that in the event that an applicant is denied pre-qualification, the written notification to that applicant shall state the reasons for denial of pre-qualification.

(6) Notwithstanding anything contained in these regulations, the Independent Auction Administrator may at any stage of pre-qualification, for reasons recorded in writing, disqualify a prospective bidder, where it finds that the information submitted by the same is false, misleading or materially inaccurate:

Provided that before disqualification under this sub-regulation, the prospective bidder shall be given an opportunity of hearing by the Independent Auction Administrator.

22. Content of pre-qualification documents— Without prejudice to the generality of the foregoing, the following information shall be provided by bidders to prequalify:

- (a) type of bidder; if the bidder is an electric power trader, include the agreement with the generation it represents for the purpose of the auction;
- (b) description of type of generation that would be offered, in particular technology and resources;
- (c) corporate details of the bidder, including:
 - (i) legal identity and structure;
 - (ii) ultimate beneficial ownership of the bidder;
 - (iii) where more than one party comprises the bidder (e.g. a consortium), a description of the proposed roles of each of the parties in relation to the bid;
 - (iv) copies of audited annual accounts of the bidder, including consortium members, for the previous four years; and
 - (v) details of any formal direct or indirect connection between the bidder and existing Market Participants, including ownership or shareholding, consulting, service agreements, etc.
- (d) information on whether the bidder is already a Market Participant, and whether it is a licensed entity. If the bidder is already a Market Participant, the information shall include whether it has registered any late payment or non-compliance with security cover and payment obligations or any other non-compliance in the market;
- (e) description and documentation to demonstrate the technical and operational qualifications, in accordance to the specifications in the RFP;
- (f) description and documentation to demonstrate the financial qualifications, in accordance to the specifications in the RFP;

- (g) in case of new generation projects, a finance plan indicating the funding mechanisms that would be available to the bidder for the project;
- (h) details of relevant experience of the bidder and of its associates in relation to generation relevant to the auction, including ownership and operation;
- (i) details of all internal and external authorizations which the bidder may require, such as board approvals and regulatory or foreign investment approvals, and the steps which have been taken to ensure those authorizations are obtained and at what stage those authorizations will be obtained;
- (j) any other information the bidder chooses to present as indicative of meeting the qualifications specified in the RFP; and
- (k) any other information as may be required by the Auction Administrator in the RFP.

PART-VI

Bidding

23. Content of Bids.— Subject to the auction design, the qualified bidders shall submit the bids following the requirements and characteristics specified in the RFP, including, as may be applicable,:

- (a) the energy and/or capacity, which can be a less, but not greater, than the total quantity auctioned;
- (b) where applicable, the bids clearly indicate the details of the generation associated to the bid, such as the type of technology and fuel source to be deployed, developed, installed or operated, including but not limited to:
 - (i) type of generation units or power plant;
 - (ii) type of fuel;
 - (iii) location and details of site conditions;
 - (iv) commit to install new equipment, or establish that latest year of manufacture of the equipment allowed; and
 - (v) maximum installed capacity;
- (c) the price(s) of energy and/or capacity at the commercial connection points defined in the RFP, where the prices can vary by season, month or time of day, and indexation mechanisms, if any; and
- (d) any other information required for bid price structure in the RFP.

24. Rejection of bids.— The Independent Auction Administrator, upon recommendation of the Evaluation Committee, may declare a bid non-responsive and reject a bid, for reasons to be recorded in writing, if the bid is in material deviation from the RFP, or the quoted bid price(s) is higher than the Benchmark Price, or if the bid does not provide all the necessary information and price structure defined in the RFP.

25. Administration of valid bids.— (1) The Independent Auction Administrator, upon recommendation of the Evaluation Committee, shall administer the bidding process in accordance to the auction design defined in the RFP. Using the evaluation methodology, the valid bids that combined represent the lowest procurement costs shall be selected by the Independent Auction Administrator:

Provided that if there are insufficient valid bids to cover the maximum contracted quantities defined in the RFP, all or such number of valid bids may be declared successful as the Independent Auction Administrator may decide:

Provided further that prior to the start of the price bidding process and taking into consideration the prequalified bidders, the Independent Auction Administrator may request the Authority approval to reduce the quantities to be auctioned to ensure sufficient bids and maximize competition and, if approved by the Authority, the reduced quantities will be informed to the qualified bidders and considered as the quantities to be contracted in the RFP.

(2) Declaration of a bid as valid or successful, shall not create any vested right or legitimate expectation in favour of the bidder for grant of procurement contract and the award of procurement contract shall be decided after the recommendations of the Auction Evaluation Report have been submitted and endorsed by the Authority.

Part-VII

Auction Evaluation Report

26. Auction evaluation report.— (1) Not later than [fourteen (14)] working days after completion of the bidding process, the Independent Auction Administrator shall submit to the Registrar the Auction Evaluation Report prepared by the Evaluation Committee along with its recommendations on the Auction Evaluation Report.

(2) The Auction Evaluation Report prepared by the Evaluation Committee shall include:

- (a) brief of the competitive auction process followed, demonstrating compliance with these regulations;
- (b) statement regarding compliance with the RFP;
- (c) details of all bidders which identifies the qualified bidders;
- (d) description of bidders declared not qualified, and the justification for each one;
- (e) identification and description of rejected bids, and the justification for each rejection;
- (f) details of all valid (responsive) bids, including bid prices and types of generation;
- (g) results of the evaluation methodology for the lowest combined electric power procurement cost, subject to requirements in the RFP, and whether the auction is considered and declared null and void;
- (h) if the auction was successful, list of all the awarded bidders, including details of generation and bid prices, and information on allocation of quantities and prices to be awarded in proposed contract of each selected bidder with each supplier of last resort;
- (i) any observation by a member of the Evaluation Committee; and
- (j) any other information the Authority may require from time to time.

(2) The Registrar, upon being satisfied that the Auction Evaluation Report is in compliance with these regulations, shall place the same before the Authority within [thirty (30)] working days of receipt thereof for its consideration and decision on thereon:

Provided that the Registrar may return the Auction Evaluation Report if it is deficient or not in conformity with these regulations.

27. Review of the Auction Evaluation Report.— (1) The Authority shall review the Auction Evaluation Report in light of the recommendations of the Independent Auction Administrator.

(2) The Authority may instruct the Evaluation Committee to make corrective actions in the evaluation, for ensuring consistency with the RFP requirements and evaluation methodology.

(3) The Authority may declare the auction cancelled and/or the result as null and void in the following situations:

- (a) the Auction Evaluation Report justifies and the Authority agrees that the process was null and void and no contract should be awarded;
- (b) the Authority verifies that the auction process did not comply with these regulations including its guidelines or the Authority's instructions, or there has been any significant deviation from the approved RFP; and/or the process did not meet the conditions to qualify as Competitive Auction.

(4) The Authority upon being satisfied that the requirements of these regulations, the approved RFP and other applicable documents have been complied with, shall approve the Auction Evaluation Report. Upon approval of the Auction Evaluation Report, the Independent Auction Administrator shall notify the successful bidders. The decision of approval of the Auction Evaluation Report shall be published on the Authority's website whereas notification of successful bidder shall be published on the Independent Auction Administrator's websites:

Provided that the Authority may, before approving the Auction Evaluation Report, appoint an independent auction auditor to submit its report evaluating the Auction Evaluation Report on the conduct and results of the Competitive Auction;

Provided further that the Authority may reject a successful bidder in case the quoted rate is imprudent or unreasonable or there is evidence of deceptive or anti-competitive behaviour, including collusion, predatory pricing, and abuse of dominant position.

Part-VIII

Approval of Contract Award

28. Licensing Requirements for Generation.— (1) The successful bidder shall, if required under the Act, submit an application for the grant of generation licence to the

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Authority in accordance with the National Electric Power Regulatory Authority (Application, Modification, Extension and Cancellation) Regulations, 2021.

29. Requirements for imports.— In the event Competitive Auction related to import of electric power, once the results of the auction have been notified, each successful bidder that corresponds to import shall file with the Registrar for the Authority review all the necessary government approvals.

30. Signing of contracts.— Once the results of an auction have been notified and the successful bidders complete the requirements in regulation 30 or 31 as applicable, the successful bidder shall sign the bilateral power purchase contract with each supplier of last resort using the template in the Bidding Document and specify the relevant characteristics and identification of the awarded bid and the Award Price. The Independent Auction Administrator shall define and include the quantities that apply for the bilateral contract of each supplier of last resort as defined in the Auction Evaluation Report approved by the Authority.

Part-IX

Miscellaneous

31. Guidelines.— To complement these regulations, the Authority may develop Guidelines with the details of Competitive Auctions for procurement of new power purchase contracts for suppliers of last resort carried out by an Independent Auction Administrator.

32. Electric power procurement as a result of imbalances in electric power market.— (1) Nothing in these regulations shall prevent an electric power supplier from procurement of electric power as a result of imbalances arising in the electric power market provided such procurement and settlement of imbalances is in accordance with the Commercial Code approved by the Authority.

(2) The Authority may set a limit for any or all electric power suppliers for procurement of electric power as a result of imbalances in the power market or issue such other directions as may be deemed proper in the interest of ensuring consumers' interest and avoiding any manipulation or circumvention of applicable documents.

33. Legacy contracts.— (1) Any power purchase agreement entered into by a supplier of last resort or Central Power Purchasing Agency (Guarantee) Limited in accordance with the Act or prior to promulgation of the Act in accordance with the relevant policy of Federal Government may be continued till expiry of these contracts.

(2) Any proposed amendment in the power purchase agreement falling within purview of sub-regulation (1) shall be submitted to the Authority for its approval before its execution.

(3) After expiry of the power purchase agreements falling within purview of sub-regulation (1), the same shall only be renewed with approval of the Authority and after ensuring that it qualifies as least cost procurement as per the IGCEP in field at the relevant time.

34. Tariff notification.- The rates and terms and conditions approved for procurement of electric power under these regulations shall be intimated to the Federal Government for notification in the official Gazette in terms of sub-section (7) of section 31 of the Act.

35. Complaints and Dispute Resolution.- All complaints regarding compliance with the RFP or these regulations, shall be referred to the Authority for decision:

Provided that a dispute between a bidder and the Independent Auction Administrator, Auction Committee or Evaluation Committee shall be addressed as per the dispute resolution mechanism provided in the RFP.

36. Repeal.- (1) Upon notification of these regulations, the following regulations shall be repealed.-

- (a) National Electric Power Regulatory Authority Interim Power Procurement (Procedure and Standards) Regulations, 2005;
- (b) National Electric Power Regulatory Authority Competitive Bidding Tariff (Approval Procedure) Regulations, 2017;
- (c) National Electric Power Regulatory Authority (Import of Power) Regulations, 2014; and
- (d) National Electric Power Regulatory Authority Upfront Tariff (Approval & Procedure) Regulations, 2011;

(2) Notwithstanding any repeal effected by these regulations, for any competitive process initiated prior to notification of these regulations the procedure for notification of successful bidder and approval of tariff shall be the same as provided in the Competitive Bidding Tariff (Approval Procedure) Regulations, 2014.
