

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. Preman Dinaraj, Chairman

OP 46/2020

In the matter of: Application dated 14.12.2020 filed by M/s Kerala Electrical and Allied Engineering Company Limited for approval of allowing 15% of Price Preference and 50% Purchase Preference as per G.O.(Rt) No.5382/2020/Fin dated 18.09.2020.

Petitioner : M/s Kerala Electrical and Allied Engineering Company Limited.

Respondents : Kerala State Electricity Board Limited.

Order dated 30.12.2020

1. M/s Kerala Electrical and Allied Engineering Company Limited. (hereinafter referred to as the petitioner or M/s KEL), a Public Sector Undertaking, fully owned by the Government of Kerala has on 14.12.2020 filed a petition before the Commission with following prayers:

a) Issue necessary directions to KSEB Ltd. to implement G.O.(Rt) No 5382/2020/Fin dated 18.09.2020 with respect to all tenders including tender No. KSEB/SCM/eP14/2020-21 dated 30.05.2020 for the supply of distribution transformers of various ratings of 100 KVA (2225 Nos), 160 KVA (478 Nos) and 250 KVA (76 Nos) worth nearly Rs.44 crores and future tenders issued by the KSEB Limited;

b) Issue necessary directions to the KSEB Limited to finalise the tenders only after considering G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020.

2. The Commission has perused the G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020 and noted that the said GO stated that

“Considering the new guidelines of the Govt. of India and the incentivized announced for local manufacturers in other States, it is essential that a new preferential policy for procurement from local MSMEs and State PSUs is implemented for reviving them in the current difficult economic situation arising from the Covid-19 pandemic.”

3. It is in the light of this situation that the Govt. of Kerala has issued the present GO dated 18.09.2020. Further this GO clearly mentions that
“Government after having examined the matter in detail are pleased to issue orders based on the latest guidelines indicated in Govt. of India’s policy and also considering the best practices among various states. The new policy for the state will consist of the following Price and Purchase preferences to products procured from local MSMEs/State PSUs and shall come into force superseding all previous Orders issued on procurement from MSMEs within the State”.

The Commission also noted that the Government of Kerala GO dated 18.09.2020, is in the nature of a policy direction. Hence it is binding on all the State PSUs to strictly follow the directions contained in this GO while procuring goods and services.

4. The Commission further noted that vide this GO on the issue of ‘Price Preference’, it has been stated that

“all State PSUs and Local MSMEs in the State shall get a Price Preference up to 15% in all procurement of State Government Departments, Organisations, Local Self Government institutions and Public Undertakings. This means that wherever State PSUs/ local MSMEs quote a rate within a 15% price range of the L1 bidder, the State PSU/local MSMEs either singly or jointly as the case may be, would be entitled to get up to 50% of the order quantity at the lowest rate quoted among them. If there are multiple State PSU/ local MSME vendors in this category, they will be given equal proportions of this 50% order.”

With reference to the Purchase Preference, the said GO stated

“in any tender, if no local participating State PSUs and local MSMEs quotes within the price band of L1+15%, they shall still be entitled to an opportunity to supply up to 50%, of the total order by bringing down their price to L1 Price. In such a scenario, the State PSU and local MSME, accepting such an invite, either singly or jointly, as the case may be, shall be allowed to supply up to 50% of the order quantity if there is only one such bidder; or in equal proportions out of the 50%, if there are multiple bidders in this category.

“Necessary amendments to the Stores Purchase Manual, if any, will be issued separately by the Stores Purchase Department”.

5. The Petitioner, KEL is a PSU wholly owned by Govt of Kerala, established for exclusively supplying transformers to KSEB Ltd. Vide tender number KSEB/SCM/eP14/2020-21 dated 30.05.2020 KSEB Ltd. floated a tender for the purchase of distribution transformers of various rating - 100 KVA (2225 Nos), 160 KVA (478 Nos) and 250 KVA (76 Nos). The estimated cost of the tender was nearly Rs. 44 Crores.
6. KEL in their petition submitted that out of the three capacities of distribution transformers tendered, they were the lowest bidder for 160 KVA (478 Nos). For

the other two transformer ratings, i.e. 100 KVA and 250 KVA, the price quoted by KEL is well within the eligible price preference of 15% of the lowest quoted firms. They further stated that more than 65% of the total tendered value is for the transformers of ratings 100 KVA and 250 KVA. Moreover, KSEB Ltd had issued to the petitioner a letter No. SCM/XD/AEEI/eP14/2020-21/4846 dated 07.12.2020 requesting them to match the price of the lowest quoted bidder for the 100 KVA and 250 KVA distribution transformers.

7. KEL further submitted that they have filed the present petition to avail the benefits given to the State PSUs and local MSMEs by virtue of the G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020. KEL further mentioned in their Petition that KSEB Ltd is hastily proceeding to finalise the tender without considering the above stated GO dated 18.09.2020 **and** the same will cause irreparable loss to the petitioner who is a State Government owned PSU. They also made a prayer for an urgent hearing in this matter. The Commission admitted the said Petition as OP No. 46 of 2020 and fixed the hearing on 30.12.2020 at 11 AM through Video Conferencing.

Hearing on the petition:

8. KEL in the hearing was represented by Col. (Retd.) Shaji Varghese. During the hearing, Colonel Shaji Varghese, Managing Director, KEL mentioned that KEL Mamala Unit was established in 1968 exclusively to support KSEB by supplying quality transformers. As such, the unit is fully dependent on KSEB for its business since inception. The transformer division of KEL had a rate contract agreement with KSEB for transformer supply till 1990-91. In addition, KEL also participated in various tenders.
9. The petitioner, KEL has participated in the tender floated by the KSEB Ltd. bearing No. KSEB/SEM/eP14/2020-21 dated 30.05.2020, and submitted their bid for the entire transformer ratings. KEL further submitted that the price bid was opened by KSEB Ltd. on 03.12.2020. The quote rating position of KEL and the percentage difference with the L1 quoted price after loss capitalization is given below-

SI No.	Rating	Quantity in Nos.	KEL Position	Difference in percentage with L1 quoted price
1.	100 kVA	2225	L6	9.86%
2.	160 kVA	478	L1	-
3.	250 kVA	76	L2	6.38%

10. The value of the total tendered quantity is estimated at Rs.44,65,64,000/-. As per the above mentioned GO of the Govt. of Kerala dated 18.09.2020, KEL being a State Government PSU is entitled to get a price preference of 15% over

and above L1 price and a purchase preference up to 50% for State owned PSUs and MSMEs units.

11. KEL in their quote has emerged as L1 for the 478 number of 160 kVA transformers. Regarding their position in the other two quotes, he submitted that in the 100 kVA rated transformer, their bid is higher by 9.86% and in the 250 kVA category their price is higher by 6.38%. In addition, he drew the attention of the Commission to the G.O.(Rt.) No.174/2017/PD dated 10.05.2017 issued by the Power Department, Government of Kerala dealing with the purchase of electrical item for KSEB Ltd. from PSUs under the Industries Dept.

As per the para 4 of the said G.O,

“KSEB Ltd. shall extend a price preference of up to 15% to the State PSUs over and above the discovered L1 price, in respect of procurement carried using the KSEB Ltd/ State Government fund. In case of procurement towards the KSEB Ltd. schemes assisted by Government of India, price will be subject to the guidelines stipulated by Government of India. This price preference proposed to State PSUs will be subject to the approval of the Kerala State Electricity Regulatory Commission (KSERC)”.

12. He however submitted that this G.O has not been implemented by KSEB Ltd. Further, though the State Government through various GOs and other measures having been extending support the State PSUs, such support has not been forthcoming from KSEL Ltd’s side as far as KEL is concerned. He also submitted that all other States have been extending purchase and price preference to the PSUs in their State through rate contracts. The petitioner also cited the example of State of Karnataka which is supporting its own PSUs. It is in this situation that the petitioner has filed this petition before the Commission for issue of necessary directions to KSEB Ltd. to finalize the tenders only after considering the G.O dated 18.09.2020.
13. Shri. Suresh A and Shri. Sunil. K, Executive Engineers presented attended the hearing on behalf of KSEB Ltd. They explained the background of the G.O dated 18.09.2020. They mentioned that the said G.O is based on Government of India Order bearing No. P-45021/2/2017-PP(BE II) dated 04.06.2020 and issued by the Ministry of Commerce and Industry, Government of India. In this Order, there is a mention of 15% of purchase preference to State PSUs etc. but there is no specific mention any price preference to such category of companies. As a distribution licensee, KSEB is functioning under regulatory control of the Commission. Hence, any such preferences have to be extended only with the approval of the Commission. He mentioned that since many of KSEB Ltd’s. purchase was decentralized, details of such preference extended if any will have to be collected from KSEB Ltd’s. Circle Office and will take some time. Since the requirement of these transformers were urgent, any such directions from the Commission regarding enforcement of the GO dated 18.09.2020 may be made applicable for future transactions.

14. Shri Sunil K, Ex. Engineer further submitted that if KSEB Ltd. was to implement the Kerala Govt. GO and grant price preference, it would create additional financial commitment to the tune of Rs.75 crores per year. Hence, it can only be introduced with the financial support of the State Government. He also submitted that prior approval of the Commission is necessary for implementing the said G.Os. and KSEB Ltd. had already issued an Order dated 16.10.2020 adopting the G.O (Rt.) No.5382/ 2020/Fin. dated 18.09.2020 with a condition that price preference would be given only after obtaining the concurrence from KSERC.
15. To this, the Commission queried as to whether KSEB Ltd. intends to keep the present procurement tender pending till such time they file a formal petition for the Commission's concurrence. This is especially important considering the stated urgent requirement of these transformers. To this, Shri Sunil K, Ex. Engineer clarified that KSEB is giving preference to the PSUs which match the L1 price in their tenders. Since, in this case the petitioner is not willing to match the L1 price, the Commission's specific direction is required. The Commission was also informed that the KSEB Ltd's Board of Directors will be meeting on 31.12.2020 and requested for an early direction from the Commission for placement before the Board for consideration.
16. The Commission in their clarification mentioned that it does not normally interfere in any purchase or tender process of its distribution licensees. Instead, the Commission shall issue broad guidelines and principles which the licensees are required to follow. However, since the petition is for directing KSEB Ltd. to implement a Kerala Govt. GO it is inclined and duty bound to direct KSEB Ltd. to strictly follow the GO.

Order of the Commission

After carefully considering the issues as presented by the parties, the Commission hereby issues the following direction.

17. KSEB Ltd. shall implement the Government of Kerala Order no. G.O (Rt) No.5382/2020/Fin dated 18.09.2020 strictly complying with the provisions of Price Preference and Purchase Preference mentioned therein.

Sd/-
Preman Dinaraj
Chairman

Approved for issue,

C.R.Satheeshchandran
Secretary (i/c)

