

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

Notification

The 16th August, 2012

No. PSERC/Secy/Regu.71 In exercise of powers conferred on it under Section 91(4) read with Section 181 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling the Commission in this behalf, the Punjab State Electricity Regulatory Commission hereby makes the following Regulations, for Engagement of Consultants :

1. Short title

- i) These Regulations shall be called ‘The Punjab State Electricity Regulatory Commission (Engagement of Consultants) Regulations, 2012’.
- ii) These Regulations shall come into force with effect from the date of their publication in the Official Gazette of the Government of Punjab.

2. Definitions

- i) In these Regulations, unless the context otherwise requires;
 - a) ‘Act’ means The Electricity Act, 2003;
 - b) ‘Commission’ means the Punjab State Electricity Regulatory Commission;
 - c) ‘Consultant’ includes any individual, firm, company, body or association of persons
 - d) “Consultancy Evaluation Committee” hereinafter referred to as “CEC” means the committee constituted for evaluation of bids/applications;
 - e) ‘Officer’ means an officer of the Commission ;
 - f) ‘Secretary’ means the Secretary of the Commission and;
 - g) “Secretariat” means secretariat of the Commission;
- ii) Words or expressions occurring in these Regulations, and not specifically defined herein, shall bear the same meaning as in the Act.

3. Engagement of Consultants

- (A) Consultant(s) may be engaged by the Commission from time to time for the purposes, namely,—
 - (i) providing expert advice on issues of relevance and interest to

the Commission;

- (ii) conducting study of best practices, analyzing data, developing benchmarks, or for any other similar purpose;
- (iii) performance of tasks requiring specific experience and qualifications which in the opinion of the Commission, the engagement of consultant can be a more efficacious and efficient method of completing the task in terms of quality, time or for any other consideration; and
- (iv) performing such other functions and for generally assisting the Commission in the performance of its functions, if the Commission consider it necessary

(B) Period of engagement

Consultant(s) shall be engaged for the period as decided by the Commission.

(C) Consultancy Evaluation Committee

Consultancy Evaluation Committee shall be constituted by the Commission for evaluation of bids/applications as per the criterion approved by the Commission

4. Categorisation of Consultants

Consultants shall be categorized as:

- (a) Corporate consultants,
- (b) Individual consultants, and
- (c) Staff Consultant.

(a) Corporate Consultants

The Commission, on being satisfied that there is a need for availing consultancy services which, in its opinion, may be more appropriately provided by a firm, or a company or an association or body of persons, shall engage corporate consultant.

(b) Individual Consultants

The Commission, on being satisfied that there is a need for availing consultancy services which in its opinion can be more efficiently performed by an individual, having qualification and experience considered essential for an assignment may decide to engage an individual consultant.

(c) Staff Consultant

The Commission, on being satisfied that there has been an increase in the quantum of work of the Commission, or difficulties arising in filling regular

posts, may decide to engage a Staff Consultant in expediciencies of work, to assist the Commission in discharge of their functions effectively.

5. Procedure to engage Consultants

(A) Corporate Consultants

- (i) The ‘Terms of Reference’ (TOR) for the ‘Engagement of Consultants’ for specific tasks will be approved by the Commission.
- (ii) The Commission may decide either to invite combined technical and financial proposals, or separate technical and financial proposals.
- (iii) The Commission shall in each case stipulate the minimum qualifying marks for the technical bid.
- (iv) After approval of the TOR by the Commission, the Secretary will cause the request for Proposals to be issued inviting proposals, and ensuring that appropriate publicity is given in each case, which shall normally be through advertisement, in at least two national Newspapers.
- (v) In addition, ‘Request For Proposal’ may also be issued to a panel of Consultants of standing, as approved by the Commission from time to time.
- (vi) The fee shall be deemed to include all the Consultant’s cost, expense and profits as well as any tax obligations (Income, Service and any others) of the Consultant.
- (vii) Fees will be paid, subject to Commissions certificate of satisfaction, and after making statutory deductions as per law.

(B) Individual Consultants

- (i) Individual Consultants shall be selected on the basis of their qualifications for the assignment.
- (ii). Applications shall be invited by publishing notice on the Commission's website and in two national newspapers by giving, a period of at least two weeks for making applications by interested persons
- (iii) Evaluation shall be on the basis of academic background, relevant experience and appropriate technical knowledge, knowledge of local conditions, administrative systems and concerned organizations.

- (iv) The individual consultant may be categorized based on the qualification and length of experience and offered fee or monthly emoluments as may be decided by the Commission.
- (v) The fee/emoluments determined shall be deemed to include all the Consultant's cost, expense and profits as well as any tax obligations (Income, Service and any others) of the Consultant.
- (vi) Fees/emoluments will be paid after making statutory deductions as per law.

(C) Staff Consultants

- (i) Applications shall be invited by publishing notice on the Commission's website and in two national newspapers by giving, a period of atleast two weeks for making applications by interested persons.
- (ii) Before publishing the notice, the qualifications and experience requirements shall be identified by the Commission keeping in view the job profile of the post.
- (iii) Evaluation shall be on the basis of academic background, relevant experience and appropriate technical knowledge, knowledge of local conditions, administrative systems and concerned organizations.
- (iv) The Staff Consultant may be categorized based on the qualification and length of experience and offered monthly emoluments as may be decided by the Commission.
- (v) The emoluments determined shall be deemed to include all the Consultant's cost, expense and profits as well as any tax obligations (Income, Service and any others) of the Consultant.
- (vi) Emoluments will be paid after making statutory deductions as per law.

“Provided that in the matter of urgent nature where rapid selection is essential and where the fee payable does not exceed Rs. Five lac in each case, the Commission may avail consultancy services of consultant (s) as mentioned above on the basis of single sourcing”.

6. Scope of Work

(A) For Corporate Consultants

- (i) The ‘Terms of Reference’(TOR) would specify the exact nature of the tasks to be undertaken by the Consultant, the time allowed for completion of each task,

the services and surveys necessary to carry out the assignment and the specific outputs and Deliverables that are to be provided by the Consultant in relation to each task.

- (ii) If transfer of knowledge, or training to staff is a task envisaged, then the TOR will list the details of staff to be trained.
- (iii) Detailed terms of engagement will be drawn up in each case and agreed to between the Consultant and the Commission prior to award of Contract for consultancy. Contract shall incorporate said details of engagement as far as possible as per 'Model Contract' at Annexure I of these Regulations.

(B) For Individual Consultants

- (i) To provide consultancy services for task requiring specific experience, qualification and expertise.
- (ii) To assist the Commission in performing its functions as may be decided by the Commission.
- (iii) Conducting study, collecting/analyzing data, preparing reports and/or jobs of similar nature.

(C) For Staff Consultant

- (i) To assist the Commission in discharge of its functions.
- (ii) To assist the Commission in expediencies of work.

7. Conflict of Interest

- (i) Consultant shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients that may place them in a position of not being able to carry out the assignments objectively and impartially.
- (ii) The Consultant, or any entity affiliated with the Consultant, engaged by the Commission shall in no case represent or give opinion or advice to other stakeholders in any matter which is adverse to the interest of the Commission. This would constitute a 'material breach of Contract'.

8. Obligations and Liability

(A) For Corporate Consultants

- (i) The Consultants obligation shall be to provide the Services and Deliverables (agreed to and specified in the Contract at Schedules A, C and D) to the Commission within the time period provided in the Contract, except in the case of any 'Force Majeure Events'. Slippage in the Consultants' submission of Deliverables beyond period of (30) days past the due date shall constitute a 'material breach of Contract'.
- (ii) The Consultants obligation shall be to provide the services (Schedule-C of the Contract) through the team of personnel stipulated therein (Schedule-B of the Contract) because the experience, qualification and Curriculum Vitae (CV) of the said personnel is fundamental to the technical evaluation of the tender, which is the basis for award of Contract. Change in team composition, task assignment, or person-day efforts contracted without written approval of the Commission shall constitute a 'material breach of Contract'.
- (iii) The Commission may, in their discretion, terminate the Contract or a part thereof in the event of the Consultant failing to meet the aforesaid obligations. In case of such defaults the Commission shall be at liberty to get the work completed from any other agency at the 'risk and cost' of the Consultant. Given that any such mid-term termination could entail higher costs than contracted, any enhanced costs would be covered by the 'risk and cost' liability.
- (iv) 'Force Majeure Events' shall include, without limitation, the following events to the extent that such events or their consequences qualify as per the standard set out above:
 - (a) any events beyond the reasonable control of the Consultant, natural disasters or other acts of God; including but not limited to earthquake, cyclone, flood, storm, war, terrorist attack, civil commotion or other similar occurrence.
 - (b) any change in law including any legislation, sub-ordinate or delegated legislation, rules, regulation, directive, order, notification, exemption

- or any interpretation thereof duly issued/promulgated in exercise of lawful authority, after the date hereof adversely affecting the performance by the Consultants of its obligations hereunder, or
- (c) any event or circumstance of a nature analogous to any of the foregoing.

(B) For Individual & Staff Consultants

- (i) The consultant's obligation shall be to provide the Services and Deliverables to the Commission within the time frame as per the terms & conditions of appointment.
- (ii) The Commission may, in its discretion, terminate the appointment with 30 days notice.

9. Confidentiality

The Consultant, or any entity affiliated with the Consultant, shall not disclose to any unauthorized person any information and data that may be supplied to him by the Commission or by any other organization, under the directions of the Commission. All such documents shall be the property of the Commission or any information that may have come to his knowledge directly or indirectly by virtue of the assignment.

10. Intellectual Property Rights

- (i) The copyright of all the reports, data or other materials (Deliverables) shall belong to the Commission.
- (ii) Without the express written consent of the Commission, a Consultant engaged by the Commission shall not utilize, publish, disclose, or part with any information collected for the Commission and shall be duty bound to hand over the entire record of the assignment to the Commission before the expiry of the Contract.

11. Duty of care and Performance Standards

- (i) The Consultant shall perform the services contracted with the highest standards of professional and ethical competence and integrity and shall furnish its independent professional opinion.
- (ii) The Corporate Consultant shall promptly replace any employee assigned under a contract awarded under these Regulations that the Commission considers

unsatisfactory. Any such replacement shall be with express approval of the Commission, and shall be by personnel of comparable qualifications and experience.

12. Termination of Contract in case of Corporate Consultants

- (i) The Commission may terminate a Contract to which these Regulations apply if;
 - (a) the Consultant commits any material or persistent breach of Contract (which, in the case of a breach capable of remedy, is not remedied within the period specified in the notice after receipt of notice of material breach of contract by consultant) ; or
 - (b) the Consultant becomes insolvent
 - (c) the Commission exercises its discretion to terminate services under Regulation 8 hereof.
- (ii) Termination shall be effected by written notice served on the Consultant and will take effect on any date as far as possible not less than seven days from the date of delivery of such notice.
- (iii) The termination will be, without prejudice to either party's rights accrued before termination as per the Contract, but subject to Commissions certificate of satisfaction with Deliverables submitted before termination.

13. Dispute Resolution

In case of any differences or disputes between the parties arising out of contracted agreement, it shall be referred for arbitration to a person nominated by the Commission. The proceedings shall be subject to the Arbitration and Conciliation Act 1996, as amended from time to time.

14. Power to Relax

The Commission may, for reasons to be recorded in writing, relax any of the provisions of these Regulations not being inconsistent with the provisions of the Act.

15. Saving of Inherent Power of the Commission

Nothing in these provisions shall bar the Commission from adopting a procedure which is at variance with any of the provisions of these Regulations,

if the Commission, in view of the special circumstances of the matter or class of matters, and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure stipulated in these Regulations.

16. General Power to Amend

The Commission may, at any time and on such terms as it may deem fit, amend any of these Regulations for the purpose of meeting the objectives with which these Regulations have been framed.

17. Repeal and Saving

- (i) The Punjab State Electricity Regulatory Commission (Engagement of Consultants) Regulations, 2005, as amended from time to time, shall stand repealed from the date of commencement of these Regulations.
- (ii) Notwithstanding such repeal, anything done or purported to have been done under the repealed regulations shall be deemed to have been done or purported to have been done under these regulations.

BY ORDER OF THE COMMISSION

Secretary to Commission

ANNEXURE- I

‘MODEL CONTRACT’ FOR ENGAGEMENT OF CONSULTANTS

This Contract (“Contract”) is entered into this the ___ day of ___ by and between PUNJAB STATE ELECTRICITY REGULATORY COMMISSION, (hereinafter referred as the “Client” and abbreviated as PSERC) having its principal place of business at SCO 220-221, Sector 34-A, Chandigarh and _____(hereinafter referred as the “Consultant” and abbreviated as _____ having its principal office located at _____.

WHEREAS, the Client wishes to have the Consultant perform the services hereinafter referred to, and

WHEREAS, the Consultant is willing to perform these services,

NOW THEREFORE THE PARTIES hereby agree as follows:

1. Services

(i) Subject to the provisions of Punjab State Electricity Regulatory Commission (Engagement of Consultants) Regulations, 2012 as amended from time to time and terms and conditions of this agreement, the Client hereby appoints the Consultant and the Consultant hereby accepts the appointment to perform the services specified at **Schedules –A,C,&D** : “**Consultant’s Scope of Work**”: Responsibilities of Consultants, Approach, Methodology and Work Plan, “**Consultant’s Services**”: Schedule of Activities, Services and Deliverables, “**Consultants Schedule for Training of Staff**”, respectively, which schedules are made an integral part of this Contract (“**the Services**”).

(ii) The Consultant shall provide the personnel listed in **Schedule-B**, “Consultant’s Personnel,” to perform “the Services” contracted. Any change of personnel from those listed in the **Schedule-B**, which is made an integral part of this Contract, shall be only with the consent and approval of the Commission, failing which, such an Act will be construed as a material breach of the terms of this Contract.

(iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in **Schedule-C**, Schedule of Activities and Deliverables.

(iv) The Consultant shall share/ transfer its entire methodology, models and technical material required for the purpose of “**the Services**” contracted.

2. Term

The Consultant shall perform “**the Services**” during the period commencing _____and continuing through such period till scope of work is completed or any other period as may be subsequently agreed by the parties in writing.’

3. Payment

(A) The Client shall pay the Consultant an amount not to exceed Rs. _____ (Rs. _____only) subject to Tax Deduction at Source under the Income Tax Act. This amount shall be inclusive of all of the Consultant’s costs and profits as well as any tax obligations (Income, Service and any other) of the Consultant.

(B) Schedule of Payment: The schedule of payment is specified in **Schedule-E**, which is made an integral part of this Contract.

4. Project Administration

A. Consultant Liason

- (i) In order to provide effective and efficient services to PSERC, which would involve close interaction with the Members of the Commission, the Consultant would dedicate its Staff Members to PSERC as per Contract. Such personnel would have to visit Chandigarh or other stations in the State of Punjab at appropriate intervals for strategic directions and discussions with the Commission, or participation in Public hearings of the Commission etc.
- (ii) The number of person-day efforts to be devoted by each team member, for the task assignment agreed to in **Schedule B and C** of this Contract should be strictly adhered to, subject to necessary variation only with the written approval of the Commission.

B. Reports

The reports listed in **Schedule-C**, Schedule of Activities and Deliverables shall be submitted in course of the assignment in seven copies and the Commission's certificate of satisfaction will be obtained thereon. This shall then constitute the basis for the payments to be made under paragraph 3-B.

C. Monitoring

The Consultant shall perform the activities under the Contract under the guidance and advice of the Commission. The reports/advise, invoices for payments etc, are to be submitted by the Consultant directly to the Commission.

D. Clients Provision of Local Resources

The Client shall not be liable to pay any amount except as has been expressly stipulated in this Contract. In addition, the Client shall provide necessary office accommodation with furniture, telephone (Outstation calls to be paid by the Consultant) etc. One computer along with a printer and photocopier machine shall be allowed to be used by the Consultant.

5. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity and shall furnish its independent professional expert opinion. The Consultants shall promptly replace any employee assigned under this Contract that the Client considers unsatisfactory. Any replacement of team offered will be with express consent of Commission and be of like qualifications and experience. Commission's certificate of satisfaction will be obtained on all reports and Deliverables before release of payments specified in **ScheduleE**

6. Confidentiality

The Consultants shall not, during the term of this Contract and after its expiration disclose any proprietary or confidential information relating to the services; this Contract or the Client's business or operations without the prior written consent of the Client.

7. Ownership of Material

Any studies reports or other material, graphic software or otherwise, prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software but shall not except with prior approval of client, use for any purpose other than the work of the Commission.

8. Consultant not to be engaged in Certain Activities.

The Consultant, or any entity affiliated with the Consultant, engaged by the Commission shall in no case represent or give opinion or advice to other stakeholders in any matter which is adverse to the interest of the Commission. This would constitute a material breach of Contract.

9. Insurance

The Consultant will be responsible for taking out any appropriate Insurance coverage to cover its risk and costs.

10. Termination

The Commission may, in their discretion, terminate the Contract or a part thereof in the event of the Consultant failing to meet the contracted obligations or any material breach of Contract (Regulation 7, 8 and 12 of the PSERC (Engagement of Consultants) Regulations, 2012. In case of such defaults the Commission shall be at liberty to get the work completed from any other agency at the risk and cost of the Consultant. Given that any such mid-term change of Consultants could entail higher costs, such enhanced costs would be covered in such risk and cost liability.

11. Dispute Resolution

Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration as per Regulation 13 of the PSERC (Engagement of Consultants) Regulations, 2012.

12. Law Governing Contract and Language

The Contract shall be governed by the laws prevalent in the Union Territory of

Chandigarh and the language of the Contract shall be English.

FOR THE CLIENT

FOR THE CONSULTANT

Signed by

Signed by

Title:

Title:

List of Schedules

- Schedule-A: **Consultant's Scope of Work:** Responsibilities of Consultants, Approach, Methodology and Work Plan.
- Schedule -B: **Consultant's Personnel:** Personnel, Task assignment and Person-day efforts.
- Schedule -C: **Consultant's Services:** Schedule of Activities, Services and Deliverables.
- Schedule -D: **Consultants Schedule for Training of Staff**
- Schedule -E: **Schedule of Payment.** 50% in Installments linked to receipt of Deliverables subject to Commissions certificate of satisfaction and 50% on satisfactory completion of task for which engaged