



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

ASSAM ELECTRICITY REGULATORY COMMISSION

NOTIFICATION

Dated the 6th January, 2015

TERMS AND CONDITIONS OF APPOINTMENT OF CONSULTANTS REGULATIONS, 2014

No. AERC.157/2005/Part-I/15: In exercise of the powers conferred under section 91(4) read with Section 181 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, and after previous publication, the Assam Electricity Regulatory Commission hereby makes the following Regulations:-

REGULATIONS

1. Short Title, extent and Commencement

- 1.1. These Regulations may be called the “Assam Electricity Regulatory Commission (Terms and Conditions of Appointment of Consultants) Regulations, 2014”.
- 1.2. These Regulations shall extend to the whole of State of Assam.
- 1.3. These Regulations shall come into force from the date of their publication in the official Gazette of the Government of Assam.

2. Definitions

- 2.1. In these Regulations, unless the context otherwise requires –
 - i. “Bidder” refers to a person or firm who submits its proposal for the appointment by the Commission as its Consultant;
 - ii. “Chairperson” means, the Chairperson of the Commission;

- iii. "Commission" means the Assam Electricity Regulatory Commission referred to in Section 82 of the Electricity Act, 2003 (36 of 2003);
 - iv. "Consultant" includes any individual, firm, body or association of persons, not in the employment of the Commission, who or which possesses or has access to any specialized knowledge, experience or skill on the matter relating to the Electricity Regulatory Commission;
 - v. "Consultancy Evaluation Committee" hereinafter referred to as "CEC" means the committee constituted under Regulation 6,7 or 8, as the case may be;
 - vi. "Secretariat" means secretariat of the Commission;
 - vii. "Secretary" means the Secretary of the Commission;
- 2.2. Words or expressions occurring in these Regulations and not defined herein but defined in the Act shall have the meanings assigned in the Act.

3. Scope of Work

- 3.1. Consultants shall not normally be appointed for routine day-to-day work for which in-house facility is available.
- 3.2. Consultants may be engaged for the following purposes, namely-
 - i. providing expert advice on specific issues of relevance and interest to the Commission,
 - ii. conducting study of best practices, analysis and interpretation of data, developing benchmarks, or for any other similar purpose, and
 - iii. performance of tasks requiring experience and qualifications which are either not available within the Commission or, in the opinion of the Commission, the engagement of consultant shall be a more efficacious and efficient method of completing the task in terms of quality, cost, time or for any other consideration.
 - iv. assisting the Commission in performing their functions, if the Commission is satisfied that there has been increase in quantum; of work in the Commission or regular posts could not be filled due to various constraints

4. Categorisation of Consultants

Consultants shall be categorized as:

- i. Corporate consultants.
- ii. Individual consultants.
- iii. Staff Consultant.
- iv. Professional experts.

5. Corporate Consultants

- 5.1. 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 registered firm, or a company or an association or body of persons, shall direct the Secretariat to prepare the terms of reference indicating the scope of the work, various deliverables, milestones and the schedule of payments linked to achievement of each milestone.

- 5.2. The Chairperson shall constitute the CEC headed by a Member of the Commission to be nominated by the Chairperson and shall include the Secretary, Internal Financial Officer, an officer having knowledge in the area of work for which the consultancy services are to be obtained and, if considered necessary, an external expert, as may be nominated by the Chairperson.
- 5.3. The CEC shall, after necessary modification, if any, obtain approval of the Chairperson for the terms of reference for engagement of a corporate consultant.
- 5.4. The CEC, shall decide the weightage to be allocated to each of the parameters for the purpose of evaluation of bids, allocating at least 70% weightage to technical parameters and obtain the approval of the Chairperson for the weightage proposed.
- 5.5. After finalizing the weightages under clause (5.4), the CEC shall invite single stage bids, containing technical and financial proposals in separate sealed envelopes, through publication of notice in at least two daily newspapers (one English and one Assamese) and also on the Commission's website giving, as far as possible, a notice of not less than three weeks:
- 5.6. The CEC shall evaluate the bids through 'Combined-Quality-Cum-Cost-Based System' based on the pre-determined weightages allocated to each of the parameters:

Provided that the CEC shall not proceed with evaluation of bids, unless at least three valid bids have been received. Rebid may be considered after evaluation of first bid.

Provided further that the condition of three valid bids may be relaxed with the prior approval of the Chairperson in case the adequate number of bids are not received.
- 5.7. The corporate consultant shall be engaged after obtaining approval of the Chairperson.
- 5.8. Notwithstanding anything contained in this regulation, in matters of urgent nature and involving financial commitment not likely to exceed Rs. ten lakh, the Commission may avail consultancy services of a corporate consultant on the basis of single sourcing through negotiation.

6. Individual Consultants

- 6.1. 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 and direct the Secretariat to prepare the terms of reference indicating the scope of the work, milestones to be achieved, the schedule of payments linked to achievement of each milestone and the experience and qualification required for obtaining consultancy services.
- 6.2. The CEC shall be constituted with the approval of the Chairperson and shall be headed by a Member of the Commission to be nominated by the Chairperson and shall include the Secretary, Internal Financial officer and an officer of the Commission having knowledge in the area of work for which consultancy services are to be obtained.

- 6.3. The CEC shall after necessary modification, if any, obtain approval of the Chairperson for the terms of reference for engagement of individual consultant,
- 6.4. The CEC shall call for applications through publication of notice in at least two daily newspapers (one English and one Assamese) and on the Commission's website giving, as far as possible, a period of at least three weeks for submission of applications.

Provided that in matters of urgency, the period of notice may be reduced to less than three weeks but shall not be less than two weeks, as may be decided with the approval of the Chairperson.

- 6.5. Based on the applications received, the CEC shall, by awarding marks for the educational qualifications and experience and the performance in interview, if any, held, prepare a panel of 3 persons, indicating the order of merit, for appointment as consultant, having regard to, but not limited to, the following, namely,-
 - i. Academic background,
 - ii. Experience,
 - iii. Knowledge of the working environment such as language, administrative system, and other relevant factors:

Provided that the CEC shall, while preparing the panel consider the profile of atleast three candidates:

Provided further that the condition of three candidates may be relaxed with the prior approval of the Chairperson, if the responses from sufficient number of candidates are not received.

- 6.6. The candidate (from the panel prepared by the CEC) approved by the Chairperson shall be engaged as individual consultant.

7. Staff Consultant

- 7.1. 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 and direct the Secretariat to take further steps.
- 7.2. The Secretariat shall invite applications by publishing notice in at least two daily newspapers (one English and one Assamese) and in the Commission's website and by giving, as far as possible, a period of two weeks for making applications by interested persons.
- 7.3. Before publishing the notice, the Secretariat shall identify the qualification and experience requirements keeping in view the relevant provisions of the Commission's Regulations governing the recruitment against regular posts.
- 7.4. The Staff Consultant may be categorized based on the qualification and length of experience and offered consolidated fee ranging from ₹20,000/- per month (for a fresh candidate) to ₹70,000/- per month (for a candidate having 15 years or more experience). The fees indicated in this clause shall stand revised at the end of every

year with an escalation of 10%. In deserving cases additional remuneration not exceeding 25% of the fees indicated above may be granted. The escalation will be considered depending on the efficiency of the Consultant.

- 7.5. The Chairperson shall constitute the CEC comprising the Secretary, Internal Financial officer, and an officer having knowledge in the area of work for which the consultancy services are to be obtained. In cases where the Staff Consultant proposed to be engaged is equivalent to the post of Chief of a Wing, the CEC shall be headed by a Member of the Commission. The CEC shall interact with the candidates and, recommend names of suitable persons for engagement as Staff Consultants and the fee to be paid for approval of the Chairperson.
- 7.6. In case the Staff Consultant is a retired Government servant, his consolidated fee should be the last salary drawn in service minus pension. The escalation will be considered as per Regulation 7.4 depending on the efficiency of the Consultant.
- 7.7. Maximum age of Staff Consultant at the time of application should be 62 years.

8. Professional Experts

- 8.1. The Chairperson, on being satisfied for the need, may decide to engage a professional for advice on an issue of urgent nature.
- 8.2. On the Chairperson so deciding, the Secretariat shall formalize the proposal and prepare a list of not less than two professionals having the requisite expertise in the field, his willingness to accept consultancy work and the fee demanded by each of them.
- 8.3. The Chairperson may approve the name of the expert for engagement as consultant/expert on payment of such fee and on such other terms as may be considered appropriate: Provided that the fee so decided shall not exceed Rupees ten lakh for an individual item of work.

9. Appointment of Corporate and Industrial Consultant

- 9.1. The appointment of Consultants may be made on the basis of evaluation of a competitive proposals submitted by the Bidders in accordance with Annexure 'A' in response to a Request for Proposal circulated by the Secretary.
- 9.2. Terms of contract
 - 9.2.1 The terms of contract shall be agreed at the time of appointment of the Consultants and prior to the commencement of work.
 - 9.2.2 The terms of contract shall provide for:
 - i. the scope of the work to be undertaken by the Consultant;
 - ii. the fees for the engagement;
 - iii. the deliverables to be provided by the Consultant; and

iv. the standard terms and conditions governing the engagement as provided in Annexure B.

9.2.3 The scope of work for the engagement shall be as laid down by the Commission in the contract:

Provided that the scope of work shall be based on the Request for Proposal circulated by the Commission and the proposal submitted by the Consultant:

Provided however that where the Commission amends or alters the scope of work at any time before the signing of the contract, the Commission may, at its discretion and having regard to the nature of such amendment/alteration either so amend or alter the scope of work in the contract and mutually agree on the additional fees or savings therein with the Consultant or cancel the engagement and invite fresh proposals:

Provided further that where the Commission amends or alters the scope of work after signing the contract, the additional fees and charges or savings therein shall be mutually agreed between the Commission and the Consultant.

9.2.4 The fees for the engagement may include-

- i. a retainership fee to be paid to the Consultants over the duration of the engagement;
- ii. consultancy fees payable on completion of specified milestones identified in the contract;
- iii. charges for out-of-pocket expenses.

10. Other Conditions (Applicable for all category of Consultant)

10.1. The Consultants appointed by the Commission shall in no case represent or give opinion or advice to others in any matter which is adverse to the interest of the Commission.

10.2. Without the express written consent of the Commission, a Consultant appointed by the Commission shall not utilize, publish, disclose, or part with any information collected for the Commission and the Consultant shall be duty bound to hand over the entire record of the assignment to the Commission before the expiry of the contract.

10.3. The Commission shall be the final authority for interpretation of these Regulations.

10.4. Consultants shall not be hired for any engagement that would be in conflict with their prior or current obligations to other clients or that may place them in a position of not being able to carry out the engagements objectively and impartially.

11. Period of engagement

The duration of first appointment of Consultant shall not exceed three years. However, the Commission may extend such contractual arrangement from time to time for a period not exceeding one year at a time up to maximum age of 65 years for Staff Consultant as and when necessary.

12. Vacancy in Office of Chairperson

In case of vacancy in the office of Chairperson, the powers exercisable by the Chairperson under these regulations, may be exercised by the senior-most Member of the Commission.

13. Power to relax

The Commission may, for reasons to be recorded in writing, relax any of the provisions of these Regulations."

14. General power to amend

The Commission may at any time and on such terms as it may think fit amend any provision of these Regulations for the purpose of achieving the objectives for which these Regulations have been framed.

15. Power to remove difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations the Commission may, by general or special order do anything, not being inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulties.

16. Repeal and Saving

16.1. Save as otherwise provided in these regulations, the Assam Electricity Regulatory Commission (Terms and Conditions of Appointment of Consultants) Regulations, 2005 shall stand repealed from the date of commencement of these regulations.

16.2. 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)

S.K. ROY,
Secretary,
Assam Electricity Regulatory Commission

ANNEXURE-A***Evaluation of Competitive Proposals of Bidders*****1. Request for Proposal**

- (1) The Secretary shall circulate the Request for Proposal to the Bidders who are invited by the Commission to submit their proposals.
- (2) The Request for a Proposal shall include the following :—
 - (a) A letter of invitation stating the intention of the Commission to :
 - (i) appoint a Consultant for the provision of consulting services;
 - (ii) enter into a contract with regard to the same, and
 - (iii) the date, time and address for the submission of proposals.
 - (b) Information to Consultants including, inter alia, the following:
 - (i) the objectives and scope of the engagement;
 - (ii) expected deliverables from the Consultants;
 - (iii) expected time period of the engagement, where required;
 - (iv) evaluation criteria to be followed by the Commission;
 - (v) form and manner for submission of proposal;
 - (vi) standard terms and conditions of the engagement as under Annexure B.

2. Conditions for Bidder

- (1) The Bidder would be required to provide details of the qualified manpower that he would commit to perform the work indicated in the Request for Proposal.
- (2) The Bidder shall provide a clear outline of its recent experience on assignments of the nature which is similar to the work indicated in the Request for Proposal.
- (3) The Bidder shall make such disclosures as may be required to ascertain that the Bidder has no conflict of interest in undertaking the assignments indicated in the Request for Proposal.
- (4) The Bidder shall be required to provide an undertaking that during the tenure of the contract, if awarded by the Commission, the professional staff assigned for the work indicated in the Request for Proposal shall not be changed without the prior consent of the Commission.

3. Evaluation of proposals

- (1) Proposals shall be evaluated both on the basis of quality as well as cost.
- (2) The Commission shall have the right to reject any proposal that is found to be unresponsive or unsuitable due to its deficiency in complying with the Request for Proposal.

Provided that the Commission may call for additional or such information that may be required to consider a proposal.

ANNEXURE-B***Standard terms and conditions of contract*****1. Introduction**

These terms should be read in conjunction with the relevant contract which will set out the details of the work and which will take precedence over these terms in the event of any inconsistency.

2. Confidentiality

2.1 The Consultants will keep all information obtained from the Commission, in whatever form, as strictly confidential and shall not disclose it to third parties, other than the persons directly employed or engaged by the Consultants in performance of the contract, without prior written consent of the Commission.

2.2 The foregoing obligations shall not apply to any information which :

- (i) Is in the public domain at the time of disclosure or later becomes part of public domain without breach of the confidentiality obligations; or
- (ii) Was known to the Consultants prior to its disclosure; or
- (iii) Is disclosed to the Consultants by a third party without breach of any obligation of confidentiality owed to the Commission; or
- (iv) Is required by law, court or government agency to be disclosed.

3. Payment terms

The Consultants will render periodic fee invoices to the Commission and the Commission shall endeavour to pay the fees within 90 days of receipt of the invoice.

4. Duty of care

The Consultants will not owe duty of care to any person apart from the Commission for the work performed under the contract.

5. Intellectual Property Rights

Where the engagement requires the Consultants to deliver reports or other materials ("Deliverables") to the Commission the copyright in such Deliverables will belong to the Commission on completion of the engagement.

6. Consultants' liability

6.1 The Consultants obligation is to provide the Deliverables to the Commission within the time period provided in the contract, except in the cases of any Force Majeure Events.

6.2 Except in the cases of any Force Majeure Events, in the event of slippage in the Consultants' submission of Deliverables beyond a period of thirty (30) days beyond the due date, the Commission may, in their discretion, terminate the engagement or a part thereof. Any such termination shall be subject to acceptance of all completed deliverables as per commitments made in terms of the contract.

For the purposes of the aforesaid clauses the term Force Majeure and Force Majeure Events are as defined below:

Force Majeure.

- 6.3 Force Majeure shall mean any event or circumstance, or combination of events or circumstances that materially and adversely prevents or delays the Consultants in the performance of their obligations in accordance with the contract, but only if and to the extent that such events and circumstances are not within the Consultants' reasonable control (directly or indirectly), and the effects of which the Consultants could not have prevented.

Force Majeure Events.

- 6.4 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:
- (i) any natural disasters or other acts of God;
 - (ii) acts of war; or
 - (iii) any change in law including any legislation, sub-ordinate or delegated legislation, rule, 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
 - (iv) any event or circumstance of a nature analogous to any of the foregoing

7. Termination of Agreement

- 7.1 The Commission may terminate a contract to which these Terms apply if:
- (i) the Consultant commits any material or persistent breach of its obligations under the contract (which, in the case of a breach capable of remedy, shall not have been remedied within 30 days of receipt or within the time stipulated in the contract which ever is less); or
 - (ii) the Consultant becomes insolvent; or
 - (iii) the Commission exercises its discretion to terminate the services under clause 6 hereof.
- 7.2 Termination shall be effected by written notice served on the other and will take effect on any date as far as possible not less than seven days from the date of delivery of such notice. The termination will be without prejudice to either party's rights accrued before termination.

8. Governing law

The contract shall be governed by and construed in accordance with the laws of the Republic of India.

9. Any dispute which may arise between the parties with regard to the Terms and Other Conditions will be decided within the territorial jurisdiction of the Courts at Guwahati.