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NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC.

TAMIL NADU ELECTRICITY REGULATORY COMMISSION CHENNAI

APPOINTMENT OF CONSULTANTS REGULATIONS

Notification No TNERC/ ACR / 3 / 2, Dated 8.1.2004

In exercise of powers conferred on it by sub section (4) of section 91 of the Electricity Act 2003 (Act 36 of 2003) the Tamil Nadu Electricity Regulatory Commission hereby makes the following Regulations. These Regulations supersede " Tamil Nadu Electricity Regulatory Commission – Appointment of Consultants Regulations 2002" published in notification No TNERC / ACR/ 3 / 1 / dated 5.7.2002in the Gazette dated July 17, 2002.

- 1 (i) These Regulations may be called the "Tamil Nadu Electricity Regulatory Commission - Appointment of Consultants Regulations, 2004"
(ii) These Regulations shall come into force on the date of their publication in the Tamil Nadu Government Gazette.

Short title and commencement

- 2 (1) In these Regulations unless the context otherwise requires -
 - (a) "Act" means, Electricity Act 2003.
 - (b) "Commission" means the Tamil Nadu Electricity Regulatory Commission.
 - (c) "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.
 - (d) "Officer" means an officer of the Commission.
 - (e) "Secretary" means the Secretary of the Commission.

Definitions

(2) Words or expressions occurring in these Regulations and not defined herein but defined in the Act shall bear the same meaning as in the Act.

- 3 (1) Consultants will not be normally appointed for routine day to day work for which staff is available.
(2) Consultants would be engaged for executing specialized tasks for which skills are either not available within the staff of the Commission or where the nature of job is specific and time bound.

Scope of Work

(3) Detailed terms of engagement will be drawn up in each case and agreed to between the Consultant and the Commission prior to award of consultancy.

(4) The terms of engagement would specify the exact nature of the tasks to be undertaken by the Consultant, the time allowed for completion of each task and the specific outputs that are to be provided by the Consultant in relation to each task.

4 Consultants will be engaged for the minimum period required. In no case will the maximum period of engagement exceed one year at a time.

Period of engagement

5 (1) Individual consultants will be categorised into three groups based on their expertise and experience, as per the table given below:-

Categorisation of Consultants

| <u>Category</u> | <u>Minimum Professional Qualifications</u> | <u>Minimum Professional Experience</u> |
|------------------------|---|---|
| Advisers | Ph.D or Master Degree | 15 years with Ph.D or 20 years with Master Degree |
| Sr. Consultants | Ph.D or Master Degree | 8 years with Ph.D or 15 years with Master Degree |
| Consultants | Ph.D. or Master or Bachelor Degree | 3 years with Ph.D or 10 years with Master Degree or 15 years with Bachelor Degree |
| Consultant Assistant | Master or Bachelor Degree | |

Note: In the case of Lawyers, Accountants and Engineers, the minimum educational qualifications will be the relevant professional qualification or its equivalent.

(2) The Commission may in appropriate case, for reasons to be recorded in writing, relax the minimum educational qualifications keeping in view the overall expertise and experience of the person being considered for engagement as Consultant in the specific area.

6 (1) When individuals are appointed as a Consultant for a specific purpose, a consolidated monthly payment on man-days basis or man-month basis shall be decided by the Commission depending on the merits of the individual on a case to case basis.

Fees & Other Charges

(2) In the case of institutionalized consultancy works, a consolidated fee at the rates decided by the consultancy contract would be payable for each category of individual Consultant.

(3) The consultants will work with the Commission at its headquarters. Where the Consultant has to incur expenditure on official travel and stay at a place away from the normal place of duty, the Commission will reimburse DA by allowing an additional expenditure in lump sum. The number of days on which this lump sum will be payable will be determined as appropriate in each case. The cost of travel will be separately reimbursed by an appropriate class of travel as decided by the Commission.

(4) These regulations regarding fees payable will also apply to former and retired Government servants engaged as Consultants.

(5) In the case of an institutional consultant the rates for different categories of individual consultants will be used to determine the reasonableness of costs allocated to consultant time in the proposal. In addition to the costs for consultant time a maximum of 10% of the fees payable will be allowable for overheads on account of office expenditure like telephone, photocopying, fax, expenses etc. The limit for contingency in the case of institutional consultant will be 10% of the fees payable for consultant time besides the amount allowed as overhead for office expenses. Such institutional consultants shall not be eligible for any leave of absence at the cost of the Commission.

(6) Individuals who are directly appointed by the Commission as Advisers/ Consultants etc., under these regulations for specific time periods on monthly basis, shall be eligible to avail the holidays applicable to the Commission employees. They shall also be permitted one day casual leave of absence in a month. Any absenteeism over and above shall be treated as leave on loss of emolument and deduction made on pro rata basis in the respective monthly emolument.

7 (1) Terms of Reference (TOR) for the appointment of Consultants for specific tasks will be prepared and approved by the Commission.

Appointment of
Consultants

(2) The Secretary will ensure that budgetary provision exists for the proposal prior to putting up the proposal for consideration by the Commission.

(3) The scope of the services described in the TOR shall be compatible with the available budget. The need for such an assignment will decide the scope of work.

(4) The Commission may decide either to invite combined technical and financial proposals or separate technical and financial proposals.

(5) The Commission will prescribe the minimum qualifying mark for the technical bid

(6) After approval of the TOR by the Commission, the Secretary will invite proposals from interested consultants, ensuring that appropriate publicity is given in each case. It will not however, be necessary to go through the process of issue of public advertisement particularly where the value of the fee is below Rs.2 lakh in each case.

8 The request for proposal shall include the following :-

Request for proposals

(a) A letter of invitation stating the intention of the Commission to enter into a contract for provision of a consulting services, the date, time and address for submission of proposals.

(b) Information to Consultants shall contain all necessary information that will help Consultants prepare responsive proposals by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum pre-qualification score.

(c) Terms of reference shall be prepared to define clearly the objectives, goals and scope of the assignment and provide background information including a list of existing relevant studies and basic data to facilitate the Consultants in preparation of their proposals. If transfer of knowledge, training is an objective the TOR will detail the number of staff to be trained. TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, surveys etc.) linked to each task in the TOR.

(d) Draft contract as per Proforma in Schedule 1.

9 (1) Enough time shall be allowed for the Consultant to prepare and submit their proposals. While the time allowed shall depend on the assignment, it will normally not be less than two weeks, during which period firms may seek clarifications about the information provided in the TOR.

Receipt of proposals

(2) The Commission may decide to extend the deadline for submission of proposals, as deemed appropriate by it.

(3) No amendments to the technical or financial proposals shall be accepted after the deadline except before a negotiating committee appointed by the Commission. The proposals shall be submitted in sealed cover. Where the Commission prescribes that separate technical and financial proposals are to be submitted, they shall be furnished in separate sealed envelope.

10 Proposals will be evaluated both on the basis of quality as well as cost. Where the Commission decides that proposals are to be evaluated separately on technical and financial basis, the evaluators of the technical proposal shall not have access to the financial proposals, until the technical evaluation is completed.

Evaluation of proposals

11 (1) Technical evaluation will be done by a committee nominated by the Commission taking into account the following criteria. Each criterion shall be marked on a scale of 1 to 100 and then the marks for each criteria shall be weighted to become average technical scores. Weights in the following ranges will be used by the technical committee with the approval of the Commission to calculate the weighted average technical score for each proposal :-

Technical Evaluation

| <u>Criterion</u> | <u>Range of Weights</u> |
|--|--------------------------------|
| The Consultants relevant experience for the assignment | 0.10 to 0.20 |
| The quality of the methodology proposed | 0.20 to 0.50 |
| The qualifications of the key staff proposed | 0.60 to 0.30 |
| The extent of transfer of knowledge to the staff of the Commission | 0.10 to 0.00 |

Note: The mix of weights approved by the Commission must total to 1

(2) Where the assignment depends critically on the performance of the key staff, the proposal shall be evaluated on the qualifications of the individuals proposed to be appointed using the following criteria:-

(a) *General qualifications:* General education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries etc.

(b) *Adequacy for the assignment:* Education, training, experience in the specific sector, field, subject and relevance to the particular assignment.

(c) *Regional Experience:* Knowledge of the administrative system, organization and culture at the local / regional level.

(3) After the technical evaluation is completed the Commission shall inform those Consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the terms of reference and their financial proposals will be returned unopened after completing the selection process. Simultaneously, those Consultants who have secured the qualifying marks shall be informed about the date and time for opening the financial proposals giving sufficient time for the Consultants to be present at the opening should they so desire.

12 (1) The financial proposals of the pre-qualified Consultants will be opened publicly. The proposed prices shall be read aloud and recorded by minutes of the public opening. Financial Evaluation

(2) The Secretary will cause a review of the financial proposals to be done. Arithmetical errors will be corrected. The cost will be converted to a single currency using uniform selling (exchange) rates.

(3) The proposal with lowest cost will be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.

e.g. Financial Score of Firm A = $100 \times LP / (QP)_A$

where LP = Lowest Price and

QP = Quoted Price of firm 'A'

13 (1) The total score shall be obtained by weighting the technical and financial scores and adding them. The weight for the financial score shall be as prescribed by the Commission in each case taking into account the complexity of the assignment and the relative importance of quality. However, the weight will never exceed 0.3 for the financial score in any case. Evaluation of financial and technical scores

(2) The Commission may appoint a negotiating committee to enter into both technical and financial negotiations. Financial negotiations can be entered into for any aspect of the financial proposal including the unit rates for staff months, contingency amounts; lump sum reimbursement of travel and living expenses and payment terms.

(3) The Commission may reject all proposals if they are found to be unresponsive or unsuitable either because they represent major deficiencies in complying with the TOR or they involve cost substantive higher than the original estimate or for any other reasons to be recorded in writing.

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|----|--|--|
| 14 | Single source selection shall be used only in exceptional cases where it is appropriate and represents a clear advantage because the tasks represent a natural continuation of previous work carried out by the Consultant, or where a rapid selection is essential, or for very small assignments on individual basis where the fee payable does not exceed Rs.2 lakhs in each case or where only one firm or an individual is qualified or has experience for the assignment | Single source selection |
| 15 | (1) Individual Consultants will be employed for assignments for which teams of personnel are not required, no additional outside (home office) professional support is required and where the experience and qualifications of the individual are the paramount requirement (2) Individual Consultants will be selected on the basis of their qualifications for the assignment. They may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the Commission. Capability will be judged on the basis of academic background, experience and as appropriate - knowledge of local conditions, administrative system and government organization. | Selection of individual Consultants |
| 16 | Consultants shall not be hired for any assignment 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 assignments objectively and impartially. | Conflict of interest |
| 17 | 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 prescribed in the regulations. | Saving of inherent power of the Commission |
| 18 | The Commission may at any time and on such terms as it may think fit amend any provisions of these Regulations for the purpose of meeting the objectives with which these Regulations have been framed. | General power to amend |
| 19 | 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. | Power to remove difficulties |

(By Order of Tamil Nadu Electricity Regulatory Commission)

**R. BALASUBRAMANIAN
SECRETARY**

SCHEDULE I

ARTICLES OF AGREEMENT made on this _____ day of _____ of year two thousand BETWEEN _____ of _____ of the one part and the Tamil Nadu Electricity Regulatory Commission (herein after called "the Commission") of the second part.

WHEREAS the Commission has engaged the party of the first part as a Consultant and the party of the first part has agreed, to provide the consultancy services to the Commission, on the terms and conditions hereinafter contained.

NOW THESE PRESENTS WITNESS and the parties hereto respectively agree as follows:

1. The party of the first part shall submit himself to the orders of the Commission and of the officers and authorities under whom he may from time to time be placed by the Commission
2. The party of the first part shall complete the assignment as contained in Annexure within a period of _____ commencing from _____
3. The party of the first part shall be paid as under :
4. The schedule of payments shall be as under :
5. No TA/DA shall be admissible to the party of the first part for local journeys in connection with the consultancy assignment.
6. The party of the first part 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
7. The party of the first part undertakes that this assignment shall not be in conflict with his prior or current obligation to other clients nor shall it place him in a position of not being able to carry out the assignments objectively and impartially
8. In case of any default on the part of the party of the first part in completion of the work within the time schedule agreed to between the parties as herein above, the Commission shall be at liberty to get the work completed from any other agency at the risk and cost of the party of the first part.
9. In case of any differences or disputes between the parties arising out of this Agreement, it shall be referred for arbitration of a person nominated by the Commission. The proceedings shall be subject to the Arbitration and Conciliation Act 1996, as amended from time to time.

10. The payment of fee to the party of first part shall be made by the Commission after the deduction of tax at source in accordance with law for the time being in force.

11. The Commission reserves its right to foreclose, terminate or cancel the engagement of the Consultant without assigning any reasons. In such cases party of the first part shall be paid remuneration after taking into consideration the part of work completed prior to such foreclose, termination or cancellation of the engagement as may be decided by the Commission, and the decision of the Commission shall be conclusive and binding. The remuneration so fixed and paid shall be deemed to be the final payment in such cases.

12. In respect of any matter for which no provision has been made in this agreement, the provisions contained in the general instructions of the Government on the subject of engagement of consultants shall apply.

In witness whereof the party of the first part and _____ to the Commission on behalf of the Commission have hereto put their hands the day and the year first above written.

Signed by _____ the party of the first part in the presence of _____

Signed by _____ the said to the Commission for and on behalf of the Commission in the presence of _____