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NOTIFICATION

No.H.11019/22/09-JERC, the 5th November, 2009. In exercise of the powers conferred on it by sub-section (4) of Section 91 read with Section 181 of the Electricity Act, 2003 and all powers enabling it in that behalf, the Joint Electricity Regulatory Commission for Manipur and Mizoram hereby makes the following Regulations.

1. Short Title and Commencement

- 1.1 These Regulations may be called the **Joint Electricity Regulatory Commission for Manipur and Mizoram (Appointment of Consultants) Regulations, 2009.**
- 1.2 These Regulations shall come into force on the date of their publication in the Official Gazette of Manipur and Mizoram.
- 1.3 These Regulations shall apply to consultants appointed under Regulation 4.

2. Definitions

2.1 In these Regulations unless the context otherwise requires :-

- (i) "Act" means the Electricity Act, 2003 (No. 36 of 2003);
- (ii) "Bidder" refers to a person who submits his proposal for the appointment by the Commission as its Consultant;
- (iii) "Commission" means the Joint Electricity Regulatory Commission for Manipur and Mizoram;
- (iv) "Consultant" includes any individual, firm, body or association or persons not in the employment of the Commission who or which possesses or has access to any specialized knowledge, experience or skill.
- (v) "Secretary" means the Secretary of the Commission.
- (vi) "Assistant Secretary" means the Assistant Secretary of the commission.

2.2 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. Scope of work

- 3.1 Consultants will not be normally appointed for routine day to day work for which staff is available.
- 3.2 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 jobs is specific and time-bound.
- 3.3 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.
- 3.4 The term 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. Appointment

- 4.1 The Commission may, at its sole discretion, appoint Consultants for any matter, using such procedure as it may deem appropriate having regard to the nature and complexity of the matter, including :-

(i) Evaluation

Evaluation of competitive proposals submitted by Bidders in accordance with Annexure A;

(ii) Single Source Selection

Single Source Selection shall be exercised only in exceptional cases where it is appropriate and represents a clear advantage, like 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 where the fee payable does not exceed Rs. 1 lac in each case or where only one firm is qualifies or has experience for the assignment.

(iii) Selection of Individual Consultant

- a. Individual Consultant shall be employed for assignments for which team of personnel is not required, no additional outside (home office) professional support is required, and where the experience and qualifications of the individual are the paramount requirement.
- b. Individual Consultants shall 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 those who are approached directly by the Commission. Evaluation shall be on the basis of academic background, relevant experience and appropriate technical knowledge, knowledge of local conditions, administrative systems and concerned organizations.

- 4.2 The appointment of Consultants may be made on the basis of a proposal submitted by the Bidders in response to a Request for Proposal circulated by the Secretary or Assistant Secretary in the absence of the Secretary.
- 4.3 The budget for the Consultants' engagement shall be approved by the Commission.
- 4.4 Terms of Reference for the appointment of Consultants will be prepared by the Commission.

5. Terms of Contract

- 5.1 The Terms of Contract shall be agreed at the time of appointment of the Consultants and prior to the commencement of work.
- 5.2 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.
- 5.3 The fees for the engagement may include :-
- (i) a retainer to be paid to the Consultants over the duration of the engagement;
 - (ii) fees payable on completion of specific milestones identified in the contract;
 - (iii) charges for out-of-pocket expenses.
 - (iv) However, the above conditions are not applicable in respect of appointment of are individual consultants

6. Special Conditions

- 6.1 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.
- 6.2 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 not be duty bound to hand over the entire record of the assignment to the Commission before the expiry of the contract.
- 6.3 The Commission shall be the final authority for interpretation of these Regulations.
- 6.4 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.

7. Miscellaneous

The Commission shall post on its website a summary of the work awarded to Consultants pursuant to these Regulations.

8. Saving of Inherent Powers of the Commission

Nothing in these Regulations 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 a 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 these Regulations.

9. 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.

10. 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.

By the Order of the Commission

Richard Zothankima,
Assistant Secretary,
Joint Electricity Regulatory Commission
For Manipur and Mizoram.

ANNEXURE -A

ANNEXURE - A
Evaluation of Competitive Proposals of Bidders

1. Request for Proposal

- 1.1 The Secretary/Assistant Secretary shall circulate the Request for Proposal to the Bidders who are invited by the Commission to submit their proposals.
- 1.2 The Request for a Proposal shall include the following :-
- (a) A letter of invitation stating the intention of the Commission to :
 - (i) appoint Consultant for the provision of consulting services;
 - (ii) enter into a contract with regard to the same, and as per draft contract at Schedule 1;
 - (iii) the date, time and address for 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. Receipt of Proposal

- 2.1 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 Terms of Reference (TOR).
- 2.2 The Commission may decide to extend the deadline for submission of proposals, as deemed appropriate by it.
- 2.3 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 to be submitted they shall be submitted in separate sealed envelopes.

3. Conditions for Bidder

- 3.1 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.
- 3.2 The Bidder shall provide a clear outline of its recent experience on assignments of the nature which is similaro the work indicated in the Request for Proposal.
- 3.3 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.

- 3.4 The Bidder to whom the contract is awarded by the Commission, shall be required to provide an undertaking that during the tenure of the contract, the professional staff assigned for the work indicated in the Request for Proposal shall not be changed without the prior consent of the Commission.

4. Evaluation of Proposals

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.

4.1 Technical Evaluation

- (i) 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:-

Criterion	Range of Weights
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	0.30 to 0.60
The extent of transfer of knowledge to the staff of the Commission	0.00 to 0.05

Note : Summation of the weights approved by the Commission must total to 1.

- (ii) 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.
- (iii) 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-re-

sponsive 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 minimum 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.

4.2 Financial Evaluation

- (i) The financial proposals of the pre-qualified Consultants will be opened publicly. The proposed prices shall be read aloud and recorded in a minute of the public opening.
- (ii) The Secretary/Assistant Secretary will cause a review of the financial proposals to be done. Arithmetical errors will be corrected.
- (iii) The proposal with lowest cost will be given financial scores that are inversely proportional to their prices.

4.3 Evaluation of Financial and Technical Scores

- (i) 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.
- (ii) The Commission may appoint a negotiating committee to enter into both technical and financial negotiations. Where technical negotiations are conducted they will be completed prior to pre-qualification of the Consultants. Financial negotiations can be entered into for any aspect of the financial proposal including the unit rates for staff months, contingency amounts; lumpsum reimbursement of travel and living expenses and payment terms.
- (iii) 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.

ANNEXURE - B

Standard Terms and Conditions of Contract

1. Introduction

Term 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 (3) 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 obligation 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 thereof.

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 constructed in accordance with the laws of the Republic of India.

9. Settlement of Dispute

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 Court at Imphal/Aizawl.

Schedule I

ARTICLES OF AGREEMENT made on this _____ day of _____ of _____ BETWEEN _____ of _____ having office located at _____ of the one part and the Joint Electricity Regulatory Commission for Manipur and Mizoram (herein after called " the Commission") of the other 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 'A' 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 knowlegde 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 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 party of the second party 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.

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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 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 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 _____