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BIHAR ELECTRICITY REGULATORY COMMISSION, PATNA

APPOINTMENT OF CONSULTANTS REGULATIONS, 2013

NOTIFICATION

The 24th June, 2013

No. BERC-Regl-1/05(Part)-05- In exercise of powers conferred under section 181 read with section 91 (4) of the Electricity Act, 2003 (Act 36 of 2003), and all other powers enabling the Commission in this behalf and in supersession of the Regulations issued under notification no. BERC-1/05-79 dated 15th October, 2005 published in the Bihar Gazette Extraordinary on 22nd October, 2005, the Bihar Electricity Regulatory Commission hereby makes the following regulations, namely :-

1. Short title, extent and commencement:

1. These regulations may be called the Bihar Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2013.
2. These Regulations extend to the whole of the State of Bihar.
3. These Regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions: In these regulations, the word used shall have the following meanings-

- (a) "Act" shall mean the Electricity Act, 2003 (36 of 2003);

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- (b) **“Bid”** shall mean proposal for the appointment as consultant by the Commission;
 - (c) **“Chairman”** shall mean the chairperson of the Commission;
 - (d) **“Commission”** shall mean the Bihar Electricity Regulatory Commission;
 - (e) **“Consultant”** shall include 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 and who may be appointed as such to assist the Commission on any matter required to be dealt with by the Commission under the Act;
 - (f) **“Consultancy Evaluation Committee”** hereinafter referred to as “CEC” shall mean the Committee constituted under Regulation 6 (4) of the Regulations.
 - (g) **“Officer”** shall mean an officer of the Commission;
 - (h) **“Member”** shall mean a member of the Bihar Electricity Regulatory Commission;
 - (i) **“Regulations”** shall mean the Bihar Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2013;
 - (j) **“Secretary”** shall mean the Secretary of the Bihar Electricity Regulatory Commission or any other officer of the Commission authorized by the Chairman to discharge the responsibility of the Secretary in his /her absence;
 - (2) **Words and expressions** used and not defined in these regulations, but defined in the Act, shall have the same meaning as in the Act.
 - (3) **Interpretation:**

In case of any doubt regarding interpretation of these regulations or when express provision has not been made in these regulations about a particular matter, the interpretation of the Commission in those matters shall be final.

3. Scope of work:

- (1) Consultants shall not normally be appointed for routine day-to-day work for which in-house facility is available.
- (2) Consultants may be engaged for any of the following purposes, namely:-
 - (a) Providing expert advice on specific issues of relevance and interest for the Commission,

- (b) conducting study of best practices, analyzing data developing benchmarks, or any other similar purpose,
 - (c) 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, and
 - (d) 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.
- (3) Detailed terms of engagement including detailed scope of work shall be drawn up in each case.
- (4) The terms of engagement would specify the exact nature of the task to be undertaken by the consultant, the time allowed for completion of each task and the specific output that are to be provided by the consultant in relation to each of the task.

4. Period of engagement:

Consultant shall be engaged for the minimum period. However, the period of engagement may be extended for a period as considered necessary by the Commission.

5. Categorization of consultants:

Consultants shall be categorized as :

- (a) Institutional Consultants
- (b) Individual Consultants
- (c) Professional experts
- (d) Staff Consultants

6. Institutional Consultants:

- (1) Institutional consultant may be appointed where the Commission is satisfied that there is a need for availing consultancy service which, in its opinion, may be more appropriately provided by a firm or a company or an association or body of persons.
- (2) The Secretary shall prepare or cause to be prepared the terms of reference for appointment of institutional consultant for any specific task indicating the scope of the work and obtain approval of the Commission.

The terms of reference shall be prepared to specify the objectives, goal and scope of assignment.

The terms of reference may also list the services and transfer of knowledge, surveys necessary to carry out the assignment and the expected outputs (reports, data, survey etc.) linked to each task.

The scope of the services described in the terms of reference shall be compatible with the available budget.

- (3) After approval of terms of reference by the Commission, the Secretary shall cause the Request for Proposal to be issued inviting proposal from interested consultants through publication of notice in at least one newspaper and also on Commission's website giving, as far as possible, a notice of not less than three weeks. Provided that in matter of urgency, the period of notice may be reduced to less than three weeks, but not less than two weeks, as may be decided with the approval of the Commission.

The request for proposal shall include the following :

- (a) A letter of invitation stating the intention of the Commission to enter into a contract for providing consultancy services, the details of the plan, the date, time and address for submission of proposals.
 - (b) All informations regarding the evaluation process, the evaluation criteria with their respective weights, the minimum pre-qualification score and special qualifying clause, if any, necessary to enable to consultants to prepare and submit responsive proposals.
 - (c) Terms of reference as per clause (2) of the regulation 6 above of the regulation.
 - (d) Provided that the Commission may, where considered appropriate, extend the time limit for submission of proposals.
 - (e) The Commission shall reserve the right to cancel the bid process without assigning any reason thereof. The Commission shall also reserve the right to reject any bid after assigning reasons thereof.
 - (f) Separate technical and financial proposals to be submitted in two separate sealed envelopes superscribed as part I and part II respectively.
 - (g) The cost of RFP document and amount of earnest money as bid security amount which the consultant shall submit alongwith the proposal in a third separate sealed envelope clearly marked 'Bid Security'. All three sealed envelopes should be placed in one single sealed packet clearly superscribed on top of the packet 'Bid for Providing Consultancy Services'.
- (4) Evaluation of Proposals :

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- (i) The Commission shall constitute the CEC comprising the Secretary, an Officer from finance, 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 Chairman.
 - (ii) The CEC shall evaluate the bids through 'Combined-Quality-Cum-Cost-Based System' based on predetermined-weightages allocated for each of the parameters.
 - (iii) Provided that the CEC shall not proceed with evaluation of bids, unless at least three bids have been received.
 - (iv) Provided further that the condition of three bids may be relaxed with the prior approval of the Commission in case adequate number of bids are not received.
 - (v) Technical Evaluation :
 - (a) Evaluation of technical bids will be done by the CEC taking into account the criteria fixed by the Commission. Each criterion shall be marked on a scale of 1 to 100 and then the marks for each criterion shall be weighted to arrive at weighted 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
(i) Consultant's Relevant experience for the assignment (in terms of length of experience and no. of assignments which shall be specified in the RFP)	20 to 30
(ii) Adequacy/quality of the proposed work plan and its methodology proposed	10 to 20
(iii) Qualification, competence and experience in the relevant field of the key personnel proposed for the assignment. General qualification- 16-25 Adequacy for assignment(no. of relevant assignments handled) -17-25 Indian experience- 2-5	35 to 55
(iv) The extent of transfer of knowledge to staff of the Commission	10 to 15

The weights approved by the Commission must total to 100

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

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- (i) General qualification : General education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries etc.
 - (ii) Adequacy for the assignment : Education, training, experience in the specific sector, field, subject and relevance to the particular assignment.
 - (iii) Indian experience : Knowledge of the administrative system, organization and culture (in India).
- (c) The Commission may decide the minimum qualifying marks to be obtained in the technical evaluation.

Provided that the minimum qualifying marks may not be less than 60.

- (d) After the technical evaluation is completed, the Commission shall inform those consultants who did not obtain the minimum qualifying marks in technical evaluation or whose technical bids were considered non-responsive to the terms of reference and their financial proposal will be returned unopened after completing the selection process.

(5) Financial Evaluation :

- (i) Those consultants who secure the minimum qualifying marks in the technical evaluation shall be informed about the date and time of opening of financial proposals giving time of not less than 7 days for the consultant to be present at the opening, if they so desire.
- (ii) The financial proposals of technically qualified consultants will be opened by CEC in the presence of consultants or their representatives who are present. The proposed prices shall be read aloud and recorded in the proceedings.
- (iii) The proposal with lowest quoted price will be given a financial score of 100 and other financial proposals shall be given financial scores that are inversely proportional to their quoted prices.

$$\text{e.g. Financial score of firm A} = 100 \times \frac{\text{LP}}{(\text{QP})_A}$$

Where LP = Lowest price and

$(\text{QP})_A$ = Quoted price of firm A

(6) 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 of the financial score shall be specified by the Commission in each case taking into

account the requirement of the assignment considering the relative importance of quality and price. The weight may not be more than 30% for the financial score and not less than 70% for the technical score.

(7) Negotiation :

- (i) The bidder scoring the highest combined score shall be invited for negotiation. The aim is to reach an agreement on all points and finalize the draft contract.
- (ii) Negotiation will include discussion on the proposed methodology, work plan, staffing activities chart, period to be spent in the field and in the home office, staff and material logistics, and reporting as also the inputs required to ensure satisfactory implementation of the assignment, but will not include negotiation on financial bid.
- (iii) In the event of the successful consultants not responding to negotiation/clarification as required for the finalization of the bid, the Commission shall reserve the right to reject the proposal and forfeit the security.
- (iv) The Commission may require specific assurances from the consultant that the key experts mentioned in the proposal will be actually available for the assignment and no member of the team can be changed without prior consent of the Commission and in case Commission is not satisfied with the working of any member of the team he shall be replaced by the consultancy firm with the approval of the Commission.

(8) Award of Contract :-

- (i) The successful consultant shall be required to execute a Contract Agreement within the time limit specified in RFP.
- (ii) The institutional consultant shall be engaged after obtaining approval of the Commission.
- (iii) Failure on the part of successful consultant to execute Contract Agreement within the time schedule as specified by the Commission may lead to cancellation of the bid and forfeiture of bid security.

(9) Performance Security :- The successful bidder shall have to deposit performance security in shape of irrevocable Bank Guarantee for 10% of the total value of work valid for a period from the date of contract agreement till six months after completion of the contract, after which it shall be released.

7. Individual Consultants:

- (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 Secretary to prepare the terms of reference indicating the scope of the work, period of consultancy, the schedule of payments and the experience and qualification required for obtaining consultancy services.
- (2) Categorization of individual consultants-
 - (a) Individual consultants will be categorized into three groups based on their experience-

Category	Minimum professional experience
Advisors	25 years
Sr. Consultants	20 years
Consultants	15 years
 - (b) The Commission may fix minimum qualifications for the consultant in each case.
 - (c) The Commission may in appropriate cases, for reasons to be recorded in writing, relax the qualification and experience keeping in view the overall expertise of the person being considered for engagement as individual consultant.
- (3) The Secretary shall obtain approval of the Commission for the terms of reference for engagement of individual consultant.
- (4) The Secretary shall invite applications through publication of notice in at least one newspaper 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 matter of urgency, the period of notice may be reduced to less than three weeks but not less than two weeks as may be decided with the approval of the Commission.
- (5) Individual consultant may be selected on the basis of their qualifications and experience for the assignment. They may be selected on the basis of references or through comparison of qualification among those expressing interest in the assignment or may be approached directly by the Commission. Their suitability shall be judged on the basis of academic background, experience related to the assignment and appropriate knowledge of local conditions, administrative system and government organization.

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- (6) The consultant shall work under the control and supervision of the Commission.
 - (7) The Commission shall have the right to terminate, curtail or extend the term of any consultant.
 - (8) The individual consultant shall be engaged after approval of the Commission.
 - (9) Fees and other charges :

- (a) When individual consultant is required for a specific purpose, where the experience, expertise, qualifications and credentials are of paramount importance and the persons of requisite qualification and experience are rarely available, the consultant shall be appointed on a consolidated monthly fee to be decided by the Commission on merits of the individual on a case to case basis.

Provided that the Commission may from time to time by an order in writing direct revision of the rates of fee.

Provided further that no other payment apart from the consolidated fee will be paid except for the additional amount to cover contingency which the Commission may allow subject to maximum of 10% of the fee payable to the consultant.

Provided also that the Commission may after consideration order for providing conveyance to the consultant.

- (b) The individual consultant may be appointed on daily basis in case the Commission considers it appropriate and for which fee per man day shall be decided by the Commission as considered on merit of the individual on a case to case basis.
- (c) Where the consultant has to incur expenditure on travel to and stay at a place away from the headquarters, the Commission may reimburse daily allowance and the cost of travel by an appropriate class, not lower than that permitted for a group A Officer of the State Government. The Commission may fix the amount permissible as daily allowance and determine the reasonable limits within which actual expenses are to be allowed, on a case to case basis.
- (d) Individual consultants, who are appointed by the Commission under these regulations for specific time periods on monthly basis, shall be eligible to avail the holidays applicable to the employees of the Commission. They shall also be eligible for one day casual leave in a month subject to total casual leave of twelve days in a calendar year.

Casual leave, if not availed during any month, shall accumulate till the end of the calendar year, provided that period of absence on holidays/casual leave in a stretch shall not exceed 10 days. Any absenteeism over and above the period approved by the Commission shall be treated as leave on loss of emolument and deduction shall be made on prorata basis in the monthly emolument.

8. Professional experts:

- (1) The Commission, on being satisfied for the need, may decide to engage a professional for advice on an issue of urgent nature.
- (2) On the Commission so deciding, the Secretary 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.
- (3) The Commission may approve the name of the expert for engagement as consultant on payment of such fee and on such other terms as may be considered appropriate which would be decided on case to case basis taking into account nature, quality and quantum of work.

Provided that the fee so decided shall not exceed Rs. one lac for an individual item of work.

9. Single Source Selection:

Single source selection shall be resorted only in exceptional cases by the Commission where it is considered appropriate and presents a clear advantage for the reason that the task represents a natural continuation of previous work carried out by the consultant, or where an urgent selection is essential or for small assignment where the fee payable does not exceed Rs. five lakhs or where only one firm is qualified and has requisite experience for the assignment.

10. Staff Consultants:

- (1) The Commission, on being satisfied that there has been an increase in the quantum of work of the Commission or there are constraints in filling regular posts, may decide to engage staff consultant in expediency of work to assist the Commission in discharge of its functions effectively and direct the secretary to take further steps.
- (2) The Secretary shall invite applications by publishing notice in at least one newspaper and on the Commission's website giving, as far possible, a period of at least three weeks to interested and eligible persons for submitting application.

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- (3) Before publishing the notice, the Secretary shall identify the qualification and experience requirements keeping in view the relevant provisions of the Commission's Regulations governing the recruitment against regular post.
- ¹[(4) The staff consultant may be categorized based on the qualification and length of experience and offered consolidated fee ranging rupees thirty five thousand only per month (for a fresh candidate) and rupees sixty thousand only per month (for a candidate having very long experience and expertise). The fee indicated in this clause shall be revised time to time depending upon the consumer price index and increase in Dearness Allowance announced by the State Government from time to time, as considered appropriate and determined by the Commission.]
- (5) The Commission shall constitute CEC comprising a senior Member of the Commission, the Secretary, the senior most Officer of Finance and an Officer having knowledge in the area of work for which the consultancy services are to be obtained. 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 chairman.
- (6) The staff consultant shall normally not be engaged for a period more than two years.
- 11.** 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 at the expiry of the contract.
- 12. Power to relax:**
The Commission may, for reasons to be recorded in writing, relax any of the provisions of these Regulations.
- 13. Power to amend:**
The Commission may at any time and on such terms as it may think fit, amend any of the provisions of these Regulations for the purpose of meeting the objectives for which these Regulations have been framed.
- 14. Power to remove difficulties:**
If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may pass general or special order, not inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulties.

[1] Substituted clause "10(4)" by BERC (Appointment of Consultants) [1st Amendment] Regulations, 2015 vide Bihar Gazette No. 1164 dated 8th October, 2015 (w.e.f. 08.10.2015)

15. Repeal and saving:

- (1) Save as otherwise provided in these Regulations the Bihar Electricity Regulatory Commission (Appointment of Consultants), Regulations, 2005 shall stand repealed from the date of coming into effect of these Regulations.
- (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.

16. Saving of inherent power 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 the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these Regulations.

By the order of the Commission,

Ganesh Prasad,
Secretary.