

PART III

Laws, Regulations and Rules passed thereunder.

JAMMU AND KASHMIR STATE ELECTRICITY REGULATORY COMMISSION

Jammu, dated May 26, 2005.

In exercise of the powers conferred under sections 7(4) and 36 of J&K State electricity Regulatory Commission Act, 2000 (Act No. VIII of 2000) and all powers enabling it in that behalf, the Jammu and Kashmir State Electricity Regulatory Commission hereby makes the following Regulations, namely:-

CHAPTER – I

1. Short title, commencement and interpretation-(1) These Regulations may be called the Jammu and Kashmir state Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2005.

(2) These Regulations shall come into force from the date of their publication in the Government Gazette.

2. Definitions- (1) In these Regulations unless the context otherwise requires-

- (a) 'Act' means the Jammu and Kashmir State Electricity Regulatory Commission Act, 2000 (Act No VIII of 2000);
- (b) 'Chairperson' means the chairperson of the Commission;
- (c) 'Commission' means the Jammu and Kashmir State Electricity Regulatory Commission, established under the Act;
- (d) 'Consultant' includes any individual, firm, body or association of persons, not in the employment of the Commission, who or which possesses or has to any specialized knowledge, experience or skill;
- (e) 'Government' means the Government of Jammu and Kashmir;
- (f) 'Member' means Member of the Commission;
- (g) 'Officer, means an officer of the Commission;
- (h) 'Secretary' means then Secretary of the Commission;

(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 or in the J&K state Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

3. Scope of work- (1) The Commission may from time to time engage consultants 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 or where the commission considers it to conducive to its working to appoint consultants. Consultants will not be normally appointed for routine day-to-day work for which staff is available.

(2) The terms and conditions of engagement of consultants will be drawn up in each case and agreed to between the consultant and the Commission prior to award of consultancy.

(3) 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. Period of engagement- Consultants will be engaged for the minimum period required. In no case will the maximum period of engagement exceed one year. On justifiable reasons, extension of contract may be given for a duration of six months, only twice against such contracts.

5. Categorization of consultants-(1) Individual consultants will be categorized into one of the three levels of advisor, senior consultant and consultant based on their expertise and experience, as per the table given below:-

Discipline	Minimum Qualification	Minimum experience in number of years		
		Advisor	Sr. Consultant	Consultant
Economics	Ph.D.	15	10	5
	Master's Degree	18	12	10
Engineering	B.Tech. or equivalent	18	12	8
Finance	C.A./MBA(F)/CWA, CFA	18	12	5
Law	Degree in Law	18	12	10

(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.

6. Fee and charges- (1) For individual consultant engaged on monthly basis consolidated remuneration shall be paid, as may be decided by the Commission from time to time, but shall not exceed rupees twenty-five thousands per month.

(2) No-other payments apart from the consolidated fee will be paid except an additional amount to cover contingencies which will be capped at an amount of 10% of the fees payable.

(3) For services on daily basis, remuneration per day shall be as follows subject to the condition that engagement on daily rate shall not normally be more than seven days at a time:-

Category	Remuneration
Advisor	Rs. 2.500/-
Sr. Consultant	Rs. 1.500/-
Consultant	Rs. 1.000/-

(4) In the case of institutional consultants the rates normally will be as determined through competitive bidding. In exceptional cases where single source selection is required due to reasons explained in Regulation 12, rates of different levels of individual consultants shall form the basis to determine the reasonableness of the cost allocated to consultant time in the proposals. A maximum of 10% over the cost of consultant time so arrived may be allowed for overheads for office expenses wherever required to be payable at rates approved by the Commission.

(5) The consultant, until and unless allowed by the Commission, will work with the Commission at its headquarters. Where the consultant has to incur expenditure on official travel and stay at a place from the normal place of duty, the Commission will reimburse DA by allowing an additional expenditure in lump sum.

The number of days or 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.

(6) The remuneration of former and retired Government servants engaged as consultants shall be determined in accordance with the provisions of article 259(A) of the Jammu and Kashmir Civil Services Regulations.

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

(2) The scope of service describe in the TOR shall be compatible with available budget. The need for such an assignment will decide the scope o work.

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

(4) The Commission will prescribe the minimum qualifying marks for the technical bid.

(5) 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 rupees two lacs in each case, where Commission may call for application or offer or nomination from such individuals, firms, companies, association of persons, bodies, institutions as Commission may consider appropriate. The decision of the Commission shall be final in this regard.

8. Requested for proposals- The request for proposal shall include the following:-

1. A letter of invitation stating the intention of the Commission to enter into a contract for provision of consulting services, the date, time and address for submission of proposals.
2. Information to consultant 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 minimum qualification, pre-qualification score.
3. Terms and 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. The 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.

4. Draft contract as per proforma in schedule.

9. Receipt of proposals.-(1) The Commission will prescribe the time within which the consultants 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 consultants may seek clarifications about the information provided, in the TOR.

(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 envelopes.

10. 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 proposals shall not have access to the financial proposals, until the technical evaluation is completed.

(i) Technical Evaluation: (1) Technical evaluation will be done by a committee nominated by the Commission taking into account the following criteria. Each criteria 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 committee with the approval of the Commission to calculate the weighted average technical score for each proposals:-

Criterion	Range of Weights
The consultants relevant experience for the assignment	0.10 to 0.40
The quality of the methodology proposed	0.20 to 0.50
The qualification of the key staff proposed	0.30 to 0.60
The extent of transfer of knowledge to the staff of the Commission	0.50 to 0.35

(Note:- Total of the mix of weights approved by the Commission shall be 1)

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

- (a) General qualification: General education and training, length of experience, positions held, time with the consulting firms 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.

(ii) Financial Evaluation : (1) The financial proposals of the pre-qualified consultants will be opened by the committee in presence of consultants or their representatives whose bids are short-listed for financial evaluation. The proposed prices shall be read, allowed and recorded in minutes of the proceedings.

- (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 proposals 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 consultant A = $100 \times LP/QP$
where LP = Lowest Price and
QP = Quoted Price of consultant A

11. Evaluation of financial and technical scores.- (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 shall not exceed 0.3 for the financial score in any case.

(2) The Commission may appoint a negotiating committee to their 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 proposals 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 substantially higher than the original estimate.

(4) If the consultants, finally selected for award of contract on basis of above procedure, fails to enter into a contract within the time limit as may be prescribed by the Commission or failed in the performance even after the signing of the contract, the Commission will invite the consultant who had scored the second

highest score on consideration of financial and technical bids for award of the contract.

12. Single source selection.- Single source selection shall be used only in exceptional cases where it is appropriate and represents a clear advantage because:-

- (1) The tasks represents a natural continuation of previous work carried out by the consultant ; or
- (2) A rapid selection is essential ; or
- (3) Assignments are small and the fee payable does not exceed rupees two lacs in each case ; or
- (4) Only one person is qualified or has experience for the assignment.

13. Selection of individual consultants.- (1) Individual consultant 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.

14. Other terms and conditions.- (1) Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligation to other clients or that may place them in a position of not being able to carry out the assignment objectively and impartially.

(2) The consultant shall work under the control and supervision of the Chairperson of the Commission or officers as may be authorized by him, but shall be liable to furnish its independent professional expert opinion.

(3) The consultant shall submit his/her report/advice to the Chairperson.

(4) The consultant will not be an officer of the Commission in terms of the Act or Rules or Regulations but other terms of appointment of the consultant in addition to consolidated remuneration and other conditions given in these Regulations, shall be such as may be decided by the Commission.

(5) In case of non-compliance of the Regulations and orders of the Commission, the Commission may take suitable action as per the provisions under

the Act, Rules and Regulations or the Commission may take any other action as deemed proper.

(6) The Commission shall have full and unrestricted right to appoint a consultant or terminate, curtail or extend the terms of any consultant at its sole discretion.

15. Savings of inherent powers 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 prescribed in the Regulations.

16. General power to amend.- The Commission may, at any time and on such terms as it may think fit, amend any provision of the Regulations for the purpose of meeting the objective with which these Regulations have been framed.

17. 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 order of the Commission

(Sd.) R.C.SHARMA,

Secretary

Schedule

Articles of agreement made on this _____ day of _____ between _____ of the one part and the Jammu and Kashmir State Electricity Regulatory Commission (hereinafter 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 tot the Commission, on the terms and conditions hereinafter contained.

Now these present witnesses and the parties hereto respectively agree as follows:-

1. The party of the first part shall submit itself to the orders of the Commission and of the officers and authorities under whom it may from time to time be placed by the Commission.
2. The party of the first part shall complete the assignment as contained in Annex. Within a period of one month commencing from _____.
3. The part 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 journey in connection with the consultancy assignment.
6. The party of the first part shall not disclose to any authorized person any information and data that may be supplied to it by the Commission or by any other organization under the directions of the Commission. All such documents or any information that may have come to its knowledge directly or indirectly by virtue of the assignment shall be the property of the Commission.
7. The party of the first part undertakes that this assignment shall not be in conflict with its prior current obligation to other clients nor shall it place it in a position of not being able to carry out 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 hereinabove, the party of the second part 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 difference or dispute between the parties arising out of this Agreement, it shall be referred for arbitration to a person nominated by the Commission. The proceedings shall be subject to the Arbitration and Reconciliation Act, 1997, as amended from time to time and will be held in Jammu or Srinagar.
10. The payment of fee to the party of the 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 rights 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 the 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, 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 on the day and the year above written.

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

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