

AUTHORITATIVE ENGLISH TEXT

**HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
SHIMLA**

NOTIFICATION

No: HPERC/Secy./704/2005

Dated: Shimla, the 26th July 2005

In exercise of the powers conferred by Section 181, read with sub-section (4) of section 91 of the Electricity Act, 2003 (Act No.36 of 2003) and all other powers enabling it in this behalf, the Himachal Pradesh Electricity Regulatory Commission hereby makes the following the Himachal Pradesh Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2005, namely:-

REGULATIONS

1. Short title, commencement and application - (1) These regulations shall be called the Himachal Pradesh Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2005.

(2) These regulations shall come into force on the date of their publication in the Rajpatra, Himachal Pradesh.

2. Definitions- In these regulations, unless the context otherwise requires;

- (a) "Act" means the Electricity Act, 2003 (36 of 2003);
- (b) "Chairman" means the Chairperson of the Commission;
- (c) "Commission" means the Himachal Pradesh Electricity Regulatory Commission;
- (d) "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 specialised 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;
- (e) "Officer" means an officer of the Commission.
- (f) "Secretary" means the Secretary of the Commission and includes any other officer of the Commission authorised in his absence to discharge his duties and perform his functions; and
- (g) other 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:

- (1) The Commission may, in its sole discretion, appoint Consultants, required to assist it in discharge of its functions, for any matter, using such procedures as it may deem appropriate, having regard to the nature and complexity of the matter.
- (2) Consultants will not be normally appointed for routine day to day work for which staff is available.
- (3) Consultants would be engaged for executing specialised tasks for which skills are either not available within the staff of the Commission or where the nature of job is highly technical, specific or time-bound.
- (4) Detailed terms of engagement will be drawn up in each case and agreed to between the Consultant and the Commission prior to the award of consultancy.
- (5) 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. **Categorisation of Consultants:**

- (1) Individual Consultants will be categorised into one of three levels of Advisor, Retainer Consultant and Consultants based on their expertise and experience, as per the table given below:-

Category	Minimum Professional Qualifications	Minimum Professional Experience.
(a) <u>Advisers</u>	Ph.D/ Master Degree.	15 years with Ph.D or 18 years with Master Degree.
(b) <u>Retainer Consultants</u>	Master Degree/ Bachelor.	15 years with Master Degree or 18 years with Bachelor Degree.
(c) <u>Consultants</u>		
(i) Sr.Consultants	Ph.D/Master Degree	8 years with Ph.D or 12 years with Master Degree.
(ii) Consultants	Ph.D/Master Degree/ Bachelor Degree	3 years with Ph.D or 5 years with Master Degree/ 8 years Bachelor Degree.
(iii) Junior Consultant	Master or Bachelor Degree.	1 year.

Note:- In the case of Lawyers, Accountants, Engineers and other highly specialised professionals, the minimum educational qualifications will be the relevant professional qualifications.

- (2) The Commission may in appropriate case, for reasons to be recorded in writing, relax the minimum educational qualifications or the minimum experience,

keeping in view the overall expertise and experience of the person being considered for engagement as Consultant in the specific area.

5. Fees and other charges:

- (1) When individuals are appointed as Consultant for a specific purpose, where the experience, expertise, qualifications and credentials are the paramount requirements and the persons of requisite qualification and experience are rarely available, a consolidated monthly payment on man-day basis or man-month basis shall be decided by the Commission depending on the merits of the individual on a case-to-case basis.
- (2) For service on daily basis, remuneration per day shall be as follows subject to the condition that engagement on daily rate shall not normally be for more than 7 days at a time.

Category	Remuneration per day (Rs.)	Lump sum per day for daily allowance (when on tour) (Rs.)
(a) Advisor	5,000/-	2,000/-
(b) Retainer Consultant	Consolidated fee per month as may be mutually negotiated between the Commission and the Consultant.	Daily allowance as admissible to Grade-I Officers of the Govt. of Himachal Pradesh.
(c) Consultants:		
(i) Sr. Consultant	3,000/-	1,500/-
(ii) Consultant	2,000/-	1,500/-
(iii) Junior Consultant	1,000/-	1,000/-

- (3) In the case of institutional Consultants rates normally will be as determined through competitive bidding. In exceptional cases where single source selection is required due to reasons as explained in regulation 13, the rates of different levels of individual Consultants will be used to determine the reasonableness of the cost allocated to Consultant time in the proposal. A maximum of 10% over the cost of Consultant time so arrived will be allowable for overheads for office expenses like telephone, photocopying, fax expenses etc. Additional upto a limit of 10% of the cost of Consultant time will be payable as contingencies wherever required, will be payable at rates approved by the Commission.
- (4) In the case of the Retainer Consultant monthly consolidated overhead office expenses like telephone, photocopying, fax expenses etc. and contingencies would be limited to 1/3rd of the monthly consolidated fees payable.
- (5) The Consultants 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 away from the normal place of duty, the Commission will reimburse D.A 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, which will never be lower than that permitted for a Grade-I Gazetted Officer of the Government of Himachal Pradesh.

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

6. Appointment of Consultants:

- (1) Terms of Reference (TOR) for the appointment of Consultants for specific tasks will be prepared by an officer of the Commission and will be submitted to the Secretary for seeking the approval of the Commission.
- (2) The scope of the services described in the TOR shall be compatible with the available budget.
- (3) The Commission may decide either to invite combined technical and financial proposals or separate technical and financial proposals.
- (4) The Commission will prescribe the minimum qualifying mark for the technical bid.
- (5) After approval of the Terms of Reference (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.5 lakh in each case, where Commission may call for application or offer or nomination from such individuals, firms, companies, association of persons, bodies, institutions as the Commission may consider appropriate. The decision of the Commission shall be final in this regard.

7 Request 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 a consulting services, the source of funds, the details of the plan and the date, time and address for submission of proposals.
- (2) Information to Consultants shall contain all necessary information that will help Consultants in preparation of 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
- (3) Terms of Reference (TOR) 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, evaluation, assessment etc.) linked to each task in the TOR.
- (4) Draft contract shall be as per performa in Schedule-‘A’.

8. Receipt of proposals:

- (1) Enough time shall be allowed for the Consultants to prepare and submit their proposals. While the time allowed shall depend on the assignment, it will normally be not less than two weeks, during which period firms may seek clarifications about the information provided in the TOR.
- (2) The Commission may decide to extend the deadline for submission of proposals, as may be 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 those shall be submitted in separate sealed envelopes.

9 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.

10 Technical Evaluation:

- (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:-

Criterion	Range of Weights
The Consultant's 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: 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 basis of 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 other 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, organisation 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 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.

11 Financial Evaluation:

- (1) 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.
- (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 financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.

12 Evaluation of financial and technical scores:

- (1) The total scorer 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.
- (2) The Commission may appoint a negotiating committee to enter into both technical and financial negotiations. Where technical negotiations are conducted those 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 amount, 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 substantively higher than the original estimate.

13 Single source selection:

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

- (a) the tasks represent a natural continuation of previous work carried out by the Consultant; or
- (b) a rapid selection is essential; or
- (c) assignments are small and the fee payable does not exceed Rs.5 lakhs in each case; or

- (d) only one firm or individual is qualified or has experience for the assignment.

14 Selection of individual Consultants:

- (1) Individual Consultant or the Retainer 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, expertise and qualifications and credentials of the individual are the paramount requirement.
- (2) Individual Consultants or the Retainer Consultant 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 organisation.

15 Other terms and conditions:

- (1) 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.
- (2) The Consultant shall work under the control and supervision of the Chairperson of the Commission or officers as may be authorised by him, but shall be liable to furnish its independent professional expert opinion.
- (3) The Consultant shall submit his/their 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 it may deem as 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.
- (7) Where the Commission amends or alters the scope of work at any time before the signing the contract, the Commission may, at its discretion and having regard to the nature of such amendment/alternation, either so amend or alter the scope of work in the contract and mutually agree the additional fees or savings therein with the Consultant or cancel the engagement and invite fresh proposals.
- (8) 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.

16 Saving of inherent power 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 these regulations.

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.

18 Repeal and savings:

- (1) The Himachal Pradesh Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2001 are hereby repealed.
- (2) Notwithstanding such repeal-
 - (a) anything done or any action taken or proposed to have been done or taken including any appointment made, or any document or instrument executed or any direction given under the repealed regulations, shall, in so far as it is not inconsistent with the provisions of these regulations, be deemed to have been done, taken, made or given under the corresponding provisions of these regulations;
 - (b) all appointments made and documents executed before the commencement of these regulations, shall continue to have effect till the expiry of the period for which such appointment has been made or the documents has been executed.

By Order of the Commission

Sd/-
Secretary

Schedule-‘A’

ARTICLES OF AGREEMENT made on this _____ day of _____
BETWEEN _____ of _____ of the one part and the Himachal Pradesh 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 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 Schedule-‘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 unauthorised person any information and data that may be supplied to him by the Commission or by any other organisation, under the directions of the Commission. All such documents or any information that may have come to his 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 his prior or current obligation to other clients nor shall it place him in a position of not being able to carry out the assignment 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 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 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 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 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 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 of the Commission for and on behalf of the Commission the presence of _____.
