



सत्यमेव जयते

बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

30TH ASHWIN 1927(S)
(NO. PATNA 568) PATNA, SATURDAY, 22ND OCTOBER, 2005

**BIHAR ELECTRICITY REGULATORY COMMISSION
(APPOINTMENT OF CONSULTANTS) REGULATIONS, 2005**

NOTIFICATION No. BERC-Regulation-1/105-79
The 15th October, 2005

1. Short title and commencement

- (i) These Regulations may be called the Bihar Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2005.
- (ii) These shall come into force with effect from the date of their publication in the official Gazette.

2. Definitions

- (i) In these Regulations unless the context otherwise requires -
 - (a) "**Act**" means The Electricity Act, 2003
 - (b) "**Commission**" means the Bihar Electricity Regulatory Commission constituted under section 82 of the Act.
 - (c) "**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.
 - (d) "**Officer**" means an officer of the Commission.
 - (e) "**Secretary**" means the Secretary of the Commission.
- (ii) 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

- (i) 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.
- (ii) 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.
- (iii) 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 of the tasks.

4. Period of engagement

Consultant may be engaged initially for a period of 2 (Two) years which on satisfactory performance may be further extended for a period as considered necessary by the Commission.

5. Categorisation of Consultants

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

Category	Minimum Educational Qualification & Experience
Advisors	15 years with Ph.D. or 20 years with Master Degree
Sr. Consultants	8 years with Ph.D. or 15 years with Masters Degree
Consultants	3 years with Ph.D. or 10 years with Masters Degree

*Note: In the case of lawyers, chartered accountants and engineers, the minimum educational qualification will be the relevant professional qualification.

- (ii) The Commission may prescribe minimum education qualifications depending on the nature of work and the relevant professional qualifications related to subject area of the consultancy.
- (iii) The Commission may in appropriate cases, 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/Advisor.

6. Fees & Other Charges

- (i) Except where the Commission decides otherwise for reasons to be recorded, the consultant will be appointed generally on a consolidated fee at the rates mentioned in clause 6 (iii). The Commission may from time to time revise the amount specified by an order to be made by the Commission.
- (ii) No other payments apart from the consolidated fee will be paid except for an additional amount to cover contingencies, which will be capped at an amount of 10% of the fees payable.
- (iii) Where the consultants have to incur expenditure on travel and stay at a place away from the normal place of residence, the Commission will reimburse DA by allowing an additional expenditure in lumpsum as indicated in the table below. The number of days on which this lumpsum will be payable will be determined by the Commission as appropriate in each case. The cost of travel will be separately reimbursed by an appropriate class of travel not lower than that permitted for a Grade-I gazetted officer of the Government of Bihar.

Category	Fee per Man-day	Lump sum per day for Daily Allowance
Advisors	Rs. 2000	Rs. 1000
Sr. Consultants	Rs. 1500	Rs. 750
Consultants	Rs. 1000	Rs. 500

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

(v) 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 expenses 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.

7. Appointment of Consultants

- (i) 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.
- (ii) The Secretary will ensure that budgetary provisions exist for the proposal prior to putting the proposal up for consideration by the Commission.
- (iii) The scope of the services described in the TOR shall be compatible with the available budget.
- (iv) The Commission may decide either to invite combined technical and financial proposals or separate technical and financial proposals.
- (v) The Commission will prescribe the minimum qualifying marks for the technical bid.
- (vi) After approval of the Terms of Reference by the Commission, the Secretary will cause the Request for Proposals to be issued inviting proposals from interested consultants, ensuring that appropriate publicity through media is given in each case. It will be however not necessary to go through the process of publicity where the value of fee is below Rs. 2 lakhs in each case.

8. Request for proposals

- (i) 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 provision of consulting services, the source of funds, the details of the plan and the date, time and address for submission of proposals.
 - (b) Information to Consultants shall contain all necessary information, 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, that will help Consultants prepare responsive proposals.
 - (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 envisaged at sub-clause (a) above shall be as per format in Schedule 1 annexed hereto.

9. Receipt of proposals

- (i) The Commission will prescribe the time within which the consultants shall prepare and submit their proposals. During this period the consultants may seek clarifications, if any, about the information provided in the TOR.
- (ii) The Commission may decide to extend the deadline for submission of proposals, as deemed appropriate by it.

- (iii) 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 submitted 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 proposal shall not have access to the financial proposals, until the technical evaluation is completed. The financial proposal shall only be opened after technical evaluation is completed.

11. 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 criterion shall be weighted to become 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
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 personnel 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 1.0

- (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/associated with the consultancy work 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 marks 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.

12. Financial Evaluation

- (i) The financial proposals of the pre-qualified Consultants will be opened by the Committee in presence of Consultants or their representatives whose bids are shortlisted for financial evaluation. The quoted prices shall be readout. The details shall be recorded in minutes of the proceedings.
- (ii) 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.

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

13. 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, lump sum 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 substantially higher than the original estimate.

14. Single source selection

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 where the fee payable does not exceed Rs. 2 lakhs in each case or where only one firm is qualified or has experience for the assignment.

15. Selection of individual Consultants

- (i) Individual Consultant will be employed for assignments for which team(s) of personnel are not required, no additional outside (home/office) professional support is required and where the experience and qualifications of the individual are at paramount importance.
- (ii) Individual 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, knowledge of local conditions, administrative system and government organization, etc.

16. Conflict of interest

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.

17. 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 prescribed in the Regulations.

18. 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 meeting the objectives with which these Regulations have been framed.

19. 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/-

Secretary

Bihar Electricity Regulatory Commission

SCHEDULE 1

ARTICLES OF AGREEMENT made on this _____ day of _____ BETWEEN _____ of the one part and the Bihar 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 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 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 journey 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 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 or current obligation to other clients nor shall it place it 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 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 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 on the day and the year first 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 _____

By order of the Commission

Sd/-

Secretary

Bihar Electricity Regulatory Commission