পঞ্জীভূক্ত নম্বৰ - ৭৬৮/৯৭ Registered No. 768/97

অসম ৰাজপত্ৰ

सत्यमेव जयते

THE ASSAM GAZETTE

অসাধাৰণ

EXTRA ORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

PUBLISHED BY AUTHORITY

নং 392 দিশপুৰ, বুধবাৰ, 14 ডিচেম্বৰ, 2005, 23 আঘোণ, 1927 (শক)

No. 392 Dispur, Wednesday, 14th December, 2005, 23rd Agrahayana, 1927 (S.E.)

GOVRNMENT OF ASSAM

ASSAM ELECTRICITY REGULATORY COMMISSION

(Terms and Conditions of Appointment of Consultants) Regulations, 2005

NOTIFICATION

The 7th November, 2005.

No. AERC.157/2005/1 - In exercise of the powers conferred on it by sub-section (4) of section 91 of the Electricity Act, 2003, the Assam Electricity Regulatory Commission hereby specifies the following Regulations relating to the terms and conditions of consultants appointed under the Act. Save as otherwise provided in these Regulations, these Regulations supercede the "Assam Electricity Regulatory Commission (Terms and Conditions of Appointment of Consultants) Regulations, 2002".

1. Short Title and Commencement

(i) These Regulations may be called the Assam Electricity Regulatory Commission (Terms and Conditions of Appointment of Consultants) Regulations, 2005;

(ii) These Regulations shall come into force on the date of their publication in the Official Gazette;

(iii) These Regulations shall apply to consultants appointed under Regulation 3.

2. Definitions

(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 Assam Electricity Regulatory Commission;

(iv) "Consultant" includes any person not in the employment of the Commission who may be appointed as such to assist the Commission on any matter required to be dealt with by the Commission under the Act;

(v) "Officer" means an Officer of the Commission;

(vi) "Secretary" means the Secretary of the Commission.

(2) Words or expressions occurring in these Regulations and not defined herein but defined in the Act shall have the meanings assigned in the Act.

3. Appointment

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

(ii) Single source selection : The Commission may appoint individual Consultants / Advisers depending upon its requirement on such terms and conditions as it deem fit and necessary. While so appointing anybody, the Commission will take into consideration the experience in the field, academic background etc.

(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.

(3) The budget for the Consultants' engagement shall be approved by the Commission.

4. Terms of contract

(1) The terms of contract shall be agreed at the time of

appointment of the Consultants and prior to the commencement of work.

(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.

(3) The scope of work for the engagement shall be as laid down by the Commission in the contract:

Provided that the scope of work shall be based on the Request for Proposal circulated by the Commission and the proposal submitted by the Consultant:

Provided however that where the Commission amends or alters the scope of work at any time before the signing of the contract, the Commission may, at its discretion and having regard to the nature of such amendment/alteration either so amend or alter the scope of work in the contract and mutually agree on the additional fees or savings therein with the Consultant or cancel the engagement and invite fresh proposals:

Provided further that 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.

(4) 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 individual consultants.

5. Other Conditions

(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.

(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 be duty bound to hand over the entire record of the assignment to the Commission before the expiry of the contract.

(3) The Commission shall be the final authority for interpretation of these Regulations.

(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.

6. Miscellaneous

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

7. 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.

8. 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.

9. 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.

ANNEXURE-A

Evaluation of Competitive Proposals of Bidders

1. Request for Proposal

(1) The Secretary shall circulate the Request for Proposal to the Bidders who are invited by the Commission to submit their proposals.

(2) The Request for a Proposal shall include the following :–

(a) A letter of invitation stating the intention of the Commission to :

(i) appoint a Consultant for the provision of consulting services;

(ii) enter into a contract with regard to the same, and

(iii) the date, time and address for the 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. Conditions for Bidder

(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.

(2) The Bidder shall provide a clear outline of its recent experience on assignments of the nature which is similar to the work indicated in the Request for Proposal.

(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.

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

3. Evaluation of proposals

(1) Proposals shall be evaluated both on the basis of quality as well as cost.

(2) The Commission shall have the right to reject any proposal that is found to be unresponsive or unsuitable due to its deficiency in complying with the Request for Proposal.

Provided that the Commission may call for additional or such information that may be required to consider a proposal.

ANNEXURE-B

Standard terms and conditions of contract

1. Introduction

These 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 (30) 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 6.4 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 6.5 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 obligations 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 hereof.

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

9. 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 Courts at Guwahati.

NEELIMA DEURI DUTTA,
Secretary.
Assam Electricity Regulation Commission,
Guwahati.

GUWAHATI - Printed and published by the Dy. Director (P&S) Directorate of Ptg. and Sty., Assam Guwahati-21
(Ex-Gazette) No. 783-500+300-14-12-2005.