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PART IV-C

Statutory Rules and Orders (Other than those published in Part I, I-A and I-L) made by Statutory Authorities other than the Government of Gujarat including those made by the Government of India, the High Court, the Director of Municipalities, the Commissioner of Police, the Director of Prohibition and Excise, the District Magistrates and the Election Commission, Election Tribunals, Returning Officers and other Authorities under the Election Commission.

GUJARAT ELECTRICITY REGULATORY COMMISSION

APPOINTMENT OF CONSULTANTS REGULATIONS

Notification: No. 14 of 2005

In exercise of the powers conferred under Section 181 read with Section 91(4) of the Electricity Act, 2003 (Act 36 of 2003), and under Section 65 read with Section 14 of the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 (Gujarat Act 24 of 2003), and all powers enabling it in that behalf, the Gujarat Electricity Regulatory Commission hereby makes the following Regulations namely:-

CHAPTER I GENERAL

1 Short Title, Extent and Commencement

- (i) These Regulations may be called the Gujarat Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2005.
- (ii) They shall come into force on the date of their publication in the official Gazette
- (iii) These Regulations shall extend to the whole of the State of Gujarat.

CHAPTER II DEFINITIONS AND INTERPRETATION

2 Definitions and Interpretations

2(1) In these Regulations, unless the context otherwise requires:

- (a) "Acts" refers jointly to the Electricity Act and the Gujarat Electricity Industry Act as defined below
- (b) "Commission" means the Gujarat Electricity Regulatory Commission.
- (c) "Consultant" includes any individual, firm, body corporate or association of persons, either individually or as a consortium of two or more of such entities, not in the employment of the Commission, who or which possesses or has access to any specialized knowledge, experience or skill.
- (d) "Electricity Act" means the Electricity Act, 2003 (Act 36 of 2003).
- (e) "Gujarat Electricity Industry Act" means the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 (Gujarat Act 24 of 2003)
- (f) "Officer" means an officer of the Commission.
- (g) "Member" means a member of the Commission.
- (h) "Regulations" shall mean the Gujarat Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2005.
- (i) "Secretary" means the Secretary of the Gujarat Electricity Regulatory Commission.

Words and expressions used and not defined in the Regulations but defined in the Acts shall have the meanings assigned to them in the Acts. Expressions used herein but not specifically defined in the Regulations or in the Acts but defined under any law passed by a competent legislature and applicable to the electricity industry in the state shall have the meaning assigned to them in such law. Subject to the above, expressions used herein but not specifically defined in these Regulations or in the Acts or any law passed by a competent legislature shall have the meaning as is generally assigned in the electricity industry. The Bombay General Clauses Act, 1904, shall apply for the purpose of the present Regulations.

2(2) Interpretation:

In the interpretation of these Regulations, unless the context otherwise requires:

- a. words in the singular or plural term, as the case may be, shall also be deemed to include the plural or the singular term, respectively.
- b. the terms "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" regardless of whether such terms are followed by such phrases or words of like import.
- c. references herein to the "Regulation" shall be construed as a reference to these Regulations as amended or modified by the Commission from time to time in accordance with the applicable laws in force.

- d. the headings are inserted for convenience and may not be taken into account for the purpose of interpretation of these Regulations.
- e. references to the statutes, regulations or guidelines shall be construed as including all provisions consolidating, amending or replacing such statutes, regulations or guidelines, as the case may be, referred to.

CHAPTER III

SCOPE AND TERMS OF ENGAGEMENT OF CONSULTANTS

Scope of Work

- 3(1) Consultants may be appointed by the Commission, from time-to-time, for executing such 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 which requires the professional proficiency or where the Commission considers it to be conducive to its working or which are required for enabling the Commission to perform its functions.
- 3(2) Broad terms of engagement will be drawn up in each case and agreed to between the Consultant and the Commission prior to award of consultancy.
- 3(3) The terms of engagement would specify the nature of the tasks to be undertaken by the Consultant, the time allowed for various tasks and the outputs that are to be provided by the Consultant. The Commission may also enter into a Memorandum of Understanding (MoU) with Government or Semi-Government Agencies, Central or State Research Institutes, and nationally or internationally reputed institutes where it deem appropriate or necessary to carry out its functions.

Period of Engagement

4. Consultants will be engaged for the minimum period required. In no case will the maximum period of engagement exceed two year at a time.

Provided that the tenure may be extended for a period not exceeding 3 months at a time, at the discretion of the Commission.

Provided further that no more than two such extensions shall be granted by the Commission

Provided further that the Commission shall have a power to enter into a retainership agreement with any Consultant to avail his services, as and when required by the Commission, for such period and such monthly fees/ charges as may be deemed necessary by the Commission

CHAPTER IV APPOINTMENT OF CONSULTANTS

Terms of Reference

- 5(1) Terms of Reference (TOR) for the appointment of Consultants for specific tasks will be prepared by Commission staff and submitted to the Secretary for seeking the approval of the Commission.
- 5(2) The Commission may decide either to invite combined technical and financial proposals or separate technical and financial proposals.
- 5(3) The Commission will prescribe the minimum qualifying marks for the technical bid. Such minimum qualifying marks shall normally range between 40 to 60 only. However, the Commission, if it deems it necessary or expedient to do so, may vary the said range after recording reasons in writing.
- 5(4) After approval of the TOR by the Commission, the Secretary will cause the request for proposals ("Request for Proposals") to be issued inviting proposals from interested Consultants, giving publicity as may be appropriate in each case. It will not, however, be necessary to go through the process of issue of public advertisement (including uploads on the website of the Commission and/or giving advertisement in the newspaper) where the estimated value of the fee in any individual assignment is below Rs.5 lakhs. However in case of Individual Consultants, such estimated value shall be upto Rs. 3 lakhs/year. Such appointment of Individual Consultant can be made from a panel of consultants.

Request for Proposals

6. The Request for Proposals shall include the following: -
 - (a) A letter of invitation stating the intention of the Commission to enter into a contract for provision of a consulting services, the details of the assignment and the date, time and address for submission of proposals.
 - (b) Information on the evaluation process such as the evaluation criteria, their respective weights and the minimum pre-qualification score.
 - (c) A copy of the TOR as approved by the Commission.
 - (d) Draft contract as in Performa in Schedule 1

Time Limits for Submission of Proposals

- 7(1) The Commission will prescribe the time within which the Consultants shall prepare and submit their proposals.

- 7(2) The Commission may decide to extend the deadline for submission of proposals, as deemed appropriate by it.
- 7(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 be submitted, they shall be submitted in separate sealed envelopes.

Evaluation of Proposals

8. The proposals will be evaluated both on the basis of technical competence as well as the quoted financial fee. 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.
- 9(1) Technical evaluation will be done, taking into account the criteria mentioned below by a committee to be nominated 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 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	10 to 40
The quality of the methodology proposed	20 to 50
The qualifications of the key staff proposed	30 to 60
The extent of transfer of knowledge to the staff of the Commission	0 to 35

The mix of weights approved by the Commission will total to 100.

- 9(2) Where the assignment depends critically on the performance of the key staff, the proposal shall be evaluated on the qualifications of such staff 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.

- 9(3) 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 TOR Their financial proposals should 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.
- 10(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.
- 10(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.
- 10(3) The least cost financial bid will be given a financial score of 100 and other bids will be given financial scores that are inversely proportional to their costs.
11. 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 40 for the financial score in any case.
- 12(1) Where it becomes necessary the Commission may appoint a 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.
- 12(2) 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.
- 12(3) In the event none of the proposals submitted to the Commission meets the criteria of minimum qualifying marks, the entire process for the selection of Consultants shall be restarted. The Commission may re-

commence such an exercise with or without any modification to any terms/part of the proposal/assignment.

- 12(4) Before awarding consultancies of a complex technical nature, the Commission may first appoint a technical group to determine the design and methodology of the study in accordance with the available best practices. The said group will also lay down detailed parameters for the prequalification of the consulting agencies with the necessary technical proficiency and experience.

Single source selection

13. 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 Consultants, or where a rapid selection is essential, or for small assignments where the fee payable does not exceed Rs.5 lakhs in each case, or where only one firm is qualified or has experience for the assignment.

Appointment of Individual Consultants

- 14(1) Individual Consultants will be engaged for assignments which do not require teams of personnel, additional (home office) professional support and where the experience and qualifications of the individual are the critical inputs for the assignment.
- 14(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.

CHAPTER V MISCELLANEOUS

Conflict of Interest

15. 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.

Other terms and conditions

16. The Consultant shall work under the control and supervision of the Secretary of the Commission or Officers as may be authorized by him, but shall furnish its independent professional expert opinion.
17. The Consultant(s) shall submit his/their report or advice to the Secretary.
18. The Consultant will not be an Officer in terms of the Acts or rules or regulations made there-under. Any other terms of appointment of the Consultant, in addition to the conditions given in these Regulations, shall be such as may be decided by the Commission.
19. In case of non compliance by a consultant of the Regulations and orders of the Commission, the Commission may take suitable action, as warranted under the provisions of the Acts, Rules and Regulations or any other action as it deems proper.
20. The Commission shall have full and unrestricted right to appoint or terminate, curtail or extend the terms of any Consultant at its sole discretion.
21. Where the Commission amends or alters the scope of work at any time before signing the contract, it may, at its discretion and having regard to the nature of such amendments/alteration, suitably amend in the contract and mutually agree with the consultant on the resultant additional fees or savings or alternatively cancel the engagement and invite fresh proposals.
22. 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.

Saving of Inherent Powers of the Commission

23. 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.

General Power to Amend

24. The Commission may at any time and on such terms as it may think fit amend any provisions of these Regulations for the purpose of meeting the objectives with which these Regulations have been framed.

Power to Remove Difficulties

25 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 Acts which appears to it to be necessary or expedient for the purpose of removing the difficulties.

(P.S. Shah)
Secretary

Place: Ahmedabad
Date: 29th October, 2005

Schedule 1

Articles of Agreement made on this _____ day of _____ Between _____ of _____ of one (first) part (Consultant) and the Gujarat Electricity Regulatory Commission (herein after called "the Commission") of the other (Second) 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 (Consultant) 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 (Consultant) shall complete the assignment as contained in Schedule – 'A' within a period of _____ commencing from _____
- 3) The party of the first part (Consultant) 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. (may be varied depending on terms agreed for any individual assignment)

- 6) The payment of fee to shall be made by the Commission after the deduction of tax at source in accordance with law for the time being in force.
- 7) Any information of confidential nature, which comes to the knowledge or into the possession of the Consultant or of any of its employees by virtue of the engagement subject matter of this contract; shall not be disclosed by the consultant or its employees to any unauthorised person in any manner. Any breach of this clause without prejudice to any other action that may be initiated according to law, shall also subject the consultant to a liability to pay to the Commission such compensation as may be decided by the Commission keeping in view the nature, manner and motive of the information disclosed and the extent of the damage caused by such unauthorised disclosure.
- 8) 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 itself in a position of not being able to carry out the assignments objectively and impartially.
- 9) in case of any default on the part of the party of the first part in completion of the work within time schedule agreed to between the parties as herein above, the party of the second part (the Commission) 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 (Consultant)
- 10) 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 (Consultant) shall be paid remuneration after taking into consideration the portion of work completed prior to such foreclosure, 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.
- 11) In case of any differences or disputes between the parties arising out of this AGREEMENT, the same 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.
- 12) Consultant's Personnel

The party of the first part (Consultant) shall provide Description of personnel with names, position and qualifications

13) Removal and/or replacement of the personnel

Except as the Commission may otherwise agree, no change shall be made in the key personnel. If, for any reason, beyond the reasonable control of the Consultant, it becomes necessary any of the key personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications, which is acceptable to the Commission.

- 14) If the Commission finds that any of the personnel (1) committed serious misconduct or has been charged with having committed a criminal action or (2) have reasonable cause to be dissatisfied with the performance of any of the personnel, then the Consultant shall, at the Secretary's written request, specifying the ground therefore, forthwith provides as a replacement a person with qualification and experience acceptable to the Commission.

The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of personnel.

- 15) Nodal Person of the party of the first part (Consultant) Mr. _____

- 16) The Secretary, Gujarat Electricity Regulatory Commission, shall be the Nodal Officer on behalf of the Commission.

- 17) Any other terms and conditions

- 18) 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 WHERE OF the party of the first part (Consultant) 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 _____ the party of the first part in the presence of _____

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