

Engagement of Consultant by Forum of Regulators for Evolving a Model Supply Code

Terms of Reference (ToR)

1.0 Context/Background:

- 1.1 The Forum of Regulators (FOR) has been constituted by the Government of India in terms of Section 166 (2) of the Electricity Act, 2003. The Forum consists of Chairperson of the Central Commission and the Chairpersons of the State Commissions. Chairperson of the Central Commission is the Chairperson of the Forum of Regulators and secretarial assistance to the Forum is provided by the Central Commission. The Forum is responsible for harmonization, coordination and ensuring uniformity of approach amongst the Electricity Regulatory Commissions across the country, in order to achieve greater regulatory certainty in the electricity sector.
- 1.2 FOR has been taking steps towards ensuring that the provisions in the Electricity Act and the policies i.e. National Electricity Policy (NEP) and Tariff Policy are implemented. Section 50 of the Electricity Act, 2003 envisages framing of the Electricity Supply Code. The FOR has recognised the need for evolving a Model Electricity Supply Code as its implementation would ensure that the basic consumer service levels are met.

1.3 Hon'ble Appellate Tribunal of Electricity (ATE) in its Order dated 9th October, 2009, against Appeal No. 5 of 2009, 181 of 2008 had directed Secretary, FOR to carry out the compilation of Supply Codes issued by various SERCs and identify the gaps and variations if any in the Supply Codes. In pursuance of the directions of the APTEL, a study was commissioned by FOR and the comparison of supply codes across ten (10) States in India was done. The study revealed inter alia that many of the states are covering the parameters relating to Supply Code under separate regulations/documents like Conditions of Supply, Distribution Code etc. Further, it was found that there are certain gaps in the Codes specified by various SERCs.

1.4 The Forum therefore, agreed that a Model Supply Code should be developed which should feature the suggested mandatory provisions in accordance with the provisions of the Electricity Act, 2003 and also desirable features based on the best practices on customer service being followed in various states. Hence, FOR has decided to engage a Consultant to prepare the Model Supply Code.

2.0 Objectives :

The objective of the assignment is to develop a Model Supply Code for use of SERCs in discharge of their responsibilities under Section 50 of the Act.

3.0 Scope of the work assigned to the Consultant:

3.1 In order to achieve the objective, the Consultant shall undertake the following:

- a. Study the supply codes and other documents issued by various State Commissions under Section 50 of the Electricity Act 2003.
- b. Cover the parameters required under Section 50 of the Act;
- c. Include the best practices currently adopted by various State Commissions in their supply codes;
- d. Consolidate the relevant features across various codes and regulations detailing on the aspect of – process, timelines, responsibility and applicable charges;
- e. Develop various application forms to be included in the Model Supply Code.
- f. Evolve a Model Supply Code which should feature the suggested mandatory provisions in accordance with the provisions of the Electricity Act, 2003 and also desirable features based on the best practices on customer service being followed in various states.

4.0 Deliverables and duration of the Assignment:

4.1 The assignment shall be completed within a period of 90 days from the date of award of consultancy.

4.2 The Consultant will be required to submit inception report at the end of 30 days from the date of award of assignment;

4.3 Submit draft report at the end of 60 days from the date of award of assignment followed by a presentation before Forum of Regulators;

4.4 Submit a Final Report at the end of 90 days from the date of award of assignment;

5. Qualification Criteria:

- 5.1 The Consultant should have completed at least three assignments in the last five years of assisting State Electricity Regulatory Commission's (SERC's) in two different states on Supply codes.

6.0 Mode of payment

The consultant shall be paid as per the following model schedules:

S. No	Stage	Percent of agreed amount
1.	Advance of the total fee of the study at the time of signing agreement/acceptance of the offer, subject to production of Bank guarantee for equal amount to be valid till the amount is to be absorbed in the amount payable to the Consultant.	10%
2.	On submission of inception report;	20%
3.	On submission of the draft report	30%
4.	On submission of the final report	30%
5.	On successful completion and acceptance of the final report by the FOR	10%

*Where necessary, the ToR may provide for withholding of the final installment till the satisfactory performance of the system delivered by the consultant is ensured.

7.0 **Termination of contracts:** The assignment may be terminated as per clause 7 of the Contract Agreement enclosed at ANNEXURE-III.

8.0 **Application and Evaluation Criteria:**

8.1 The format of application is at Annexure-I and Annexure-II.

8.2 The Consultant is required to submit four (4) copies of bids for Technical offer (each of which will be treated as original) and one copy of Financial offer, duly sealed in separate envelopes.

8.3 Technical component will carry 70% weightage and Financial component 30% weightage.

8.4 The bids of the eligible bidders as per Clause 5 will be scrutinized by Consultancy Evaluation Committee (CEC) and shortlisted bidders will be called for interaction with the CEC and their technical performance may be evaluated based on the following model criteria:

Technical Parameters	Weights
Relevant experience for the assignment	30
Understanding of the issues and approach to be followed	30
Qualifications and experience of the key staff proposed	40

8.5 The minimum qualifying marks in the Technical Evaluation may be 50 % of the total score for technical component.

8.6 Only those bidders, who qualify technically as per Clause 8.5, would be considered for Financial Evaluation.

8.7 **Weight for Financial parameters:** Proposal with the lowest cost will be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.

- 8.8 The total score will be obtained by combining the Technical and Financial scores.
- 8.9 Only successful bidder would be communicated the award of consultancy assignment.
- 8.10 The consultant shall abide by the contract as per Annexure-III.

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/ ANNEXURE – I /
DETAILED PROPOSAL FOR STUDY
(TECHNICAL)

Note: Four (4) copies of the proposal shall be submitted to Secretary, CERC.

I. GENERAL INFORMATION:

01. Title of the Proposed Assignment :
02. Name and address of the Organization/
Institution :
03. Name & Designation of the Key Person :
04. Contact address of the Key Person :
 - 4.1 Address :
 - 4.2 e-mail :
 - 4.2 Telephone :
 - 4.3 Fax :
 - 4.4 Mobile No. :
05. Net-worth/Turnover of the Organization/
Institution (To be supported by Annual
Statement of Accounts of Last Financial
Year) :

II. TECHNICAL SPECIFICATIONS:

- 06. i. Department(s) of the organization/Institution(s) where the study will be carried out.
 - ii. Other department(s), if any, which will collaborate in this study

- 07. Brief review of the experience in the relevant field (National and International).

- 08. Detailed Approach & Methodology for undertaking the assignment.

- 09. Previous experience of the proposer in this or related field

- 10. Name and Designation of the Proposed Team (also indicate the man-hour committed for each member of the team)

- 11. Biographical sketch of the Study Team (for every team member)
 - (i) Name
 - (ii) Designation
 - (iii) Date of Birth
 - (iv) Education and Experience
 - (a) Academic Qualifications

Degree	University	Field(s)/Specialisation	Year

(b) Experience:

(1) Total Relevant Experience for the proposed assignment: Years

(2) Detailed Experience:

Institution	Topic of work done	Period

(v) Field of major interest

(vi) Additional information (if any)

12. Capacity to impart training/transfer of knowledge

/ ANNEXURE – II /

DETAILED PROPOSAL FOR ASSIGNMENT
(FINANCIAL)

I. GENERAL INFORMATION:

01. Title of the Proposed Assignment :

02. Name and address of the Organization/
Institution :

03. Name & Designation of the Key Person :

04. Contact address of the Key Person :
(e-mail/fax/telephone)

05. Certificate of authorization in case of Institutes/other organizations (Format enclosed at **Appendix-‘A’**).

II. Fee Proposed:

06. Amount of Fee proposed for:

Note: The fees should not include other financial liabilities of the Consultant.

Components	Basis	Amount (in Rs.)
(I) Consultant Charges -		
(II) Misc./Others (if any)		
(III) Tax		
<i>Total</i>		

(RUPEES _____)

Signature of the Principal Investigator/
Head of the Study Team

CERTIFICATE

The undersigned agree to abide by the conditions of the grants and certify that available facilities for proposed work shall be extended to the investigator/study team.

Signature of Executive Authority
Investigator/of the Organisation

Signature of the Principal
Head of the Study Team

Name and Designation
Date

Name and Designation
Date

Signature of Co-investigator
Name and Designation
Date

Official stamp of
Organization/Institution

/ ANNEXURE – III /

On 50Rs Stamp Please

AGREEMENT

This agreement made on this day of [here give the date of the agreement] at New Delhi BETWEEN [here give the Name and address of the Corporate consultant] hereinafter referred to as “the consultant” of one part and the **Forum of Regulators, 3rd and 4th Floor Chanderlok Building, 36 Janpath, New Delhi -110001** (herein after called "the FOR") of the other part.

WHEREAS

- (A) The FOR, on being satisfied that there is a need to engage a [**Corporate consultant**] for a study to evolve a Model Supply Code and invited quotations vide notice [here give the No and date of the notice]
- (B) The [Corporate consultant] responded to the above notice and submitted his quotations vide his letter [here give the No and date of the quotation of the consultant]
- (C) The FOR, on scrutiny of the responses received in response to its above mentioned notice dated [here give the date of the notice inviting quotations] including the one received from the [Corporate consultant] has decided to engage the Corporate consultant for the above said assignment.
- (D) The Corporate consultant has agreed, to take up the above said assignment

NOW THIS AGREEMENT WITNESSETH AS UNDER:

That the Parties to this Agreement have agreed to terms and conditions mentioned below:

1. Definitions:

- (i) “Confidential information” means any and all information communicated to the consultant by the FOR duly marked so.
- (ii) “Member” means the member of the FOR.
- (iii) “Person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (iv) “Secretary” means the Secretary of the FOR.

2. **Nature of work:** The Corporate consultant shall be engaged as a consultant / expert in the area of Supply Codes in accordance with the Terms of Reference (**Appendix-I**) attached hereto and which shall be deemed to be a part of this agreement for all intents and purposes.

3. **Commencement and duration of assignment:** The above assignment shall commence with effect from [the date of this agreement (or) specify the date] and shall be valid for a period of [here give the duration of the contract] which may be extended by [give the duration of extended duration] with the consent of the FOR.

4. Obligations of the consultant:

- (i) The consultant shall adhere to the time-frame specified in the Terms of Reference and submit the deliverables to the Secretary.
- (ii) The consultant shall make the presentations before the FOR as required by the Secretary.
- (iii) The consultant shall ensure that the interim and final findings of the study and the contents of his interim and final reports to the FOR are not disclosed to any person unless expressly authorized by FOR.

5. Payment to the Consultant:

- (i) The total fees of the study which will be paid to the corporate consultant shall be Rs. (Rupees) (Exclusive of taxes if any).
- (ii) The Corporate consultant shall be paid as per clause 6.0 of Terms of Reference (**Appendix-I**).
- (iii) In appropriate cases a part of the money payable will be released only after satisfactory performance of the system/item provided by the Consultant (case to case basis).

6. **Restrictive terms:**

- (i) The consultant further affirms and confirms that the current assignment is not and shall not be, in conflict with any of its present obligations to any party with whom he/she/it has association.
- (ii) The consultant further affirms and confirms that he/she/it shall hold all Confidential Information in confidence and with the same degree of care he/she/it uses to keep his/her/its own similar information confidential, but in no event shall it use less than a reasonable degree of care; and shall not, without the prior written consent of FOR, disclose such information to any person for any reason at any time;
- (iii) The FOR shall be entitled to, without prejudice to any other right for civil or criminal proceedings, receive from the consultant a compensation for the damages for violation by him/her/it of any of the terms of the agreement which shall be limited to the total fee of the assignment.

7. **Termination of contract:**

At the option of the FOR:

- (i) Without any notice: The assignment may be terminated by the FOR, any time, with immediate effect, under any of the following circumstances:
 - (a) It has come to notice that the Corporate consultant has been convicted for an offence involving moral turpitude or unethical professional practices.
- (ii) With one month notice: The assignment may be terminated by the FOR, under any of the following circumstance, by giving one month's notice and after providing an opportunity to the Corporate consultant to offer explanation:
 - (a) It has come to the notice of the FOR that the consultant has resorted to fraud or suppression of material information or submission of false information or unethical means to secure the assignment.
 - (b) It has come to the notice of the FOR that there is a material change in the circumstances of the Consultant based on which the assignment was awarded to the Corporate consultant [This clause may be used under circumstances such as fall in the net worth criteria, if any fixed for the selection of the consultant, cancellation of the practitioner's license by the professional body, forming the basis of the consultant's eligibility].
 - (c) The Corporate consultant has failed, without any valid justification, to adhere to the time-frame specified by the FOR in the assignment.
 - (d) The consultant has violated any of the provisions of the agreement.

At the option of either parties

- (iii) Both the parties namely, the FOR and the Corporate consultant have the option to terminate the assignment by giving a notice of three months or the equivalent remuneration in lieu thereof.
8. **Effect of termination:** On pre-mature termination of the assignment, the FOR shall pay the Corporate consultant, the remuneration after taking into consideration the part of work performed by him/her/it till the date of termination of the Contract.
- Provided that in case of any dispute as to what is the entitled remuneration for the work the matter shall be referred to arbitration under the provisions of this agreement.
9. **Notice** Any notice between the parties shall be in writing and posted to the other party to the last known address.
10. In respect of any matter for which no provision has been made in this agreement, the provision contained in the general instructions of the Government on the subject of engagement for study shall apply.
11. **Arbitration:**
- (i) Any difference, dispute, claims which may arise between the parties hereto as to the construction or true intent and meaning of any of the terms and conditions herein contained or as to any payment to be made in pursuance hereof or as to any other matter arising out or as to any other matter arising out of or connected with or incidental to these presents or as to the rights, duties and obligations of any of the parties, such difference, dispute or claim shall be mutually settled amicably by arbitration through a sole arbitrator appointed by the FOR.
- (ii) The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof. The venue of such arbitration will be Delhi/New Delhi.
- (iii) Arbitration shall be subject to English language.
12. **JURISDICTION:** In respect of any legal proceedings arising as a result of or relating to or incidental to this agreement, the courts in Delhi/New Delhi alone shall **have exclusive jurisdiction**

IN WITNESS WHEREOF, the Parties above named have executed this Agreement of the day, month and year mentioned hereinabove.

Signed by, [the consultant/Professional party or on behalf of] in the presence of

Signed by, on behalf of the FOR in the presence of

Note: In contracts wherein time is crucial factor, damages for delay clause and Force Majeure clause may be addressed.