

CENTRAL ELECTRICITY REGULATORY COMMISSION

3rd & 4th Floor, Chanderlok Building, 36, Janpath, New Delhi - 110 001

Tel : 23353503/ Fax : 23753923

No. L-1/249/2019/CERC

Dated: 09 October, 2019

Subject: Quotations invited for “**Empanelment of Corporate Consultants for providing inputs for tariff determination by the Central Electricity Regulatory Commission**”

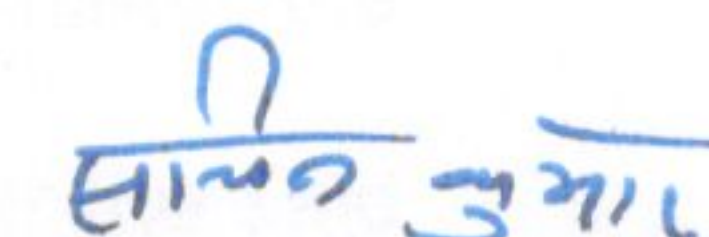
The Central Electricity Regulatory Commission (CERC) proposes to engage Corporate Consultants for providing inputs for tariff determination by the Central Electricity Regulatory Commission. The Terms of Reference for the proposed assignment including format of application are available on website (<http://www.cercind.gov.in>).

2. Sealed quotations are invited from the reputed Corporate Consultants for the aforesaid purpose. Two separate sealed bids clearly marked as “Technical” and “Financial” are required to be submitted which may be placed in one outer envelope clearly mentioning in bold letters on top of envelope as “**QUOTATIONS FOR EMPANELMENT OF CORPORATE CONSULTANTS FOR PROVIDING INPUTS FOR TARIFF DETERMINATION BY THE CERC**”. The bids are to be addressed to, **The Secretary, Central Electricity Regulatory Commission, 3rd Floor, Chanderlok Building, 36, Janpath, New Delhi - 110001** so as to reach by **15.00 hrs** on **1st November, 2019**.

3. The quotations received after due date or without proper supporting documents will not be entertained. CERC has all the right to reject/accept any/all the quotations without assigning any reason whatsoever.

4. The Technical Bids will be opened by the Tender Opening Committee, CERC on **01st November, 2019** at **16.00 hrs** in Conference Hall at Fourth Floor office in Chanderlok Building, 36 Janpath, New Delhi-110001 in the presence of bidders or their representatives.

5. It may kindly be noted that the proposal would be evaluated by a Committee duly constituted by CERC. Selection of the Agency will be based on the criteria mentioned in TOR.


(Sachin Kumar)

Assistant Secretary (P&A)

Encl : As above

Engagement of Corporate Consultants for providing inputs for tariff determination by the Central Electricity Regulatory Commission

Terms of Reference (ToR)

1.0 Background

1.1 The Central Electricity Regulatory Commission constituted under the erstwhile Electricity Regulatory Commissions Act, 1998 was recognized as the Central Electricity Regulatory Commission (hereinafter referred as “the Commission”) under the Electricity Act, 2003 (hereinafter referred as “the Act”). The Act has significantly enlarged the responsibilities of the Commission. Under the Act, the Commission has *inter-alia* been vested with the functions to regulate the tariff of the generating companies owned or controlled by Central Government; regulate tariff of generating companies having a composite scheme for generation and sale of electricity in more than one State; to regulate inter-State transmission of electricity and determination of tariff for inter-State transmission of electricity.

1.2 The Commission issued Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the “2014 Tariff Regulations”) for the 2014-19 period under the Act and determined the tariff of the various generating stations and transmission assets under the said Regulations. The Commission has further issued the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as the “2019 Tariff Regulations”) which is effective from 1.4.2019. As per these Regulations, the Commission is required to true up the tariff of the 2014-19 period, besides determination of tariff for the 2019-24 period.

1.3 In accordance with Regulation 9(2) of the 2019 Tariff Regulations, the tariff petitions of assets (that have declared COD on or before 31.03.2019) are required to be filed by 31.10.2019. In compliance of the said regulation, the generating companies and transmission licensees have started filing petitions for the purpose of true up of the tariff of these assets for the 2014-19 tariff period and for determination of tariff for the 2019-24 tariff period. Further, fresh tariff petitions, in respect of assets that declare COD on or after 01.04.2019, are likely to be filed in respect of generating stations/units or transmission systems/transmission elements for determination of tariff for the 2019-24 period. The Commission is required to complete the exercise expeditiously to enable distribution companies or beneficiaries to capture final tariff in their respective Annual Revenue Requirements (ARR) proposal. Therefore, the Commission proposes to engage Corporate Consultants to assist the Commission in this exercise, in a time bound manner.

2.0 Objective

2.1 The objective of engaging the Corporate Consultants is to assist the Commission in determination of tariff (and true up exercise) of the generating companies and the transmission licensees in accordance with the applicable tariff regulations taking into consideration the submissions made by the general public, stakeholders, petitioner and respondents for disposal of the petitions in a time bound manner.

3.0 Scope of work

Part-I

3.1 The Corporate Consultant shall provide inputs for the following three categories of petitions.

- 3.1.1 Revision of transmission tariff of 2001-04, 2004-09, 2009-14 tariff periods in respect of transmission assets taking into consideration the recent judgement of the Hon'ble Supreme Court, judgements of Appellate Tribunal for Electricity and orders of the Commission; truing up the tariff of the 2014-19 tariff period; and determination of tariff of the 2019-24 period in accordance with the applicable Tariff Regulations.
- 3.1.2 Truing up the tariff of the 2014-19 tariff period in respect of generating units/stations and the transmission assets that achieved COD during the 2014-19 tariff period and determination of tariff of the 2019-24 period in accordance with the applicable Tariff Regulations.
- 3.1.3 Determination of the tariff of the 2019-24 tariff period in respect of new generating units/stations and new transmission assets in accordance with the 2019 Tariff Regulations.

Part-II

- 3.2 The Corporate Consultant shall assist the Commission in different stages namely, pre-listing, listing and post-listing of the tariff petitions.

3.2.1 Pre-listing

- a) To undertake scrutiny/evaluation/technical validation of various tariff petitions filed by the transmission licensees, including deemed transmission licensees, and generating companies on economic, financial, technical and legal aspects. The Corporate Consultant shall prepare input for technical validation in the specified format;

- b) To submit draft technical validation report of each petition which include the findings and inadequacies in the tariff petitions from financial, technical, and legal angle for determination of tariff. The technical validation should also indicate requirement, if any, of additional information to work out the tariff;
- c) To analyse submissions/comments/suggestions/objections of the general public/stakeholders/respondents and rejoinders/submissions received prior to the hearing. Thereafter, to provide inputs (as per the specified format) on various issues in the tariff petitions along with supporting analysis and back up material;
- d) To brief the Commission on issues raised by the petitioner in tariff petitions;
- e) To attend meetings as desired by the Commission.

3.2.2 Listing

- a) To attend the hearing of the petitions

3.2.3 Post Listing

- a) To provide inputs for the purpose of preparing “Record of Proceedings” on the basis of the hearing;
- b) To analyse submissions/comments/suggestions/objections of the stakeholders/respondents and additional submissions by the petitioner during the hearing as recorded in “Record of Proceedings” and after hearing;
- c) To carry out financial analysis of tariff claimed by considering all relevant legal, financial and technical inputs as well as previous decisions of the

Commission which *inter-alia* included determination of capital cost, time over-run, cost over-run, IDC, IEDC, initial spares, depreciation, return on equity, interest on loan, interest on working capital and O&M cost etc.;

- d) To submit inputs addressing all relevant issues in the desired format and manner;
- e) To submit the required input in case of any Review Petition or Appeal or Writ Petition during the period of engagement.

Part-III

3.3 The Corporate Consultant shall carry out analysis of the petition and provide input for order.

- a) The Corporate Consultant shall prepare inputs covering all the aspects of tariff components, approved financial and technical inputs in accordance with the applicable Tariff Regulations. The inputs shall be prepared by considering the following:

- Approved technical, financial and legal inputs for each tariff petition and calculation of tariff of the generating companies or transmission licensees, as the case may be;
- The suggestions/comments/objections received from various stakeholders, written and oral submissions of the petitioner and respondents and previous decisions of the Commission, APTEL, Hon'ble High Courts and Hon'ble Supreme Court on various aspects;
- Applicable Tariff Regulations and all relevant Acts, Rules and Regulations applicable thereto.

- b) In addition to the above, the Corporate Consultant may also be required to provide all assistance, so as to enable the Commission to dispose of the Tariff Petitions in a time bound manner.
- c) In case any Review or Appeal or Writ Petition is filed in respect of the Tariff Petitions handled by the Corporate Consultant, the Corporate Consultant shall provide the input/material required for defending the same.

3.4 The Corporate Consultant shall handover Information/Details/Data

- a) After disposal of the Petition, the Corporate Consultant shall handover soft and hard copy of the petition, entire workings/data including tariff calculations sheets, technical/financial/legal inputs etc. to the Nodal Officer designated by the Commission for this purpose, within three days of posting of the order on the Commission's website.
- b) The Corporate Consultant shall make and submit index of the details of the hard and soft copy of the material submitted to the Nodal Officer.
- c) The Corporate Consultant shall quote rate per petition for completion of work related with the petition.
- d) The Corporate Consultant will function from the premises of the Commission and will on no occasion remove the records/documents relating to the petitions from the assigned premises. An undertaking to this effect will be provided by the Corporate Consultant and any breach will be viewed seriously.

4.0 Deliverables and duration of the Assignment

4.1 Period of the Contract:

The engagement of Corporate Consultant will be for a period of one year, which may be extended for a further period of one year considering the work load.

4.2 Time-line for deliverables

4.2.1 The Corporate Consultant shall complete each milestone in accordance with the following timeline:

Sl. No.	Activity	Schedule Completion
1	Examination/technical validation of the Petition and all the documents referred therein; submission of the draft report of technical validation including the list of inadequacies/data gaps in the petition along with additional information to be sought from the petitioner in the prescribed format.	Within 5 days for transmission tariff and within 10 days for generation tariff from the date of handing over of the petition to the Corporate Consultant
2	Examination/analysis of the comments/suggestions/objections received from stakeholders and respondents in response to public notice and the rejoinder of the petitioner. The Corporate Consultant shall submit the issues in the prescribed format.	Within 7 days after receipt of all objections or suggestions or additional rejoinder.
3	Submission of inputs for preparing "Record of Proceedings" on the basis of the hearing	Within 1 day of the hearing.
4	Submission of the inputs along with final tariff calculations for taking a final view on the petition.	Within 5 days of the hearing where all required information is available on record. Else within 5 days of submission of the required information by the parties.

4.2.2 The time-line for deliverables is to be strictly adhered to. For any delay, except where extension is allowed, 1% penalty per day will be levied for value of work executed after the due date subject to a ceiling of 10% of contracted amount.

- 4.2.3 The individual task shall be completed in phased manner and overlapping of one or more tariff proposals shall not be considered as a constraint in adhering to the timeline.
- 4.3 The Corporate Consultants shall deploy the requisite number of professionals/manpower on daily basis to ensure that the deliverables are commensurate with the timeline and requirements.
- 4.4 The Corporate Consultant will remain present in all hearings related to the petitions assigned to it.
- 5.0 Qualification Criteria
- 5.1 The Corporate Consultant during the last 5 years should have undertaken at least 10 assignments relating to tariff determination in respect of thermal, hydro and gas based generation projects and transmission projects and/or filed tariff petitions (including tariff computation) of generating companies, transmission licensees and distribution companies.
- 5.2 The Corporate Consultant must have an average annual financial turnover of Rs. 5 crore during the last three years. Documentary evidence to this effect duly attested by a Chartered Accountant should be submitted along with the Bid.
- 5.3 The Corporate Consultants shall deploy at least five (5) personnel with at least one each in areas of Finance, Engineering (Mechanical/Electrical) and Law. Such personnel should have requisite professional qualifications along with relevant experience of tariff determination. The Corporate Consultant team should consist of at least one graduate in Engineering, one graduate in Law and one having CA/ICAI (Cost)/CFA qualification.

- 5.4 The Corporate Consultants should be well versed with relevant Acts, Policies, Regulations prevalent in the Electricity Sector, the Tariff Regulations notified by the State/Central Commission, including the operational and commercial aspects of thermal generating stations, hydro generating stations and transmission systems.
- 5.5 Each member of the team deployed for the said assignment shall be a full time employee or contractual staff on full time basis of the Corporate Consultant.
- 5.6 No member of the team should be changed/replaced during the course of the said assignment without the prior approval of the Secretary of the Commission.
- 5.7 The Corporate Consultant shall submit an affidavit in support of the claim that the Corporate Consultant has not been blacklisted during the last five years by any organisation/Government Department.

6.0 Procedure for payment

- 6.1 The Corporate Consultant shall submit a status report to the Nodal Officer on completion of all the deliverables (as per Clause 4.2 of this TOR) in respect of each petition assigned and the status of the petitions pending with it, as on the first day of each month.
- 6.2 The Corporate Consultant shall raise bills in the first week of every month in respect of the petitions handled by it and disposed of during the previous month and posted on the Commission's website.
- 6.3 The payment shall be made only on receipt of the hard and soft copy of the information/details/data as stated in Clause 3.3.2 of this TOR.
- 6.4 The Corporate Consultant shall be paid on a monthly basis as per the accepted rate in respect of petitions completed, subject to withholding of 10% payment of

completed work, which shall be paid after the successful completion of the assignment.

- 6.5 In case any Review or Appeal or Writ Petition is filed in respect of the Tariff Petitions handled by the Corporate Consultant, the Corporate Consultant shall provide the input/material required for defending the same, for which no additional payments would be made.

7.0 Conflict of Interest

- 7.1 The Corporate Consultant is required to enclose an undertaking/affidavit (as at Annexure-III) that they are not handling any assignment that would be in conflict with this assignment or place the Commission in a position of not being able to carry out this assignment objectively and impartially. The Corporate Consultant is also required to disclose through an undertaking about the details of current assignments with their other clients or current obligations. The Commission's decision in these matters will be final and binding.

8.0 Confidentiality of data and documents

- 8.1 The Corporate Consultant shall maintain confidentiality of information and enter into a "Confidentiality and Non-Disclosure" agreement (as at Annexure-V). The Corporate Consultant shall provide an undertaking on behalf of its employees along with an undertaking of the team leader to ensure the confidentiality of information as required by the Commission.
- 8.2 The Corporate Consultant shall not utilize or publish or disclose or part with any part of data or statistics or proceedings or information collected for the purpose of this assignment or during the course of the assignment, without the approval of the Secretary of the Commission.

9.0 Termination of contract

9.1 The performance of the Corporate Consultant shall be evaluated on the basis of deliverables. If the performance of the Corporate Consultant is not satisfactory in terms of the quality and the timeline of the work, the Agreement may be terminated as per clause 7 of the said Agreement. The decision of the Commission shall be final in this regard.

10.0 Technical Evaluation

- 10.1 The format of application is at Annexure-I and Annexure-II.
- 10.2 The Corporate Consultant is required to submit two bids i.e. Technical Bid and Financial Bid. Both the Bids shall be submitted in separate sealed covers and put in another envelope while submitting the same to the Commission.
- 10.3 Technical Bid shall be submitted in two (2) copies (each of which will be treated as original). Financial Bid is required to be submitted in one copy.
- 10.4 Soft copy of Technical Bid as well as Financial Bid is also required to be submitted along with hard copy and should be kept in respective envelopes.
- 10.5 The Technical Bids of the bidders will be scrutinized taking into consideration the criteria laid down in Clause 5 of this Terms of Reference by Consultancy Evaluation Committee (CEC), to be constituted by the Commission and shortlisted bidders will be called for interaction with the CEC. The evaluation of Technical Bids shall be done on the basis of following criteria:

Technical Parameters	Weightage
Corporate Consultant's relevant experience for the assignment	30%
Quality/approach/methodology	30%
Qualifications and experience of the key staff proposed	40%
Total	100%

- 10.6 The minimum qualifying score based on above weightages shall be 70%.
- 10.7 Financial Bids of only those bidders would be opened who score more than the qualifying score in Technical Bid.

11.0 Financial Evaluation

- 11.1 The Commission proposes to engage two Corporate Consultants. The number of petitions to be assigned to each Corporate Consultant is likely to be in the range of 200 to 250. However, the Commission reserves the right to allocate the petitions depending upon relative workload.
- 11.2 The technically qualified bidders would be ranked as L1, L2, L3 and so on based on the rates quoted in Financial Bid where the bidder quoting the lowest rate would be declared as L1. If the L2 bidder matches the rate quoted by L1 bidder, the L2 bidder will also be eligible to take up the assignment.
- 11.3 However, the L1 bidder may be assigned 10% more petitions than the L2 bidder.
- 11.4 The Corporate Consultant shall abide by the contract as per Annexure-IV and Confidentiality and Non-disclosure Agreement as per Annexure-V.

Annexure – I**DETAILED PROPOSAL FOR ASSIGNMENT****(TECHNICAL)**

Note: Two (2) copies of the proposal shall be submitted to the Secretary, CERC.

Sl.No.	Particulars	Details (to be provided by the applicant)
I. General Information		
1	Title of the Proposed Assignment	
2	Name and address of the Organization	
3	Name & Designation of the Key Person	
4	Contact address of the Key Person	
	Address	
	e-mail	
	Telephone	
	Fax	
	Mobile No.	
	Average annual financial turnover during last three years of the Organization (To be supported by Annual Statement of Accounts of the last three years duly certified by a Chartered Accountant)	
II. Technical Specifications:		
1	Brief review of the experience in the relevant field (National and International).	
2	Detailed Approach & Methodology for undertaking the assignment.	
3	Facilities available for the proposed work in the applicant's organization/institution	
4	Previous experience of the applicant in this or related field	
5	Name and Designation of each Member of the Proposed Team (also indicate the	

Sl.No.	Particulars	Details (to be provided by the applicant)								
	man-hour committed for each member of the team)									
6	Biographical sketch of the Study Team to be given separately (for every team member									
	6.1 Name									
	6.2 Designation									
	6.3 Date of Birth									
	6.4 Education and Experience:									
	6.4.1 Academic Qualifications:									
	<table border="1"> <thead> <tr> <th>Degree</th><th>University</th><th>Field(s)/Specialisation</th><th>Year</th></tr> <tr> <th>A</th><th>B</th><th>C</th><th>D</th></tr> </thead> </table>	Degree	University	Field(s)/Specialisation	Year	A	B	C	D	
Degree	University	Field(s)/Specialisation	Year							
A	B	C	D							
	6.4.2 Experience :									
	(a) Total Relevant Experience for the proposed assignment: Years									
	(b) Detailed Experience :									
	<table border="1"> <thead> <tr> <th>Institution</th><th>Topic of work done</th><th>Period</th></tr> <tr> <th>E</th><th>F</th><th>G</th></tr> </thead> </table>	Institution	Topic of work done	Period	E	F	G			
Institution	Topic of work done	Period								
E	F	G								
	6.5 Field of major interest									
	6.6 Additional information (if any)									

Signature of the Head
of the Corporate Consultant

Annexure – II**DETAILED PROPOSAL FOR ASSIGNMENT****(FINANCIAL)**

Sl.No.	Particulars	Details (to be provided by the applicant)
I. General Information		
1	Title of the Proposed Assignment	
2	Name and address of the Organization	
3	Name & Designation of the Team Leader	
4	Contact address of the Team Leader (e-mail/fax/telephone)	
5	Certificate of authorization in case of Institutes/other organizations (Format enclosed at Appendix-‘A’) .	

II. Fee Proposed per petition (amount should be exclusive of GST):(Rupees_____)

Signature of the Head
of the Corporate Consultant

Appendix-‘A’

CERTIFICATE

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

Signature of the Competent Authority
of CERC

Signature of the Head
of the Corporate Consultant

Name and Designation
Date

Name and Designation
Date

Official stamp of
Organization



Annexure-III

(On Stamp Paper of Rs.100/-)

UNDERTAKING

(In terms of Clause 6 of the Contract Agreement read with Clause 7 of the Terms of Reference)

The Corporate Consultant (name of the organisation) hereby certifies that

- a) the Corporate Consultant has not undertaken any consultancy service or assignment or given any advice, either directly or indirectly to those organisations whose tariff petitions are part of the present assignment.
- b) to the knowledge and belief, there are no present interests (financial, contractual, organizational, or otherwise) relating to the assignment for providing input for tariff determination for relevant control period awarded by CERC by Letter No.____dated ____and to be performed under the terms of Agreement dated ____, that would create any actual or foreseeable conflict of interest (or apparent conflicts of interest), (including conflicts of interest for immediate family members, spouses, parents, children) that would impinge on its ability to render impartial assistance or advice or result in it being given an unfair advantage.
- c) the Corporate Consultant will continue to exercise due diligence in identifying and removing or mitigating, to the satisfaction of CERC, such conflicts of Interest (or apparent conflicts of interest).
- d) the Corporate Consultant shall notify the CERC of any possible or potential conflict of interest which may result from his other activities, and shall commence such other activities only after written approval of the Secretary, CERC.
- e) CERC may terminate the assignment/agreement, in whole or in part, if it deems that such termination is necessary to avoid the appearance of a conflict of interest. Also, if the Corporate Consultant was aware of a potential conflict of interest prior to award of the said assignment or discovered an actual or potential conflict after award of the assignment and did not disclose or misrepresented relevant information to the CERC, then the CERC may terminate the contract for default, or pursue such other remedies as may be permitted by law or under the agreement.

Name / Organisation (with seal)_____

Signature
Name of Authorised Signatory
Date



In Witness of :

- 1.
- 2



Annexure IV

(On Stamp Paper of Rs.100/- duly notarised)

AGREEMENT

This **AGREEMENT** entered into on this _____ day of, 2019 [here give the date of the agreement] BETWEEN [give the Name and full address of the Corporate Consultant] hereinafter referred to as "the Corporate Consultant" or the party of the First Part

AND

Central Electricity Regulatory Commission represented by Secretary (name and designation of the Officer) having its office at 3rd and 4th Floor, Chanderlok Building, 36 Janpath, New Delhi -110001 (herein after called "CERC") or the party of the Other Part.

WHEREAS

- (A) the CERC, on being satisfied that there is a need to appoint Corporate Consultant(s) for providing inputs for determination of tariff by the Central Electricity Regulatory Commission in accordance with relevant Tariff Regulations 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 CERC, 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 [consultant] has decided to engage the consultant for the above said assignment under the provisions of the Central Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2008 and subsequent amendment thereto.
- (D) the Corporate Consultant has agreed, to take up the above said assignment through unconditional acceptance of Letter of Intent dated (Insert date).

NOW THIS AGREEMENT WITNESSETH AS UNDER:

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



1. Definitions:

- (i) “Commission” means the Chairperson and the members of the CERC including the Ex-officio member.
- (ii) “Confidential information” mean any and include all information as defined under the Confidentiality and Non-Disclosure Agreement.
- (iii) “Member” means the member of the CERC including the Chairperson and the ex-officio member.
- (iv) “Person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (v) “Secretary” means the Secretary of the Commission.

2. Nature of work: The Corporate Consultant shall be engaged for providing inputs for determination of tariff by the Central Electricity Regulatory Commission in accordance with relevant Tariff Regulations as per the Terms of Reference (**Annexure-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] and shall be valid for a period of one year, which may be extended by CERC for a further period which it deems fit taking into consideration the work load.

The Corporate Consultant shall adhere to the timelines specified in Clause 4.2 of the Terms of Reference.

Provided that for any delay after taking into account extension granted, 1% penalty per week will be levied for value of work executed after due date of completion of work subject to a ceiling limit of 10% of the contracted amount.

4. Obligations of the Corporate Consultant:

- (i) The Corporate Consultant shall adhere to the time-frame specified in the Terms of Reference and submit the deliverables to the Secretary.
- (ii) The Corporate Consultant shall make the presentations before the CERC as required by the Secretary.
- (iii) The Corporate Consultant shall ensure that the inputs for determination of tariff by Central Electricity Regulatory Commission in accordance with relevant Tariff Regulations are confidential information and shall not be disclosed to any person. The provision of Confidentiality and Non-disclosure Agreement shall apply to these information.

- (iv) The Corporate Consultant shall provide all the inputs, reports and calculations in the report format as well as digital format as desired by CERC.

5. Entitlements of the Corporate Consultant:

- (i) The Corporate Consultant shall be entitled to [Here give the amount payable and the schedule of payment and any other provision such as TDS, etc.];
- (ii) The Corporate Consultant shall be paid as per Clause 6 of Terms of Reference;
- (iii) In appropriate cases, a part or full amount payable will be released only after approval of the deliverables by the competent authority authorized by the Commission;
- (iv) The Corporate Consultant shall not be entitled to any other remuneration or reimbursement or perquisites or facilities;
- (v) The Corporate Consultant will function from the office premises of CERC.

6. Restrictive terms:

- (i) The Corporate 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 any association. The Corporate Consultant shall provide an undertaking (as per Annexure-III) in this context which will be abided by during the assignment.
- (ii) The Corporate Consultant further affirms and confirms that he/she/it shall hold all business information including Confidential Information in confidence and with the same degree of care he/she/it uses to keep his/her/it 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 CERC, disclose such information to any person for any reason at any time.
- (iii) The Corporate Consultant shall enter into Confidentiality and Non-disclosure agreement and Conflict of Interest Agreement and shall abide by the provisions of this agreement;
- (iv) The CERC shall be entitled to, without prejudice to any other right for civil or criminal proceedings, receive from the Corporate 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.
- (v) The Corporate Consultant, while functioning from office premises, shall indemnify the CERC for any damages at all times. The Corporate Consultant, shall undertake the entire responsibility of their professionals, while executing their assignment from office

premises. No compensation towards the expenses for their professionals is admissible.

- (vi) The Corporate Consultant shall ensure that their professionals maintain office discipline, follow ethical professional practices while functioning from office premises and follow/report to the officer in charge.

7. Termination of contract:

a. At the option of the CERC:

- (i) Without any notice: The assignment may be terminated by the CERC, any time, with immediate effect, under any of the following circumstances:

- (a) It comes to notice of CERC that 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 CERC, under any of the following circumstances, by giving one month notice and after providing an opportunity to the Corporate Consultant to offer explanation:

- (a) It comes to the notice of the CERC that the Corporate Consultant has resorted to fraud or suppression of material information or submission of false information or unethical means to secure the assignment;
 - (b) It comes to the notice of the Commission that there is a material change in the circumstances of the Corporate 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 Corporate Consultant's eligibility].
 - (c) The Corporate Consultant has failed, without any valid justification, to adhere to the time-frame specified by the CERC in the assignment.
 - (d) The Corporate Consultant has violated any of the provisions of the agreement.
 - (e) The Corporate Consultant failed to provide deliverables within the timeline specified in the Terms of Reference for three consecutive occasions as reported by the officer in charge.

b. Further, the Corporate Consultant shall be liable to be debarred for any future assignment for a period of 3 (three) years in any of the above events.

c. At the option of either parties

(iii) Both the parties, namely, the CERC 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, CERC shall pay the Corporate Consultant, part or full remuneration, as CERC deems fit, for the work performed by the Corporate Consultant till the date of termination of the Contract.

9. **Notice** Any notice between the parties shall be in writing and posted to the other party to the last known address.

10. **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 on the day, month and year mentioned hereinabove.

Signed by, [Corporate Consultant or on behalf of]
in the presence of

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

(Note: The CERC may review the above after pre-bid conference meeting to align with TOR, if required)

Annexure V

(On Stamp Paper of Rs.100/-)

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** entered into on this _____ day of _____, 2019 [here give the date of the agreement] BETWEEN [give the Name and full address of the CorporateConsultant hereinafter referred to as "the CorporateConsultant" or the party of the First Part

AND

Central Electricity Regulatory Commission represented by _____ (name and designation of the Officer) having its office at 3rd and 4th Floor, Chanderlok Building, 36 Janpath, New Delhi -110001 (herein after called "CERC") or the party of the Other Part:

A) Whereas CERC has undertaken a bidding process for selection of a CorporateConsultant for the assignment of providing inputs after analysis of tariff proposals for relevant tariff periods (hereinafter called "**the assignment**") in accordance with the provisions of the Central Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2008 and its amendments thereof;

B) Whereas, CERC, after evaluation of bids, decided to engage [name of Corporate Consultant] as the CorporateConsultant for the said assignment and the said CorporateConsultant has agreed to take up the above said assignment and has entered into a Contract Agreement dated [Insert date] for undertaking the said assignment;

C) Whereas, CERC, desires to share business information which *inter-alia* include CERC information or business information of confidential or non-confidential nature to the CorporateConsultant for the purpose of the assignment for which the CorporateConsultant has agreed to enter into a Confidential and Non-disclosure Agreement;

D) Whereas, the said CorporateConsultant has agreed to enter into a Confidential and Non-disclosure Agreement in accordance with Clause 11.4 of the Terms of Reference and Clause 6 of the Contract Agreement dated (Insert Date of Contract Agreement);

E) Whereas, CERC intends to lay down in writing the obligations of the CorporateConsultant with respect to the handling and disclosure of the business Information shared with or made known to the said CorporateConsultant in connection with the said assignment.

NOW THIS AGREEMENT WITNESSETH AS UNDER:



In consideration of the mutual covenants and conditions set forth herein, the Corporate Consultant, is legally bound and agrees as follows:

1. Definitions

- a) "CERC Information or Business Information" includes, but is not limited to, information relating to tariff petitions, intellectual property, reply affidavits / rejoinders/objections, written submissions, technical and financial information, sources of information, strategic decisions and discussions, plans, datas, methods and approach, personnel and business relationships in respect of the functioning of CERC etc.
- b) "Commission" means the Chairperson and the members of the CERC including the Ex-officio member.
- c) "Confidential information" includes, but is not limited to business information and includes all and any information communicated to the said Corporate Consultant in writing or orally by CERC:

Explanation: The Confidential Information shall not include any information which (i) was already known to the Corporate Consultant prior to the time of disclosure by CERC as evidenced by written records, (ii) or is available or becomes available to the public, through any other source, other than through a breach of this Agreement by the Corporate Consultant.

- d) "Person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or an artificial juridical person;
- e) "Secretary" means the Secretary of the Commission.
- f) "Effective Date" means the date of signing of this agreement by the Corporate Consultant;

2. The Corporate Consultant agrees that:

- a) it shall use the business information including Confidential Information or non-Confidential Information for the assignment and for no other purpose whatsoever;
- b) It shall take all necessary and appropriate steps to keep the business information confidential and shall protect the Confidential Information including: (i) restricting access to all confidential information received, to those employees who have a "need to know" and advising such employees of their obligations to handle the Confidential Information with the highest degree of care and prudence to prevent any violation of this Agreement; and (ii) not using, disclosing, or allowing access to such Confidential Information by any third party, except as authorized by CERC in writing.
- c) It shall be liable for any breach of this agreement by any of its employees, employees of its affiliates or subsidiaries and by any of its agent, or other third

party to whom it has communicated the said business information including Confidential Information.

2

3. Disclosure of information

3.1 If the Corporate Consultant is legally required to disclose business information including Confidential Information, or any part thereof, the Corporate Consultant will give CERC prompt notice of such requirement. Upon such notice or request, CERC shall either waive compliance to any of the terms of this agreement or if CERC is unable to obtain any order prohibiting disclosure of such business Information and made known to the consultant, only then the Corporate Consultant shall disclose that portion of the Confidential Information, which are necessary to ensure compliance of such legal requirement.

3.2 Any business information including Confidential Information that is disclosed pursuant to a legal obligation as above, the Corporate Consultant shall maintain its confidential or restrictive access character if the disclosure does not result in the information becoming generally known or available to third parties, without restrictions on further disclosure. The Corporate Consultant shall have the responsibility to show that the information remains confidential based on the foregoing exceptions and must inform CERC within forty eight hours from the date /time of disclosure upon such exceptions.

4. Rights on Information

4.1 The Corporate Consultant agrees that business information including Confidential Information is and will remain the property of CERC and all such Information in tangible form and copies thereof will be returned promptly to CERC upon request of officer in charge or at the end of the assignment. In case, the Corporate Consultant is required to hold on to the Confidential Information in furtherance of the assignment, then such copy shall be maintained in a safe and secure location by the said Corporate Consultant. No use of such business information including Confidential Information is permitted except as provided in this agreement, and the Corporate Consultant agrees not to rely upon, in any manner, the said Confidential Information, except as authorized by this agreement. No grant of any of the CERC's intellectual property rights, including any license implied or otherwise, is given or intended to be given.

4.2 Any additional information provided by CERC to the Corporate Consultant for its evaluation, together with the tariff petitions and the information obtained by the Corporate Consultant as a result of the scrutiny and examination thereof shall also be deemed to be Confidential Information and is subject to this agreement. The interim report or analysis or deliverables made there from shall be returned or disposed of as directed by CERC.

5. Effective date and termination of the Agreement:

5.1 This Agreement will be effective as on the Effective date of (Insert Date) and will cover all the business information including Confidential Information disclosed to the Corporate Consultant by CERC subsequent to such date. This agreement shall remain



valid for 10 years from and after the effective date of this agreement and from the termination of the

3

Agreement dated (Insert Date) unless extended by CERC in relation to the said assignment/Permitted Purpose.

5.2 The expiry of the agreement dated (Insert Date) does not give liberty to CorporateConsultant to disclose any information shared/disclosed by CERC and available with the CorporateConsultant and/or their employees and the CorporateConsultant shall indemnify CERC to the extent of the breach of confidentiality and affecting the interests of CERC.

6. The CorporateConsultant acknowledges and agrees that the unauthorized disclosure or any other violation, or any perceived violation of this agreement by the CorporateConsultant will cause irreparable damage to CERC. The CorporateConsultant agrees that CERC has the authority to prohibit the CorporateConsultant from any such disclosure, attempted disclosure, violation or perceived violation without the necessity of proving damage of its interests. The CorporateConsultant hereby agrees and indemnifies and holds the CERC harmless from and against all or any damage, losses and costs (including reasonable attorneys' fees) resulting from any such actual, attempted or threatened disclosure or perceived violation.

7. Neither this agreement nor anything disclosed or provided pursuant to this agreement shall create or should be construed to create, in any manner, any obligation to enter into any contract or business arrangement nor does it obligate either Party to purchase any service or item from the other or offer for sale any products using or incorporating Confidential Information.

8. The CorporateConsultant agrees and acknowledges that neither CERC nor its officers, employees, assigns or advisors make any representation or warranty (express or implied) as to the accuracy and completeness of Confidential Information except as may be expressly represented or warranted in any subsequent agreement concluded between the Parties.

9. This Agreement may not be amended or modified, nor may any right or remedy of any Party be waived, except in writing and signed by such Party. The waiver by any Party of the breach of any term or provision hereof by any other Party will not be construed as a waiver of any other subsequent breach.

10. The rights and obligations of the parties pursuant to this Agreement shall be in addition to and shall not derogate from either party's obligations under any other agreement between them. In the event of any conflict between any provision(s) of this Agreement and those of any other agreement between them, the more restrictive provision(s) shall apply and the interpretation of CERC in this regard shall be final.

11. The CorporateConsultant affirms that the individual(s) executing this agreement on behalf of the said consultant has the authority to bind the CorporateConsultant to the terms hereof.

12. The CorporateConsultant acknowledges and agrees that each and every term of this agreement is of the essence. If any one or more of the provisions contained in this agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this

Agreement shall not in any way be affected or impaired thereby so long as the commercial, economic and legal substance of the transaction contemplated hereby are not affected in any manner materially adverse to any Party. Upon such a declaration, the Parties shall modify this Agreement so as to carry out the original intent of the Parties as closely as possible in an acceptable manner so that the purposes contemplated hereby are consummated as originally contemplated to the fullest extent possible. However, the decision of CERC shall be final.

13. 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 on the day and month of the year mentioned hereinabove.

Signed by, [the Corporate Consultant/Head] for on behalf of] in the presence of

Witness

1.

2.

Signed by,for on behalf of CERC in the presence of

Witness

1.

2.

(Note: The CERC may review the above after pre-bid conference meeting to align with TOR, if required)

Annexure VI

(On Stamp Paper of Rs.100/-)

(TO BE SIGNED BY AUTHORISED SIGNATORY AND TEAM LEADER)

UNDERTAKING OF CONFIDENTIALITY

This is to certify that I, _____, an employee of [thename of the Corporate Consultant], understand that any information (written, verbal or other form) obtained during the performance of my assignment "Providing inputs for determination of tariff by the Central Electricity Regulatory Commission for relevant tariff period") awarded by the Central Electricity Regulatory Commission vide letter dated _____, shall remain confidential and adhere to the provisions of Confidentiality and Non-disclosure Agreement dated _____. This includes all business information restricted for permitted use including confidential information and any other information marked or known.

2. I understand that any unauthorized release or carelessness in the handling of this confidential information is considered a breach of duty to maintain confidentiality. I further understand that any breach of the duty to maintain confidentiality could be grounds for immediate termination and /or liability in any legal action arising from such breach.

Authorised Signatory and
Seal of the Corporate
Consultant
(Date)

Signed in Witness of:

1. _____

_____.

2. _____

_____.