HARYANA ELECTRICITY REGULATORY COMMISSION

Panchkula

11th October, 2007

Regulation No. HERC / 14 / 2007

In exercise of powers conferred on it under Section 91(4) read with Section 181 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling the Commission in this behalf, the Haryana Electricity Regulatory Commission hereby makes the following Regulations, after previous publication as per Commission's order dated 19th July, 2005, for Engagement of Consultants: -

1. **Short Title and Commencement**

1.1. These regulations shall be called 'The Haryana Electricity Regulatory Commission (Engagement of Consultants) Regulations, 2007.

1.2. These regulations shall come into force with effect from the date of their publication in the Official Gazette of the Government of Haryana.

1.3. The Punjab General Clauses Act 1898(1 of 1898), as applicable to the state of Haryana shall apply to the interpretation of these Regulations.

2. **Definitions**

2.1. In these Regulations, unless the context otherwise requires;

2.1.1. 'Act' means The Electricity Act, 2003;

2.1.2. 'Commission' means the Haryana Electricity Regulatory Commission;

2.1.3. 'Consultant' includes any individual, firm, company, body or association of persons, not in the employment of the Commission, who or which possesses or has access to any specialized knowledge, experience or skill relevant for the work and functions of the Commission;

2.1.4. 'Material breach of Contract' shall include but not be limited to the instances enumerated hereinafter in these Regulations and shall also include all such violations of the terms of the Contract which cannot be described in ordinary parlance as trivial;

2.1.5. 'Officer' means an officer of the Commission; and

2.1.6. 'Secretary' means the Secretary of the Commission.

2.2. All other expressions used herein but not specifically defined herein but defined in the Act shall have the meaning assigned to them in the Act. The other expressions used herein but not specifically defined in these regulations or in the Act but defined under the Haryana Electricity Reform Act, 1997 shall have the meaning assigned to them under the said Act, provided that such definitions in the Haryana Electricity Reform Act, 1997 are not inconsistent with the provisions of the Electricity Act, 2003.

3. **Engagement of Consultants**

3.1 Consultants would be engaged only for executing specialized tasks for which requisite skills are either not available within the staff of the Commission or where the nature of job is specific and time bound.

3.2 Consultant will not normally be engaged for routine day-to-day work of the Commission, for which staff is available.

3.3 The 'Terms of Reference' (TOR) for the 'Engagement of Consultants' for specific tasks will be approved by the Commission.

3.4 The Commission may decide either to invite combined technical and financial proposals, or separate technical and financial proposals.

3.5 The Commission shall in each case stipulate the minimum qualifying marks for the technical bid.

3.6 After approval of the TOR by the Commission, the proposals will be invited through advertisement, in at least two national Newspapers in addition to the official website of the Commission.

In addition, 'Request For Proposal' may also be issued to a panel of Consultants of standing, as approved by the Commission from time to time.

4. **Selection of Individual Consultant**

4.1 Individual Consultant shall be employed for assignments for which team of personnel is not required, no additional outside (home office) professional support is required, and where the experience and qualifications of the individual are the paramount requirement.

4.2 The 'Terms of Reference' (TOR) for the 'Engagement of Individual Consultants' for specific tasks will be approved by the Commission.

4.3 After approval of the TOR by the Commission, the proposals will be invited through advertisement, in at least one national Newspapers in addition to the official website of the Commission.

4.4 Individual Consultants shall be selected on the basis of their qualifications for the assignment. Evaluation shall be on the basis of academic background, relevant experience and appropriate technical knowledge, knowledge of local conditions, administrative systems and concerned organizations.

5. **Scope of Work**

5.1 The 'Terms of Reference' (TOR) would specify the exact nature of the tasks to be undertaken by the Consultant, the time allowed for completion of each task, the services and surveys necessary to carry out the assignment and the specific outputs and Deliverables that are to be provided by the Consultant in relation to each task.

5.2 If transfer of knowledge, or training to staff is a task envisaged, then the TOR will list the details of staff to be trained.

5.3 Detailed terms of engagement will be drawn up in each case and agreed to between the Consultant and the Commission prior to award of Contract for consultancy. Contract shall incorporate said details of engagement as far as possible as per 'Model Contract' at Annexure I of these Regulations. The Model Contract for individual consultant is at Annexure II

6. **Period of engagement**

Consultants will be engaged for the minimum period required. In no case will the maximum period of engagement exceed two years. Performance of consultant shall be reviewed on half yearly basis and subject to work load.

7. Evaluation of proposals

7.1 Technical evaluation will be done by a Committee nominated by the Commission taking into account the following criteria. Each criterion shall be marked on a scale of 1 to 100 and then the marks for each criterion shall be weighted to become weighted average technical scores. The consultant shall be required to have a minimum technical score of not less than 70 (Seventy) in order to qualify. 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 Consultants relevant experience for the assignment	0.10 to 0.20
The quality of the methodology proposed	0.20 to 0.50
The qualifications of the key staff proposed	0.30 to 0.60
The extent of transfer of knowledge to the staff of the Commission.	0.00 to 0.05

Note: The mix of weights approved by the Commission must total to 1(one).

Where the assignment depends critically on the performance of the key staff the proposal shall be evaluated on the qualifications of the individuals proposed to be appointed using the following criteria:-

7.1.1 General qualifications: General education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries etc.

7.1.2 Adequacy for the assignment: Education, training, experience in the specific sector, field, subject and relevance to the particular assign ent.

7.1.3 Regional Experience: Knowledge of the administrative system, organization and culture at the local/regional level.

7.2 The Commission may also enter into technical negotiations with the applicants provided that if the Commission decides to enter into technical negotiations then it shall do so after opening the technical bids but prior to opening the financial proposals.

7.3 After the technical evaluation/ negotiation is completed, the Commission shall inform those Consultants whose proposals did not meet the minimum qualifying marks or were considered non-responsive to the terms of reference and their financial proposals will be returned unopened after completing the selection process. Simultaneously, those Consultants who have secured the minimum qualifying marks shall be informed about the date and time for opening the financial proposals giving sufficient time for the Consultants to be present at the opening, should they so desire.

8. **Fees and Other Charges**

8.1. The Commission shall consider the report of the Committee and take the action(s) mentioned herein after.

8.2. The Commission may appoint a negotiating Committee provided that the financial negotiations can be entered into only with the lowest tenderer 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.

8.3. The Commission may reject all proposals if they are found to be unresponsive or unsuitable either because they represent major deficiencies in complying with the TOR or they involve cost substantially higher than the original estimate.

8.4. The Commission shall determine the fees and other charges separately for each case, commensurate with the quantum of work involved and the level of professional expertise made available.

8.5. The amount determined shall be inclusive of all of the Consultant's costs and profits as well as any tax obligations (Income, Service and any others) of the Consultant.

8.6. Fees will be paid, subject to Commissions certificate of satisfaction, and statutory Tax Deduction at Source under the Income Tax Act 1961, as amended from time to time.

8.7. The remuneration for the individual consultant shall be finalized by the Commission keeping into view the academic background, relevant experience and appropriate technical knowledge, knowledge of local conditions, administrative systems and concerned organizations.

9. **Conflict of Interest**

9.1. Consultant shall not be hired for any assignment that would be in conflict with their prior or current obligations to other Commissions that may place them in

a position of not being able to carry out the assignments objectively and impartially.

9.2. The Consultant, or any entity affiliated with the Consultant, engaged by the Commission shall in no case represent or give opinion or advice to other stakeholders in any matter which is adverse to the interest of the Commission. This would constitute a 'material breach of Contract'.

10. **Obligations and Liability**

10.1. The Consultants obligation shall be to provide the Services and Deliverables (agreed to and specified in the Contract at Schedules A, C and D respectively) to the Commission within the time period provided in the Contract, except in the case of any 'Force Majeure Events'. Slippage in the Consultants' submission of Deliverables beyond a period of thirty (30) days past the due date, shall constitute a 'material breach of Contract'.

10.2. The Consultants obligation shall be to provide the services (Schedule-C of the Contract) through the team of personnel stipulated therein (Schedule-B of the Contract) because the experience, qualification and Curriculum Vitae (CV) of the said personnel is fundamental to the technical evaluation of the tender, which is the basis for award of Contract. Change in team composition, task assignment, or person-day efforts contracted, without written approval of the Commission shall constitute a 'material breach of Contract'.

10.3. The Commission may, in their discretion, terminate the Contract or a part thereof in the event of the Consultant failing to meet the aforesaid obligations. In case of such defaults the Commission shall be at liberty to get the work completed from any other agency at the 'risk and cost' of the Consultant. Given that any such mid-term termination could entail higher costs than contracted, any enhanced costs would be covered by the 'risk and cost' liability.

10.4. '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:

10.4.1. any events beyond the reasonable control of the Consultant, natural disasters or other acts of God; including but not limited to earthquake, cyclone, flood, storm, war, terrorist attack, civil commotion or other similar occurrence

10.4.2. any change in law including any legislation, subordinate or delegated legislation, rules, 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

10.4.3. any event or circumstance of a nature analogous to any of the foregoing.

11. **Confidentiality**

The Consultant, or any entity affiliated with the Consultant, shall not disclose to any unauthorized person any information and data that may be supplied to him by the Commission or by any other organization, under the directions of the Commission. All such documents or any information that may have come to his knowledge directly or indirectly by virtue of the assignment shall be the property of the Commission.

12. **Intellectual Property Rights**

12.1. Where the Contract requires the Consultant to deliver reports or other materials (Deliverables) to the Commission the copyright in such Deliverables shall belong to the Commission.

12.2. Without the express written consent of the Commission, a Consultant engaged by the Commission shall not utilize, publish, disclose, or part with any information collected for the Commission and shall be duty bound to hand over the entire record of the assignment to the Commission before the expiry of the Contract.

13. **Duty of care and Performance Standards**

13.1. The Consultant shall perform the services contracted with the highest standards of professional and ethical competence and integrity and shall furnish its independent professional opinion.

13.2. The Consultant shall promptly replace any employee assigned under this Contract that the Commission considers unsatisfactory. Any such replacement shall be with express approval of the Commission, and shall be by personnel of comparable qualifications and experience.

13.3. The Consultant will not owe duty of care to any person apart from the Commission for the work performed under the Contract.

14. **Termination of Contract**

14.1. The Commission may terminate a Contract to which these Regulations apply if;

14.1.1 the Consultant commits any material or persistent breach of Contract (which, in the case of a breach capable of remedy, is not remedied within 30 days of receipt or within the time stipulated in the Contract which ever is less); or

14.1.2 the Consultant becomes insolvent;

14.1.3 the Commission exercises its discretion to terminate the Contract under Regulation 10 hereof.

14.2. Termination shall be effected by written notice served on the Consultant and will take effect on any date as far as possible not less than seven days from the date of delivery of such notice.

14.3. The termination will be, without prejudice to either party's rights accrued before termination as per the Contract, but subject to Commissions certificate of satisfaction with Deliverables submitted before termination.

15. **Dispute Resolution**

In case of any differences or disputes between the parties arising out of contracted agreement, it shall be referred for arbitration to a person nominated by the Commission. The proceedings shall be subject to the Arbitration and Conciliation Act 1996, as amended from time to time. The place of arbitration shall be the headquarters of the Commission.

16. **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.

17. **Saving of Inherent Power of the Commission**

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 stipulated in these Regulations.

18. **General Power to Amend**

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

By orders of the Commission

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Secretary

Haryana Electricity Regulatory Commission

ANNEXURE-I

'MODEL CONTRACT' FOR ENGAGEMENT OF CONSULTANTS'

This Contract ("Contract") is entered into this the ___day of ____ by and between HARYANA ELECTRICITY REGUALTORY COMMISSION, (hereinafter referred as the "Commission" and abbreviated as HERC) having its principal place of business at ---------- and _____(hereinafter referred as the "Consultant" and abbreviated as_____ having its principal office located at _____.

WHEREAS, the Commission wishes to have the Consultant perform the services hereinafter referred to, and

WHEREAS, the Consultant is willing to perform these services,

NOW THEREFORE THE PARTIES hereby agree as follows:

1. **Services**

   1.1. The Consultant shall perform the services specified at **Schedules -A,C,&D; "Consultant's Scope of Work";** Responsibilities of Consultants; Approach, Methodology and Work Plan; **"Consultant's Services";** Schedule of Activities, Services and Deliverables; **"Consultants Schedule for Training of Staff";** respectively, which schedules are made an integral part of this Contract ("the Services").

   1.2. The Consultant shall provide the personnel listed in **Schedule-B,**"Consultant's Personnel," to perform "the Services" contracted. Any change of personnel from those listed in the **Schedule-B,** which is made an integral part of this Contract, shall be only with the consent and approval of the Commission, failing which; such an Act will be construed as a material breach of the terms of this Contract.

   1.3. The Consultant shall submit to the Commission the reports in the form and within the time periods specified in **Schedule-C,** Schedule of Activities and Deliverables.

   1.4. The Consultant shall share/ transfer its entire methodology, models and technical material required for the purpose of **"the Services"** contracted.

2. **Term**

   The Consultant shall perform **"the Services"** during the period commencing _____and continuing through such period till scope of work is completed or any other period as may be subsequently agreed by the parties in writing.'

3. **Payment**

   3.1 The Commission shall pay the Consultant an amount not exceeding Rs._____ (Rs._____only) subject to Tax Deduction at Source under the Income Tax Act 1961, as amended from time to time. This amount shall be inclusive of all of the Consultant's

costs and profits as well as any tax obligations (Income, Service and any other) of the Consultant.

3.2 Schedule of Payment: The schedule of payment is specified in **Schedule-E,** which is made an integral part of this Contract.

4. Project Administration

4.1. Consultant Liaison

4.1.1. In order to provide effective and efficient services to HERC, which would involve close interaction with the Members of the Commission, the Consultant would dedicate its Staff Members to HERC as per Contract. Such personnel would have to visit Chandigarh or other stations in the State of Haryana at appropriate intervals for strategic directions and discussions with the Commission, or participation in Public hearings of the Commission etc.

4.1.2. The number of person-day efforts to be devoted by each team member, for the task assignment agreed to in **Schedule B and C** of this Contract should be strictly adhered to, subject to necessary variation only with the written approval of the Commission.

4.2. Reports

The reports listed in Schedule-C, Schedule of Activities and Deliverables shall be submitted in course of the assignment in six copies and the Commission's certificate of satisfaction will be obtained thereon. This shall then constitute the basis for the payments to be made under paragraph 3.2.

4.3. Monitoring

The Consultant shall perform the activities under the Contract under the guidance and advice of the Commission. The reports/advise, invoices for payments etc, are to be submitted by the Consultant directly to the Commission.

4.4. Commissions Provision of Local Resources

The Commission shall not be liable to pay any amount except as has been expressly stipulated in this Contract. In addition, the Commission shall provide necessary office accommodation with furniture, telephone (Outstation calls to be paid by the Consultant) etc. One computer along with a printer and photocopier machine shall be allowed to be used by the Consultant.

5. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity and shall furnish its independent professional expert opinion. The Consultants shall promptly replace any employee assigned under this Contract that the Commission considers unsatisfactory. Any replacement of team offered will be with express consent of Commission and be of like qualifications and experience. Commission's certificate of satisfaction will be obtained on all reports and Deliverables before release of payments specified in Schedule E

6. **Confidentiality**

The Consultants shall not, during the term of this Contract and after its expiration disclose any proprietary or confidential information relating to the services; this Contract or the Commission's business or operations without the prior written consent of the Commission.

7. **Ownership of Material**

Any studies reports or other material, graphic software or otherwise, prepared by the Consultant for the Commission under the Contract shall belong to and remain the property of the Commission. The Consultant may retain a copy of such documents and software but shall not except with prior approval of Commission, use for any purpose other than the work of the Commission.

8. **Consultant not to be engaged in Certain Activities.**

The Consultant, or any entity affiliated with the Consultant, engaged by the Commission shall in no case represent or give opinion or advice to other stakeholders in any matter which is adverse to the interest of the Commission. This would constitute a material breach of Contract.

9. **Insurance**

The Consultant will be responsible for taking out any appropriate Insurance coverage to cover its risk and costs.

10. **Termination**

The Commission may, in their discretion, terminate the Contract or a part thereof in the event of the Consultant failing to meet the contracted obligations or any material breach of Contract (Regulation 9, 10 and 14 of the HERC Engagement of Consultants Regulations, 2006). In case of such defaults the Commission shall be at liberty to get the work completed from any other agency at the risk and cost of the Consultant. Given that any such mid-term change of Consultants could entail higher costs, such enhanced costs would be covered in such risk and cost liability.

11. **Dispute Resolution**

Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration as per Regulation 15 of the HERC Engagement of Consultants Regulations, 2006.

12. **Law Governing Contract and Language**

The Contract shall be governed by the laws prevalent in the State of Haryana and the language of the Contract shall be English.

FOR THE COMMISSION

Signed by
Title:

FOR THE CONSULTANT

Signed by
Title:

List of Schedules

- Schedule-A : **Consultant's Scope of Work**: Responsibilities of Consultants, Approach, Methodology and Work Plan.
- Schedule -B : **Consultant's Personnel**: Personnel, Task assignment and Person-day efforts.
- Schedule -C : **Consultant's Services**: Schedule of Activities, Services and Deliverables.
- Schedule -D: **Consultants Schedule for Training of Staff**
- Schedule -E: **Schedule of Payment.** Schedule of payment indicating periodicity and quantum of payment from time to time.

Annexure-II

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1.2. The Consultant shall submit to the Commission the reports in the form and within the time periods specified in **Schedule-C,** Schedule of Activities and Deliverables.

1.3. The Consultant shall share/ transfer its entire methodology, models and technical material required for the purpose of **"the Services"** contracted.

2. **Term**

The Consultant shall perform **"the Services"** during the period commencing _____and continuing through such period till scope of work is completed or any other period as may be subsequently agreed by the parties in writing.'

3. **Payment**

3.1. The Commission shall pay the Consultant an amount not exceeding Rs._____ (Rs._____only) subject to Tax Deduction at Source under the Income Tax Act 1961, as amended from time to time. This amount shall be inclusive of all of the Consultant's costs and profits as well as any tax obligations (Income, Service and any other) of the Consultant.

3.2. Schedule of Payment: The schedule of payment is specified in **Schedule-E,** which is made an integral part of this Contract.

4. **Project Administration**

4.1. **Consultant Liaison**

In order to provide effective and efficient services to HERC, which would involve close interaction with the Members of the Commission, the Consultant would be required to hold discussions with the Members of the Commission and the staff.

4.2. **Reports**

The reports listed in Schedule-C, Schedule of Activities and Deliverables shall be submitted in course of the assignment in six copies and the Commission's certificate of satisfaction will be obtained thereon. This shall then constitute the basis for the payments to be made under paragraph 3.2.

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The Consultant shall perform the activities under the Contract under the guidance and advice of the Commission. The reports/advise, invoices for payments etc, are to be submitted by the Consultant directly to the Commission.

4.4. **Commissions Provision of Local Resources**

The Commission shall not be liable to pay any amount except as has been expressly stipulated in this Contract. In addition, the Commission shall provide necessary office accommodation with furniture, telephone (Outstation calls to be paid by the Consultant) etc. One computer along with a printer and photocopier machine shall be allowed to be used by the Consultant.

5. **Performance Standards**

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity and shall furnish its independent professional expert opinion. Commission's certificate of satisfaction will be obtained on all reports and Deliverables before release of payments specified in Schedule E

6. **Confidentiality**

The Consultants shall not, during the term of this Contract and after its expiration disclose any proprietary or confidential information relating to the services; this Contract or the Commission's business or operations without the prior written consent of the Commission.

7. **Ownership of Material**

Any studies reports or other material, graphic software or otherwise, prepared by the Consultant for the Commission under the Contract shall belong to and remain the property of the Commission. The Consultant may retain a copy of such documents and software but shall not except with prior approval of Commission, use for any purpose other than the work of the Commission.

8. **Consultant not to be engaged in Certain Activities.**

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9. **Insurance**

The Consultant will be responsible for taking out any appropriate Insurance coverage to cover its risk and costs.

10. **Termination**

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11. **Dispute Resolution**

Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration as per Regulation 15 of the HERC Engagement of Consultants Regulations, 2006.

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