

Consolidated Reply to queries received regarding the bid call by Forum of Regulators (FOR) to prepare a study report on "Consumer Protection in Electricity Sector"

S No	Clause No.	Clause	Query	Reply
1	2.4. – Page 2	An overview of International Experience in Consumer Protection and participation. The countries may be selected after consultation with FoR;	It is requested to clarify the expected number of countries to be reviewed as the part of study, to allow us to do more precise effort estimation.	There is no provision of an upper limit of the countries chosen to be reviewed. However, it is expected that minimum 3-5 countries relevant for Indian scenario may be covered in the study.
2	5.3. – Page 3	The Consultant should have legal and financial background.	We understand that intended requirement is of regulatory background that can be utilized to analyse the cases in regards to consumer rights in electricity sector and may draw upon their understanding from Electricity Act, State Regulations and related policies. Please affirm our understanding. Otherwise, for requirement of legal background, we may need to associate relevant individual / firm, which will require additional time to prepare the responsive proposal. Therefore, request you to please confirm whether such association is allowed.	Since the subject of the study is related with the issues of consumers having legal and financial aspects, it is expected that bidder exhibits understanding of these issues. Although the regulatory experience may suffice however it is the complete discretion of the bidder to associate with individual/firm having core legal or financial background and deemed fit for the completion of the project.

3	6.4 – Page 4	The bids of the eligible bidders as per Clause 6 will be scrutinized by Consultancy Evaluation Committee (CEC) and shortlisted bidders will be called for interaction with the CEC (to be supplemented with a presentation not exceeding 6 slides).	It is requested that a detailed evaluation criteria for evaluation of technical score may be prescribed i.e. the weights assigned to each component like organization experience, experience of team proposed, proposed methodology etc. This would facilitate a more objective response to the proposal's technical requirement.	The assignment of weights has been clearly mentioned in the TOR. The intrinsic details are solely under the discretion of CEC .
4	Not mentioned in RfP	Due date for proposal submission is 29 th July 2019	It is requested to extend the last day for proposal submission by 15 days to 13 th August 2019 in order to provide us with a time frame to prepare a responsive proposal.	Considering the number of queries received by prospective bidders, it is informed that last date of submission has been extended to 14 th August 2019. It may also be noted that FOR Sectt. shall neither entertain any queries received after 5 th August 2019 nor any more requests for extension.
5	Annex VI (Clause 8) – Page 16	In case of delay in completion of Report/Services in each deliverables/schedule as per clause 4, liquidated damages not exceeding an amount equal to 0.5% (zero point five per cent) per day of	We request that Liquidated damages or penalties (if any) should be applicable only for delays solely attributable to the Consultant. Further, it is requested that overall amount of liquidated damages and penalties may not exceed 5% of the contract value. An objective and consultative process should precede before the Client chooses to exercise this right. A mechanism should be put in place to objectively capture service related defaults and allocate the accountability to appropriate party in a transparent manner.	It is stated that the penalties would be applicable for the delays on account of the Consultant only. However, the provision of liquidated damages subject to a maximum of 10 % has been stipulated to encourage strict adherence to the timelines. Hence, the provision remains unchanged.

		the Agreement Value, subject to a maximum of 10% (ten per cent) of the Agreement Value will be imposed and shall be recovered from the payments to be made as per schedule.	We understand that as per Contract Act, where LDs are stipulated, generally any other damages cannot be claimed. Therefore we request you to kindly make imposition of liquidated damages as sole and exclusive remedy for corresponding breaches.	
6	Annex VI (Clause 6(III)) – Page 15	The FOR shall be entitled to, without prejudice to any other right for civil or criminal proceedings, receive from the consultant/professional expert 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	There are several remedies available under law and contract for such breach of obligations. For e.g., there are penalties and LDs that may be imposed for some of these breaches. Seeking indemnities for such breaches frustrates the purpose of available remedies. We understand that remedies other than indemnity are sufficient for such breaches. We therefore request that this section may be deleted. If this section is retained, we request that indemnification may be subject to overall cumulative liability cap of total contract value and subject to final determination of court/ arbitrator.	The provision has been stipulated for violation of any of the terms of the contract and the same has been limited to total fee of the assignment. Hence, the provision remains unchanged.
7	No Clause in RfP	No third party disclaimer	We will be providing services and deliverables to you under the contract and our liability shall only be restricted to you. We accept no liability to anyone, other than you, in connection with our services, unless otherwise agreed by us in writing. Please affirm our understanding.	It is stated that the consultant shall be liable only to the FOR regarding the study

Sno	Reference	Clause as per the RfP	Proposed Clause/ /Rationale	Reply
8	Qualification / Experience Criteria, Clause 5.1	<i>“The Consultant should have completed at least 10 (ten) assignments in the last 5 (five) years of assisting the Electricity Regulatory Commissions and/or Electricity Distribution Entities on matters involving consumer tariff, business plan, financial planning for Distribution companies.”</i>	<p>Proposed Clause: The Consultant should have ongoing/completed at least 5 (five) assignments in the last 10 (ten) years of assisting the Electricity Regulatory Commissions and/or Electricity Distribution Entities and/or consumer bodies/associations on matters involving consumer tariff, business plan, financial planning for Distribution companies.</p> <p>Rationale/Query: Since, the scope of the study under this ToR is focussed on consumer related issues it is very important to consider the experience of the bidder with consumer bodies/associations on tariff and regulatory matters. Therefore, we request you to modify the clause as mentioned above. Further, we understand that the criteria of 10 assignments in the last 5 years is very high. Thus, we request you consider the experience of the bidder as 5 assignments for the last 10 years instead of 5 years. Further, we request to consider ongoing assignments also as many distribution companies or regulatory commissions issue contract on retainership basis for a period of more than one year. Thus, if a bidder has provided services of one or more years under an ongoing retainership assignment, same may be considered in the qualification criteria.</p>	<p>The clause has been in placed after deliberations and decision of competent authority in line with common norms adopted as Qualification/criteria. The rationale is to have experienced Consultant working on the subject. Since knowledge of distribution sector is essential, experience of mere consumer bodies might not suffice the cause. The clause remains unchanged.</p>

9.	TOR Clause 2 (2.3): <i>Scope of work assigned to the consultant</i>	“2.3. <i>Review the Status of Consumer Grievance Redressal and Consumer Protection in various States;</i> ”	May please add a clarification on the <u><i>number of the states</i></u> for which the study needs to be done. May kindly also specify that the study shall be done basis the information available on public domain.	All the States need to be covered for the purpose of the study. It may be noted that information already available on public domain might not be sufficient for the completion of the study. It is expected that the Consultant shall have to visit/consult various organisations such as SERCs, CGRF Ombudsman etc with relevant data formats and questionnaire, in at least 10 states (2 from each region).
10..	TOR Clause 2 (2.4): <i>Scope of work assigned to the consultant and,</i>	“2.4. <i>An overview of International Experience in Consumer Protection and Participation. The countries may be selected after consultation with FoR;</i> ”	May please add a clarification on the number of the countries for which the study needs to be done. May kindly also specify that the study shall be done basis the information available on public domain.	There is no provision of an upper limit of the countries chosen to be reviewed. However, it is expected that minimum 3-5 countries relevant for Indian scenario may be covered in the study. Information available in public domain for international experience shall suffice.

11.	<p>TOR Annexure-IV Clause 4: Obligations of the Consultant,</p> <p>and,</p> <p>TOR Clause 3: Deliverables and duration of the Assignment</p>	<p><i>“i. The consultant shall adhere to the time-frame and submit the deliverables to the Secretary as follows:</i></p> <p><i>a. Submission of Inception Report at the end of 10 days from the date of signing of agreement;</i></p> <p><i>b. Submission of first progress report by the end of 30 days from the date of signing of the agreement;</i></p> <p><i>c. Submission of second progress report by the end of 60 days from the date of signing of the agreement;</i></p> <p><i>d. Submission of first draft of the Report based on detailed study by the end of 90</i></p>	<p>The obligations of the Consultant are mentioned twice in the ToR, at two clauses, one at ‘Annexure-IV Clause 4: Obligations of the Consultant’ and second one at ‘Clause 3: Deliverables and duration of the Assignment’, however there is a slight difference in language w.r.t obligations in the above two quoted clauses.</p> <p>May kindly keep the same language at both the clauses.</p>	<p>The reference is noted. It is stated that the provisions mentioned in the Clause 3 of the TOR shall be applicable in this regard.</p>
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days from the date of signing of the agreement; ...”

And

“3.1. The assignment shall be completed within a period of 120 days from the signing of the agreement.

3.2. The Consultant will be required to submit the inception report at the end of 10 days;

3.3. Submit first progress report by the end of 30 days, for feedback of FOR;

3.4. Submit second progress report by the end of 60 days based on the previous

		<p><i>feedback of the FOR.</i></p> <p><i>3.5. Submit the first draft of the Report based on detailed study by the end of 90 days from the date of signing of the agreement; ...”</i></p>		
12.	Clause 10. Effect of termination	<p>On pre-mature termination of the assignment any time under the circumstances other than above mention in para 8.1 and 8.2 above, the FOR shall pay the consultant/professional expert, the remuneration</p>	<p>On pre-mature termination of the assignment any time under the circumstances, the FOR shall pay the consultant/professional expert, the remuneration for the work performed by him/her/it till the date of termination of the Contract subject to party Liquidated Damage imposed by FOR as per Clause 8 of the agreement.</p>	<p>The current clause has been inserted in order to maintain strict adherence to the timelines and the accuracy of the report. Hence, the Clause remains unchanged</p>

		for the work performed by him/her/it till the date of termination of the Contract subject to any Liquidated Damage imposed by FOR as per Clause 8 of the agreement.		
13.	New Clause: International Sanctions Warranty		Client warrants that neither it nor any person that owns (50% or more) or controls it is subject to sanctions imposed by the United Nations Security Council, United States, or European Union, or United Kingdom. Client further warrants that it will not use any products, information or services provided by Consultant for the benefit of any of the foregoing. Client agrees to notify Consultant if it learns that these circumstances have changed. If at any time during the term of this Agreement, Petitioner/s is in breach of this warranty, Consultant may immediately terminate the Agreement.	The suggestion does not have any relevance to the study.
14.	New Clause: Assignment		In the event of the sale or transfer by Consultant of all or substantially all of its assets related to this Agreement to an affiliate, whether by sale, merger, or change of control, Consultant would have the right to assign any or	The Consultant shall be solely responsible for the completion of study. In any circumstances, re-assigning of the study to any other affiliate shall not be allowed.

			all rights and obligations contained herein.	
15.	Clause 8.2	In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by FOR in a reasonable manner and shall be recovered from the Consultant by way of liquidated damages from the payment to be made as per clause 5(ii) above, subject to a maximum of 50% (fifty	In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, liquidated damages will be levied subject to a maximum of 10% (ten per cent) of the Agreement Value. — Please note we propose deletion of consequential damages.	The current clause has been inserted in order to maintain strict adherence to the timelines and the accuracy of the report. The Clause hence remains unchanged

		per cent) of the Agreement Value		
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