

**FORUM OF REGULATORS (FOR)**

**TERMS OF REFERENCE**

**Preparing Model Regulations entailing the procedure for implementing, enforcing and executing orders, directions and regulations issued by Electricity Regulatory Commissions.**

1. Introduction:

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 (“ERCs”) across the country, in order to achieve regulatory certainty in the electricity sector.

1.2 The Electricity Regulatory Commissions constituted under the Electricity Act, 2003 (“the 2003 Act”) exercise various powers and perform various functions. These are dual in nature, that of decision making and regulation making. In exercise of their powers and functions, the ERCs *inter alia* pass orders and directions. ERCs perform judicial and quasi judicial functions. In the 2003 Act, failure to comply with the directions and orders of ERCs is made punishable with imprisonment or fine. Section 142 also empowers ERCs to impose monetary penalty for non-compliance of directions issued by them. The Electricity Regulatory Commissions are mandated to serve the ends of justice aiming not only at recompensing the consumer but also to bring about a qualitative change in the attitude of the service providers (State Electricity Boards/ distribution and transmission licensees), generating companies, Appropriate Governments, electricity traders, load despatch centres, etc. The ERCs should take intermediate steps in order to give effect to the exercise of the power its final step, otherwise the ultimate power would become illusory, and inoperative which cannot be the intention of the 2003 Act. Hence, orders and directions passed by ERCs are to be complied with. For achieving this, ERCs must spell out their powers to execute their orders or implement their orders. ERCs which have been also conferred with the power to adjudicate a dispute and pass necessary order have also the power to implement its order.

1.3 Besides giving decisions, passing various orders and notifying regulations, it is incumbent on the Regulatory Commissions to implement, enforce and execute their orders and regulations. If these orders and directions are not complied with then the exercise of powers and performance of functions by the

ERCs become illusory, and inoperative unless the ERCs execute their orders / implement their orders. It is settled law that a statutory power carries with it all other powers which are incidental or consequential upon exercise of such power and such powers can be impliedly read to make the exercise of the power conferred under the law to be really effective, since otherwise the purpose of conferment of power under the law is defeated.

1.4 That having regard to the powers and functions of the Electricity Regulatory Commissions, it will need to be inferred that the said Commissions have the authority and power to implement, enforce and execute their orders and regulations. Further, the Electricity Act, 2003 which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the ERCs all powers in order to make its orders effective. Powers to enforce and execute orders must therefore be inferred as incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers so that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. Otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the Parliament while enacting the 2003 Act.

1.5 The FOR is of the view that to make the exercise of the power to pass orders and directions and to implement, enforce and execute the same, to be really effective, regulations are required to be formulated by the Appropriate Commissions evolving various parameters based on which appropriate directions could be issued for implementing, enforcing and executing such orders and directions. The regulations are also required to provide for deterrents against violation of the regulations, orders, and directives of the Commission. FOR is keen to commission a study to evolve a model regulation in this context. In this regard, the proposed activities that have been formulated for undertaking the exercise of preparing Model Regulations are as follows -

## **2. Objectives of the assignment and Scope of Work:**

### **2.1. To prepare a comprehensive report to include:-**

- 2.1.1 Various types of orders passed by Electricity Regulatory Commissions, to identify the range of actions that have been taken for implementation, execution and enforcement or directions contained therein. Identify the range and form of interventions and provide an assessment of their merit and demerits in terms of legislative/statutory measures required and overall viability.
- 2.1.2 Identify the ways and means of implementation, enforcement and execution of orders and regulations by ERCs;

- 2.1.3 Identify the powers to execute orders not expressly spelt out in the Electricity Act, 2003 including the following :-
- (a) Action that could be taken by the ERCs on their own;
  - (b) Through Civil Court as per procedure under the Civil Procedure Code, and alternate options under law recognizing the delay in securing compliance through civil courts.
  - (c) Through other authorities.
- 2.1.4 Spell out the incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers vested in ERCs so that order and directions could be implemented, enforced and executed;
- 2.1.5 Based on the findings of the study on each of the above aspects the consultant should make suitable recommendations.

## **2.2 To prepare draft Model Regulations to include:-**

- 2.2.1 Based on the above items and after incorporating suggestions received on the aforesaid recommendations, prepare the draft of Model Regulations.
- 2.2.2 The Model Regulations should specify the procedure to be followed to initiate action including but not limited to issuance of show cause notice as well as issuance of interim orders / take interim measures under Section 94(2) of the 2003 Act.
- 2.2.3 Draft model Regulations should also provide for graded deterrent /penalty for violation of the regulations, directives, and orders of the Commission.

## **3. Deliverables and Duration of Assignment**

The assignment shall be completed within a period of 60 days from the date of award of consultancy. The Consultant will be required to:

- (i) Submit Inception Report at the end of 15 days from the date of award of assignment;
- (ii) Submit draft report at the end of 30 days from the date of award of assignment [followed by a presentation before Forum of Regulators]<sup>1</sup>;
- (iii) Submit a Final Report at the end of 45 days from the date of award of assignment;
- (iv) Submit draft of Model Regulations;

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<sup>1</sup> If not required then the portion in square brackets may be deleted.

(v) Submit final draft of the Regulations preferably settled by an eminent Senior Advocate who is specialized on the subject of execution of orders under CPC by High Court.

**4. Payment Schedule:**

- (i) 10% on award of contract/signing of agreement;
- (ii) 20% on submission of inception report;
- (iii) 30% on submission of draft report;
- (iv) 30% on submission of final report; and
- (v) 10% on successful completion and acceptance of final report by the FOR.

**5. Qualification Criteria:**

5.1 The consultant should be well versed with power sector – (i) regulatory, judicial, quasi judicial aspects; (ii) procedural aspects of enforcement of orders under the Code of Civil Procedure; (iii) generation, transmission, distribution areas.

5.2 The consultant should have completed atleast two assignments preferably of similar nature in the past 3 years out of which one assignment should have been with any regulatory commission. The consultant is expected to have experience of drafting regulations for regulatory commissions. The team should ideally have a person with law background qualification/experience)

**6. Application and Evaluation Criteria:**

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

6.2 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.

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

6.4 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 will be evaluated based on the following criteria:

Technical Parameters	Weights
The Consultants relevant experience for the assignment	0.3
Understanding of the issues and approach to be followed	0.3
The qualifications and experience of the key staff proposed	0.4

6.5 The minimum qualifying marks in the Technical Evaluation is 50% of the total score for technical component.

6.6 Only those bidders, who qualify technically as per Clause 6.5, would be considered for Financial Evaluation.

6.7 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.

6.8 The total score will be obtained by weighting the Technical and Financial scores.

6.9 Only successful bidder would be communicated the award of consultancy assignment.

6.10 The right to reject any or all bids rests with the 'FOR' Secretariat without assigning any reason.

6.11 The 'FOR' and the Consultant both would have option to terminate the contract by giving a notice of two months or the equivalent remuneration in lieu thereof. In such cases, the Consultant shall be paid fees after taking into consideration the part of work completed prior to such foreclosure, termination or cancellation of the engagement as may be decided by the 'FOR', and the decision of the 'FOR' shall be conclusive and binding. The fees so fixed and paid shall be deemed to be final payment in such cases.

6.12 The consultant shall abide with the contract as per **Annexure-III**.

**ANNEXURE – I**

**DETAILED PROPOSAL FOR STUDY**  
**(TECHNICAL)**

**Four (4) copies** of the proposal to be submitted to Secretary, FOR/FOR.

**I. GENERAL INFORMATION:**

01. Title of the Proposed Study :
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. Net-worth/Turnover of the Organization/  
Institution during 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 state-of-art in the field (National and International)

08. Detailed Approach & Methodology for undertaking the assignment

09. Facilities available for the proposed work in the applicant's organization/institution

10. Previous experience of the proposer in this or related field

11. Biographical sketch of the Study Team

(i) Name

(ii) Designation

(iii) Date of Birth

(iv) Education and Experience

(a) Academic Qualifications

Degree	University	Field(s)	Year

(b) 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



DETAILED PROPOSAL FOR STUDY

(FINANCIAL)

**I. GENERAL INFORMATION:**

01. Title of the Proposed Study :
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. Net-worth/Turnover of the Organization/ :  
Institution during last financial year
06. Certificate of authorization in case of Institutes/other organizations  
(Format enclosed at **Appendix-‘A’**).

**II. Fee Proposed:**

07. Amount of Fee proposed for:

Components	Basis	Amount (in Rs.)
(I) Consultant Charges -		
(II) Misc./Others (if any)		
<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

Name and Designation

Date

Date

Signature of Co-investigator

Official stamp of

Name and Designation

Organization/Institution

Date

**On 50Rs Stamp Please**

**AGREEMENT**

This agreement made on this day of ..... at New Delhi BETWEEN ..... hereinafter referred to as “the consultant” of one part and the **Forum of Regulators, C/O Secretariat: Central Electricity Regulatory Commission, 3<sup>rd</sup> and 4 the 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 Consultant to prepare Model Regulations entailing the procedure for implementing, enforcing and executing orders, directions and regulations issued by Electricity Regulatory Commissions** invited quotations vide notice No 15/2(13)/2009-FOR/CERC dated .....
- (B) the consultant responded to the above notice and submitted his quotations vide his letter .....
- (C) the FOR, on scrutiny of the responses received in response to its above mentioned notice dated ..... including the one received from the consultant has decided to engage the consultant for the above said assignment.
- (D) the 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” mean any and all information communicated to the consultant by the FOR duly marked so.
- (ii) “Person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (iii) “Secretary” means the Secretary of the FOR.

- 2. **Nature of work:** The consultant shall be engaged as Corporate consultant to prepare **Model Regulations entailing the procedure for implementing, enforcing and executing orders, directions and regulations issued by Electricity Regulatory Commissions** in accordance with 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 ..... and shall be valid for a period of .....

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. **Entitlements of the Consultant:**

- (i) The consultant shall be entitled to Rs. ....
- (ii) The consultant shall be paid as per clause .... of Terms of Reference (**Annexure-1**).
- (iii) The consultant shall not be entitled to any other remuneration or reimbursement or perquisites or facilities.

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/ 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.

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 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 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 Commission that there is a material change in the circumstances of the Consultant based on which the assignment was awarded to the consultant.
  - (c) The 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 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 consultant, the remuneration for the 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. 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.

11. **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