

# FORUM OF REGULATORS

## Engagement of Consultant by Forum of Regulators (FOR) to conduct a study on “Review of Status of Open Access in Distribution”

### Terms of Reference (TOR)

#### **1.0 Introduction:**

1.1 The Forum of Regulators (FOR) has been constituted in 2005 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 as Chairperson and the Chairpersons of the State and Joint Electricity Regulatory Commissions as Members of the Forum. Secretarial assistance to the Forum is provided by the Central Commission. The Forum is responsible for harmonization, coordination and ensuring uniformity of approach amongst the Electricity Regulatory Commissions across the country, in order to achieve greater regulatory certainty in the electricity sector.

1.2 Open Access (OA) is one of the cornerstones of the Electricity Act 2003, seeking to bring about competition in the electricity sector. The Forum of Regulators (FOR) has been deliberating on the issues concerning implementation of open access at regular interval. In order to assess the status of Open access, its challenges, FOR has now decided to engage a Consultant to study and "Review the Status of Open Access in Distribution".

#### **2.0 Objective**

To conduct a study on Reviewing the Status of Open Access in Distribution so as to assess the status of Open Access; success, challenges in implementation of Open Access and way forward.

#### **3.0 Scope of the work assigned to the Consultant:**

The consultant is to work on the following areas but not limited to (individually for States if need be):-

- 3.1 Overview of the status of Open Access in States, including compilation of data on potential OA consumers (number, nature & capacity) etc., various charges payable for OA.
- 3.2 Status of implementation of Open Access (i.e. number of applications for OA, time taken for disposal of application, reasons for delay etc.).
- 3.3 Primary data is to be collected and provided by the consultant for 10 (ten) Indian States, particularly 2 States from each region, to be identified in consultation with FOR Secretariat.
- 3.4 Statutory requirements to be fulfilled to obtain open access.

- 3.5 Role of different institutions/ agencies involved in the grant of Open Access to the customers in the selected States.
- 3.6 Identification and analysis of issues raised by different stakeholders (viz. discoms, consumers etc.) on implementation of OA. .
- 3.7 Identification of constraints in implementation of Open Access in different States.
- 3.8 Impact analysis on Discom and Consumers from Discom point of view.
- 3.9 Suggest measures for effective implementation of Open Access in States.
- 3.10 Any other task required in pursuance of achieving the objectives of the Committee

#### **4.0 Deliverables and duration of the Assignment :**

- 4.1 The assignment shall be completed within a period of 120 days from the signing of the agreement.
- 4.2 The Consultant will be required to submit the inception report at the end of 10 days;
- 4.3 Submit first progress report by the end of 30 days, for feedback of FOR;
- 4.4 Submit second progress report by the end of 60 days based on the previous feedback of the FOR.
- 4.5 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;
- 4.6 Submit the revised draft Report after discussion with FOR secretariat by the end of 110 days from the date of signing of the agreement followed by a presentation before Forum of Regulators;
- 4.7 Submit the final Report "Review of Status of Open Access in Distribution" by the end of 120 days from the date of signing of the agreement or within 60 days from when the report is accepted by the FOR in its meeting, whichever is later.
- 4.8 The timelines for deliverables is to be strictly adhered to. The individual task should be completed in phased manner and overlapping of one or more study shall not be a constraint to adhere to the timelines. In case of delay, the penalty/liquidated damages as per clause 8 of the Agreement will be applicable on the consultant.
- 4.9 Time is essence of the contract. Hence no abnormal delay would be tolerated. In case of any such contingency, the study would be got conducted from alternate source at the cost of the bidder.

#### **5.0 Payment Schedule :**

- 5.1 10% of the professional fee as advance of the total fee of the study at the time of signing agreement. The Consultant shall provide an irrevocable Performance Bank Guarantee of 10% of amount stipulated in the agreement at the time of signing the agreement to be valid till 3(three) month after the expiry of the agreement; In the event of extension of assignment/Contract, the Performance Bank Guarantee shall be suitably extended by

the consultant. If advance is not requested by the Consultant, 10% of the fee can be claimed at the end of the contract period on submission of the final report.

- 5.2 20% of the professional fee on the submission of the inception report of the Study;
- 5.3 20% of the professional fee on submission of first Draft Report of the study;
- 5.4 20% of the professional fee on submission of Final Report of the study;
- 5.5 30% of the professional fee on successful completion and acceptance of the Final Report, at the end of the contract period.
- 5.6 Performance Bank Guarantee will be kept as performance security and can be invoked to appropriate against breach of any terms of this Agreement or for non-performance

## **6.0 Qualification/Experience Criteria :**

- 6.1 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, cross subsidy or Aggregate Transmission and Commercial (AT & C) losses. Additional weightage would be given for any assignment undertaken on Open Access in Distribution.
- 6.2 The bidder is expected to have complete knowledge of Electricity Act, 2003 as well as policies, Rules, Regulations and guidelines issued under the Act.
- 6.3 The Consultant should have legal and financial background.
- 6.4 The organization of consultant should not be blacklisted/debarred for conducting studies or consultancy services, by any Government/semi-government/quasi-judicial agency. An under taking in this regard shall be given by the consultant in the format at Annexure-III.
- 6.5 The Turnover and Net Worth of the Consultant should be a minimum of Rs.50 lakh.

## **7.0 Application and Evaluation Criteria :**

- 7.1 The format of application is at **Annexure – I** and **Annexure – II**.
- 7.2 The bidder is required to submit two (2) copies of bids for Technical offer (each of which will be treated as original) along with soft copy (in word format) and one copy of Financial offer, duly sealed in separate envelopes.
- 7.3 Technical component will carry 70% weightage and financial evaluation will carry 30% weightage.
- 7.4 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). Their technical performance will be evaluated based on the following criteria:

Technical Parameters	Marks
The Consultant's relevant experience for the assignment	30
Understanding of the issues and approach to be followed	30
The qualifications and experience of the key staff (who would actually be working on the project) proposed	40
Total Technical Score	100

- 7.5 The minimum qualifying marks in the Technical Evaluation is 70% of the total score for technical component.
- 7.6 Only those bidders, who qualify technically as per Clause 7.5, would be considered for Financial Evaluation.
- 7.7 Weight for Financial Evaluation Proposal with the lowest quoted price will be given a financial score of 100 and other proposals would be given financial scores that are inversely proportional to their prices.
- 7.8 The total score will be obtained by weighting the Technical and Financial scores.
- 7.9 Only successful bidder would be communicated the award of consultancy assignment.
- 7.10 The right to reject any or all bids rests with the FOR Secretariat without assigning any reason.
- 7.11 No requests for extension of date for submission of bids will be entertained unless decided so by FOR secretariat.
- 7.12 The 'FOR' will have an option to terminate the contract by giving a notice of one month. 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. The consultant shall abide by the terms and conditions of the Agreement as per **Annexure – IV**.
- 7.13 The address for submission of the proposal and seeking any clarification (within the due date of submission of the ToR) is given below:

The Assistant Secretary (Forum of Regulators),  
C/o Central Electricity Regulatory Commission,  
First Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001  
Ph: 91-11-23353503 Fax: 91-11-23753923

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

**Two (2) copies** of the proposal along with project summary to be submitted to Assistant Secretary, 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
06. PAN No of the Organization/  
Institution

**II. TECHNICAL SPECIFICATIONS:**

- 07. 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
- 08. Brief review of the state-of-art in the field (National and International)
- 09. Detailed Approach & Methodology for undertaking the assignment
- 10. Facilities available for the proposed work in the applicant's organization/institution
- 11. Previous experience of the proposer in this or related field
- 12. Biographical sketch of the Study Team
  - (i) Name
  - (ii) Designation
  - (iii) Date of Birth
  - (iv) Education and Experience
  - (v) Man days to be spent on this assignment

(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)

13. Capacity to impart training/transfer of knowledge

14. Whether blacklisted/debarred for conducting studies or consultancy services, by any Government/semi-government/quasi-judicial agency, if so the details thereof:

[Undertaking to be given as per Annexure-III]

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



**II. Fee Proposed:**

07. Amount of Fee proposed for:

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

**(The amount quoted is exclusive of statutory levies and taxes etc. )**

**(RUPEES \_\_\_\_\_)**

Signature of the Principal Investigator /  
Head of the Study Team

**Declaration/Certification**

To  
The Assistant Secretary  
Forum of Regulators  
3<sup>rd</sup> Floor, 36, Chanderlok Building  
Janpath New Delhi - 110001

Sir

I have carefully gone through the Terms & Conditions contained in the Terms of Reference (TOR) regarding study on “Review of Status of Open Access in Distribution”. I hereby declare that my firm has not been debarred/blacklisted by any reputed Government/Semi Government Organizations from conducting Studies or consultancy services within last three years nor is there any pending dispute in this regard. I further certify that I am an authorised signatory of my company/firm and therefore competent to make this declaration.

Yours’ sincerely

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Company/firm: \_\_\_\_\_

Address: \_\_\_\_\_

**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  
Name and Designation  
Date

Official stamp of  
Organization/Institution

On 50 Rs. Stamp Paper

AGREEMENT

This agreement made on this day of [here give the date of the agreement] at New Delhi BETWEEN [here give the Name and address of the consultant or Professional Expert] hereinafter referred to as “the consultant/professional expert” of one part and the **Forum of Regulators, C/o. Secretariat: Central Electricity Regulatory Commission, 3<sup>rd</sup> and 4<sup>th</sup> 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 appoint a [**Corporate consultant or Professional Expert**] to conduct a study on “**Review of Status of Open Access in Distribution**” invited quotations vide notice [here give the No and date of the notice]
- (B) the [consultant/Professional Expert] responded to the above notice and submitted his quotations vide his letter [here give the No and date of the quotation of the consultant]
- (C) the FOR, on scrutiny of the responses received in response to its above-mentioned notice dated [here give the date of the notice inviting quotations] including the one received from the [consultant/professional Expert] has decided to engage the consultant/professional expert for the above said assignment.
- (D) the consultant/professional expert has agreed, to take up the above said assignment

NOW THIS AGREEMENT WITNESSETH AS UNDER:

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

**1. Definitions:**

- (i) “Confidential information” means any and all information communicated to the consultant by the FOR duly marked so.
- (ii) “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/professional expert shall be engaged as [**Corporate consultant or Professional Expert**] to conduct a study on “**Review of Status of Open Access in Distribution**” [hereafter called the ‘**Agreement**’] on the following areas but not limited to (individually for States if need be):-

- 2.1 Overview of the status of Open Access in States, including compilation of data on potential OA consumers (number, nature & capacity) etc., various charges payable for OA.
- 2.2 Status of implementation of Open Access (i.e. number of applications for OA, time taken for disposal of application, reasons for delay etc.).
- 2.3 Primary data is to be collected and provided by the consultant for 10 (ten) Indian States, particularly 2 States from each region, to be identified in consultation with FOR Secretariat.
- 2.4 Statutory requirements to be fulfilled to obtain open access.
- 2.5 Role of different institutions/ agencies involved in the grant of Open Access to the customers in the selected States.
- 2.6 Identification and analysis of issues raised by different stakeholders (viz. discoms, consumers etc.) on implementation of OA. .
- 2.7 Identification of constraints in implementation of Open Access in different States.
- 2.8 Impact analysis on Discom and Consumers from Discom point of view.
- 2.9 Suggest measures for effective implementation of Open Access in States.
- 2.10 Any other task required in pursuance of achieving the objectives of the Committee

**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 120 days.

**4. Obligations of the Consultant:**

- (i) The consultant shall adhere to the time-frame and submit the deliverables to the Secretary as follows:
  - a) Submission of Inception Report at the end of 10 days from the date of signing of agreement
  - b) Submission of first progress report by the end of 30 days from the date of signing of the agreement;
  - c) Submission of second progress report by the end of 60 days from the date of signing of the agreement;
  - d) Submission of first draft of the Report based on detailed study by the end of 90 days from the date of signing of the agreement;
  - e) Submission of revised report by the end of 110 days followed by a presentation before the Forum of Regulators.
  - f) Submission of Final report at the end of 120 days from the date of signing of agreement or within 60 days from when the report is accepted by the FOR in its meeting, whichever is later.
- (ii) The consultant shall make presentations before the FOR as required by the Secretary.

- (iii) The consultant shall ensure that findings of the study and the contents of the reports to the FOR are not disclosed to any person unless expressly authorized by FOR.

#### **5. Entitlements of the Consultant:**

- (i) The consultant/professional expert shall be entitled to Rs. [Here give the amount payable and the schedule of payment and any other provision such as TDS, etc.]
- (ii) The consultant/professional expert shall be paid as per the conditions specified below
  - a. 10% of the professional fee as advance of the total fee of the study at the time of signing agreement.
  - b. 20% of the professional fee on the submission of the inception report of the Study;
  - c. 20% of the professional fee on submission of first Draft Report of the study;
  - d. 20% of the professional fee on submission of Final Report of the study;
  - e. 30% of the professional fee on successful completion and acceptance of the Final Report, at the end of the contract period.

If advance amount is not requested by the Consultant, 10% of the fee can be claimed at the end of the contract period on submission of the final report.

- (iii) The consultant/professional expert 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 Performance Guarantee**

The Consultant shall furnish an irrevocable Performance Bank Guarantee of 10% of value amount stipulated in the agreement at the time of signing the agreement and shall be kept valid for 3(three) month after the expiry of the agreement; In the event of extension of assignment/Contract, the Performance Bank Guarantee shall be suitably

extended by the consultant. The Performance Bank Guarantee and/or the extended Bank Guarantee shall be kept as security for performance of the contract/work and shall if need be, invoked for breach of any of any of the terms of this Agreement and/or for non-performance.

## **8. Liquidated Damages**

The timelines for deliverables as per clause 4, above shall be strictly adhered by the consultant. The tasks should be completed in a phased manner and overlapping of one or more study shall not be a constraint for adherence to the timelines specified. In case of any delay in adhering to the timelines of completion of study and error/variation in submitted report, liquidated damages shall be levied in the following manner.

### **8.1 Liquidated Damages for delay.**

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 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. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time with no additional financial commitment shall be granted.

### **8.2 Liquidated Damages for error/variation in the report.**

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 per cent) of the Agreement Value.

In addition to the liquidated damages as specified above, warning may be issued to the Consultant for minor deficiencies noted by FOR. In the case of non-completion of study/ assignment within the stipulated time or extended time, FOR shall have the right to get the study / assignment completed at the risk and cost of the Consultant. In the case of significant deficiencies in services causing adverse effect on the Project or on the reputation of FOR, other penal action including debaring for a specific period may also be initiated

## **9. 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 following circumstances.

(a) It has come to notice that the consultant/professional expert has been convicted for an offence involving moral turpitude or unethical professional practices. In such context, Performance Bank Guarantee amount will be invoked and encashed. Further legal action may also be taken against consultant.

(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/professional expert to offer explanation. In case the explanation is not satisfactory, the Performance Bank Guarantee amount will be invoked/ encashed:

(a) It has come to the notice of the FOR that the consultant/professional has resorted to fraud or suppression of material information or submission of false information or unethical means to secure the assignment.

(b) It has come to the notice of the FOR that there is a material change in the circumstances of the Consultant based on which the assignment was awarded to the consultant/professional expert.

(c) The consultant/professional expert 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.

(iii) The FOR and the Consultant have the option to terminate the assignment on mutual consent by giving notice of one month to the other. This is however subject to adjustment of Liquidated Damages imposed if any for error/variation or delay in completion of the work schedule in that event.

#### **10. Effect of termination:**

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 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.

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.

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

#### **12. 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 the parties failing which the parties must resort by arbitration in terms of the Arbitration and Conciliation



Act 1996 as amended from time to time . In the event of arbitration, FOR shall appoint sole arbitrator which shall be binding on the Consultant.

(ii) The venue of the arbitration will be Delhi/New Delhi and the language shall be English.

**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 of the day, month and year mentioned hereinabove.

Signed by:

Signed by:

.....  
.....  
[The consultant/Professional  
party or on his behalf of]

.....  
.....  
[on behalf of the FOR]

in the presence of [witness]

the presence of [witness]

Signature.....  
Name.....

Signature.....  
Name.....

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