

Jammu & Kashmir State Power Development Corporation Ltd.

Standard Guidelines for Engagement of Consultants by JKSPDC

1.0 Short Title and Commencement

These Guidelines shall be called ‘The J&K State Power Development Corporation Limited (JKSPDC) Engagement of Consultants Guidelines’.

2.0 Definitions

In these Guidelines, unless the context otherwise requires;

- 2.a** Words or expressions used in these guidelines shall have the meaning respectively assigned to them in the Jammu and Kashmir Electricity Act, Samvat 1997 or the Jammu and Kashmir Electricity Duty Act, 1963 or the Jammu and Kashmir State Electricity Regulatory Commission Act, 2000;
- 2.b** ‘Commission’ means the Jammu & Kashmir State Electricity Regulatory Commission constituted under the J&K State Electricity Regulatory Commission Act, 2000;
- 2.c** ‘Management Committee’ means a Committee designated as Management Committee appointed by the Board of Directors of JKSPDC;
- 2.d** ‘Consultant’ includes any individual, firm, company, body or association of persons, not in the employment of the JKSPDC, who or which possesses or has access to any specialized knowledge, experience or skill relevant for the work and functions of the Commission;
- 2.e** ‘Material breach of Contract’ shall include but not be limited to the instances enumerated hereinafter in these guidelines and shall also include all such violations of the terms of the Contract which cannot be described in ordinary parlance as trivial;
- 2.f** ‘Officer’ means an officer of the JKSPDC.

3.0 Engagement of Consultants

- 3.a** Consultant would be engaged only for executing specialized tasks for which requisite skills are either not available within the staff of the JKSPDC or where the nature of job is specific and time bound.
- 3.b** Consultant will not normally be engaged for routine day-to-day work of the JKSPDC, for which staff is available.
- 3.c** The ‘Terms of Reference’(TOR) for the ‘Engagement of Consultants’ for specific tasks will be approved by the Management Committee of JKSPDC.
- 3.d** The Management Committee of JKSPDC may decide either to invite combined technical and financial proposals, or separate technical and financial proposals.
- 3.e** The Management Committee of JKSPDC shall in each case stipulate the minimum qualifying marks for the technical bid.
- 3.f** After approval of the TOR by the Management Committee of JKSPDC, the Managing Director will cause the request for Proposals to be issued inviting proposals, and ensuring that appropriate publicity is given in each case, which shall normally be through advertisement, in at least two national newspapers.
- 3.g** In addition, ‘Request For Proposal’ may also be issued to a panel of Consultants of standing, as approved by the JKSPDC or by the Central Electricity Authority (CEA) or by the Central Water Commission (CWC) or by the Central Electricity Regulatory Commission (CERC) or by the Ministry of Power of Government of India depending upon the context, from time to time.

4.0 Request For Proposals (RFP)

The request for proposal shall include the following:

- 4.a** A letter of invitation stating the intention of the JKSPDC to enter into a contract for provision of a consulting services, the source of funds, the details of the plan and the date, time and address for submission of proposals.
- 4.b** Information to consultants shall contain all necessary information that will help consultants prepare responsive proposals by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum pre-qualification score.

- 4.c Terms of reference (TOR) shall be prepared to define clearly the objectives, goals and scope of the assignment and provide background information including a list of existing relevant studies and basic data to facilitate the consultant's preparation of their proposals. If transfer of knowledge, training is an objective, the TOR will detail the number of staff to be trained. TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, surveys etc.) linked to each task in the TOR.

5.0 Receipt of Proposals

- 5.a Enough time shall be allowed for the consultant to prepare and submit their proposals. While the time allowed shall depend on the assignment, it will normally not be less than two weeks, during which period firms may seek clarifications about the information provided in the TOR.
- 5.b The Board of Directors of JKSPDC may decide to extend the deadline for submission of proposals, as deemed appropriate by it.
- 5.c No amendments to the technical or financial proposals shall be accepted after the deadline except before a Management Committee appointed by the Board of JKSPDC. The proposal shall be submitted in sealed cover. Where the JKSPDC prescribes the separate technical and financial proposals to be submitted, they shall be submitted in separate sealed envelopes.

6.0 Single Source Selection

Single source selection shall be exercised only in exceptional cases where it is appropriate and represents a clear advantage because the tasks represent a natural continuation of previous work carried out by the Consultant or where a rapid selection is essential or for very small assignments where the fee payable does not exceed Rs.1 lac in each case or where only one firm is qualified or has experience for the assignment. For each single source selection, prior approval of the Board of Directors of JKSPDC is required.

7.0 Selection of Individual Consultant

- 7.a 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.
- 7.b Individual Consultants shall be selected on the basis of their qualifications for the assignment. They may be selected on the basis of references, or through

comparison of qualifications among those expressing interest in the assignment, or those who are approached directly by the JKSPDC. Evaluation shall be on the basis of academic background, relevant experience and appropriate technical knowledge, knowledge of local conditions, administrative systems and concerned organizations. For individual consultants the fee payable shall not exceed Rs.Fifty Thousands in each case.

8.0 Scope of Work

- 8.a** 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.
- 8.b** If transfer of knowledge, or training to staff is a task envisaged, then the TOR will list the details of staff to be trained.
- 8.c** Detailed terms of engagement will be drawn up in each case and agreed to between the Consultant and the JKSPDC prior to award of Contract for consultancy. Contract shall incorporate said details of engagement as far as possible as per 'Model Contract' at Schedule- I of these Guidelines.

9.0 Fees and Other Charges

- 9.a** The JKSPDC shall determine, based on the bids, the fees and other charges separately for each case, commensurate with the quantum of work involved and the level of professional expertise made available based on the bids.
- 9.b** The amount determined shall be inclusive of all of the Consultant's costs and profits as well as any tax obligations (Income Tax, Service Tax and any other) of the Consultant.
- 9.c** Fees will be paid, subject to JKSPDC's certificate of satisfaction, and statutory Tax Deduction at Source under relevant laws including the Income Tax Act 1961.

10.0 Conflict of Interest

- 10.a** Consultant shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients that may place them in a position of not being able to carry out the assignments objectively and impartially.
- 10.b** The Consultant, or any entity affiliated with the Consultant, engaged by JKSPDC shall in no case represent or give opinion or advice to other

stakeholders in any matter which is adverse to the interest of the JKSPDC. This would constitute a ‘Material Breach of Contract’.

11.0 Obligations and Liability

- 11.a** The Consultant’s 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 JKSPDC 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 days past the due date, shall constitute a ‘Material Breach of Contract’.
- 11.b** The Consultant’s 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 bid, which is the basis for award of Contract. Change in team composition, task assignment, or person-day efforts contracted without written approval of the JKSPDC shall constitute a ‘Material Breach of Contract’.
- 11.c** The JKSPDC 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 JKSPDC 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.
- 11.d** ‘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:
- i.** any event beyond the reasonable control of the Consultant: natural disasters or other acts of God; including earthquake, cyclone, flood, storm, war, terrorist attack, civil commotion or other similar occurrence
 - ii.** any change in law including any legislation, sub-ordinate 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
 - iii.** any event or circumstance of a nature analogous to any of the foregoing.

12.0 Confidentiality

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

13.0 Intellectual Property Rights

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

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

14.0 Duty of Care and Performance Standards

14.a 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.

14.b The Consultant shall promptly replace without any cost to JKSPDC, any employee assigned under a contract awarded under these Guidelines that the JKSPDC considers unsatisfactory. Any such replacement shall be with express approval of the JKSPDC, and shall be by personnel of comparable qualifications and experience.

15.0 Termination of Contract

15.a The JKSPDC may terminate a Contract to which these Guidelines apply if;

- i.** the Consultant commits any material or persistent breach of Contract (which, in the case of a breach capable of remedy, is not remedied within the period specified in the notice after receipt of notice of material breach of contract by consultant) ; or
- ii.** the Consultant becomes insolvent;
- iii.** the JKSPDC exercises its discretion to terminate services under Article-11 of these guidelines.

15.b 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.

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

16.0 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 JKSPDC. The proceedings shall be subject to the Jammu & Kashmir Arbitration and Conciliation Act, as amended from time to time. Jurisdiction of J&K Courts will apply.

17.0 Power to Remove Difficulties

If any difficulty arises in giving effect to any of the provisions of these Guidelines, the JKSPDC may, by general or special order, do anything, not being inconsistent with the provisions of the relevant Jammu & Kashmir Government regulations which appears to it to be necessary or expedient for the purpose of removing the difficulties.

18.0 Saving of Inherent Power of JKSPDC

Nothing in these provisions shall bar the JKSPDC from adopting a procedure which is at variance with any of the provisions of these Guidelines, if the JKSPDC, 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 Guidelines.

19.0 General Power to Amend

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

**SCHEDULE-I OF THE GUIDELINES FOR ENGAGEMENT OF
CONSULTANTS BY JKSPDC**

‘MODEL CONTRACT’ FOR ENGAGEMENT OF CONSULTANTS

This Contract (“Contract”) is entered into this ___ day of ___ by and between JAMMU & KASHMIR STATE POWER DEVELOPMENT CORPORATION LIMITED, (hereinafter referred as the “Client” or party of first part and abbreviated as JKSPDC) having its principal place of business at Exhibition Ground, Srinagar-190001, Kashmir, J&K State, as one part and _____ (hereinafter referred as the “Consultant” and abbreviated as _____) of the second part having its principal office located at _____.

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

WHEREAS, the Consultant is willing to perform these services,

NOW THESE PRESENTS WITNESS and the parties hereto respectively agree is follows:

- 1.** The party of the second part shall submit himself to the orders of the JKSPDC and of the officers and authorities under whom he may from time to time be placed by the JKSPDC.

2. Services

- i.** 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”).
- ii.** 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 JKSPDC, failing which, such an Act will be construed as a material breach of the terms of this Contract.
- iii.** The Consultant shall submit to the Client the reports in the form and within the time periods specified in Schedule-C, Schedule of Activities and Deliverables.

- iv. The Consultant shall share/ transfer its entire methodology, models and technical material required for the purpose of “the Services” contracted.

3. 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.’

4. Payment

- i. The Client shall pay the Consultant an amount not to exceed Rs. _____ (Rupees _____ only) subject to Tax Deduction at Source under relevant law including the Income Tax Act 1961. This amount shall be inclusive of all of the Consultant’s costs and profits as well as any tax obligations (Income Tax, Services Tax and any other) of the Consultant.
- ii. Schedule of Payment: The schedule of payment is specified in Schedule-E, which is made an integral part of this Contract.

5. Project Administration

A. Consultant Liaison

- i. In order to provide effective and efficient services to JKSPDC, which would involve close interaction with the officers of the JKSPDC, the Consultant would dedicate its Staff Members to JKSPDC as per Contract. Such personnel would have to visit Srinagar/Jammu or other stations in the State of JAMMU & KASHMIR or elsewhere at appropriate intervals for strategic directions and discussions with the JKSPDC.
- ii. 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 JKSPDC.

B. 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 JKSPDC’s certificate of satisfaction will be obtained thereon. This shall then constitute the basis for the payments to be made under paragraph 4-ii.

C. Monitoring

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

D. Clients Provision of Local Resources

The Client shall not be liable to pay any amount except as has been expressly stipulated in this Contract. In addition, the Client shall provide minimum possible office accommodation with furniture. One computer along with a printer and photocopier machine shall be allowed to be used by the Consultant.

6. 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 Client considers unsatisfactory. Any replacement of team offered will be with express consent of JKSPDC and be of like qualifications and experience. JKSPDC's certificate of satisfaction will be obtained on all reports and Deliverables before release of payments specified in Schedule-E.

7. Performance Guarantee

The Consultant has provided Bank Guarantee to the Client for an amount computed at FIVE PER CENT of the cost of the contract as a security deposit.

8. 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 of this Contract or the Client's business or operations without the prior written consent of the Client.

9. Ownership of Material

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

other than the work of the JKSPDC. The Consultant will protect data security of the client.

10. *Consultant NOT to be engaged in Certain Activities*

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

11. *Insurance*

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

12. *Termination*

The JKSPDC 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 (Guidelines 10, 11 and 15 of the J&K State Power Development Corporation Limited Engagement of Consultants Guidelines). In case of such defaults the JKSPDC 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.

13. *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 Guideline 16 of the J&K State Power Development Corporation Limited Engagement of Consultants Guidelines. Jurisdiction of J&K Courts will apply.

14. *Law Governing Contract and Language*

The Contract shall be governed by the laws prevalent in the State of Jammu & Kashmir and the language of the Contract shall be English. In respect of any matter for which no provision has been made in this contract, the provisions contained in the Standard

Guidelines of the JKSPDC on the subject of engagement of consultants shall apply.

In witness whereof.....to the JKSPDC on behalf of JKSPDC and the party of the second part have hereto put their hands the day and the year first above written.

Signed by.....the party of the first part in the presence of.....

Signed by.....the party of the second part in the presence of.....

FOR THE CLIENT

Signed by:

Designation:

FOR THE CONSULTANT

Signed by:

Designation:

LIST OF SCHEDULES TO THE 'MODEL CONTRACT' FOR ENGAGEMENT OF CONSULTANTS

- 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 of JKSPDC
- Schedule-E: Schedule of Payment