



Gujarat Electricity Regulatory Commission

6th Floor, GIFT ONE, Road 5-C, Zone 5, GIFT CITY,
Gandhinagar-382 355, GUJARAT, INDIA.
Ph. : +91-79-2360 2000 Fax : +91-79-2360 2054/55
E-mail : gerc@gercin.org Website : www.gercin.org

GUJARAT ELECTRICITY REGULATORY COMMISSION

GERC/TECH.-1/2023/

Dt. 22 DEC 2023

No - 2504

Sub.:- Engagement of consultant to provide assistance in the work of determination of methodology for calculation of Banking Charges leviable from the Renewable Energy Consumers of the State of Gujarat keeping in mind the overall economic development and investment in the State.

In response to clarifications/ suggestions/ modifications sought by the interested bidder on the referred RfP document advertised on 05.12.2023, the following amendments to the RfP document and clarifications are hereby issued;

1. Clause 4(g) of the RfP document is amended as below;

The Bidder is required to nominate a Project Director who shall interact with the Commission or the Officer designated by the Commission on regular basis during the consultancy period. **Whenever required, sufficient number of key personnel of the Team should be present in the office of GERC for discussion pertaining to the Scope of Work during the course of the engagement.**

2. Clause 8 of the RfP document is amended as below;

The final bids complete in all respect are required to be submitted latest by, on or **before 05/01/ 2024** up to 1800 hours IST. The address for submission of the proposal is given below:

The Secretary,
Gujarat Electricity Regulatory Commission,
6th Floor, GIFT ONE, Road 5C, Zone 5, GIFT City,
Gandhinagar, Gujarat - 382355.

3. Clause 13 of the Agreement is amended as below;

Consultant's Personnel

The party of the first part (Consultant) shall provide Description of personnel with names, position, qualifications and experience. **Whenever required, sufficient number of key personnel of the Team should be present in the office of GERC for discussion pertaining to the Scope of Work during the course of the engagement.**

Decision of the Commission on clarifications/ suggestions/ modifications sought by the interested bidder is given in the Annexure to this letter. All the interested bidders are advised to go through the said Annexure. Other terms and conditions of the RfP remain unchanged.

Sd/-

(Ranjeeth Kumar J., IAS)
Secretary
Gujarat Electricity Regulatory Commission
Gandhinagar

Encl.: As above

Clarifications/ suggestions/ modifications sought by PwC on RfP to invite bids from consultancy firms to provide assistance in the work of determination of methodology for calculation of Banking Charges leviable from the Renewable Energy Consumers of the State of Gujarat keeping in mind the overall economic development and investment in the State;

Sr. No.	Clause No.	Clause	Clarifications/ suggestions/ modifications sought	Decision of the Commission
1	4 (d)	The personnel concerned of the Consultancy Firm should have completed at least eight assignments in the past of framing of Rules, Regulations related to renewable energy and preparation of study report for FoR, CERC/ SERCs. The bidder is required to submit documentary evidences in support of having completed such jobs.	While the experience of the personnel / experts in the Technical Proposal may be mentioned in their respective CVs, however, it is unclear as to how the individual experience will be supported through any documentary evidence, as the completion certificates are in the name of the Firm and not in the name of individual experts. Further it is difficult to provide individual experts, all having experience of at least assignments in the past of framing of Rules, Regulations related to renewable energy and preparation of study report for FoR, CERC/ SERCs. Accordingly, it is requested to amend the clause as follows: “The key personnel concerned of the Consultancy Firm should have sufficient experience in the field of preparing framing of Policies, Rules, Regulations, Concept Paper, Discussion Paper, Study Reports or White Papers for Governments, Ministries, State Development Agencies. FoR, CERC, SERCs and/ or Think Tanks.”	CVs of personnel will accepted as documentary evidence subject to condition that bidder shall substantiate the information of assignments carried out by personnel as mentioned in CV, whenever required by the Hon’ble Commission.

2	4 (f) (c)	Data Analyst – At least 10 years of experience in power sector. (having education qualification of BE/ B. Tech in Computer Engineering/ IT)	Data Analyst are not domain experts but experts in analyzing data for different fields and sectors. Further, with other senior level domain experts being proposed in the team, the Data Analyst may be Expert having a lesser experience may be considered. Accordingly, it is requested to amend the clause as follows: (c) Data Analyst – At least 5 years of experience in analyzing large data volume. (having education qualification of BE/ B. Tech in Computer Engineering/ IT).	Clause inserted after thorough deliberations and hence not modified.
3	4 (f) (e)	Legal Expert – at least 10 years of experience (preferably LLM or any higher degree)	None of the activities mentioned in the Scope of Work in the RfP requires legal expertise. The deliverables require Technical (Generation, Grid, Distribution and RE), Regulatory, Financial and Economic expertise. Further, consulting firms which are not a Law Firm, do neither have the expertise nor they are allowed to provide the 'legal opinions / assistance' to its client. Therefore, we request to drop the requirement of Legal Expert from the RfP.	Clause inserted after thorough deliberations and hence not modified.
4	4 (g)	The Bidder is required to nominate a Project Director who shall interact with the Commission or the Officer designated by the Commission on regular basis during the consultancy period. The Commission shall require on	It is requested to amend the clause as follows: "Whenever required, sufficient number of key personnel of the Team should be present in the office of GERC for discussion pertaining to the Scope of Work during the course of the engagement."	Considering nature of work, suggestion is accepted and accordingly, said Clauses 4 (g) and 13 of Agreement RfP are modified, as below;

		<p>continuous basis at least one Project Executive having sufficient exposure of technical, financial, regulatory and legal aspects to be present in the office of the Commission, since beginning of the process till the final regulations are issued. Such project executive shall require to interact with the Commission or the Officer designated by the Commission on regular basis.</p>		<p>4 (g) The Bidder is required to nominate a Project Director who shall interact with the Commission or the Officer designated by the Commission on regular basis during the consultancy period. <i>Whenever required, sufficient number of key personnel of the Team should be present in the office of GERC for discussion pertaining to the Scope of Work during the course of the engagement.</i></p>
5	13 of the Agreement	<p>Consultant's Personnel The party of the first part (Consultant) shall provide Description of personnel with names, position, qualifications and experience. The Consultants shall also make sure continuous availability of the senior personnel at GERC office till completion of the consultancy assignment.</p>		<p>13 of the Agreement</p> <p>Consultant's Personnel The party of the first part (Consultant) shall provide Description of personnel with names, position, qualifications and experience. <i>Whenever required, sufficient number of key personnel of the Team should be present in the office of GERC for discussion pertaining to the Scope of Work during the course of the engagement.</i></p>

6	4 (i)	The Turnover and Net Worth of the bidding firm for the Task as per the Audited Annual Accounts for any of the FY 2021-22 or FY 2022-23 should be a minimum of Rs. 10 Crore.	In order to hire reputed and experienced consultancy firms, we request GERC to increase the criteria of minimum annual turnover from Rs. 10 crore to Rs. 25 crores.	Clause inserted after thorough deliberations and hence not modified.
7	8	The final bids complete in all respect are required to be submitted latest by, on or before 26/12/ 2023 up to 1800 hours IST. The address for submission of the proposal is given below:	It is requested to extend the last date of submission of bid to 5th January 2023 or one week from the date of providing clarifications on the RfP, whichever is later.	Last date extended up to 05.01.2023 up to 1800 hours IST.
8	Additional Comments		<p>No limitation of liability clause.</p> <p>It is requested to limit consultant's liability to 1X of the total contract value. This is as per GFR and the guidelines issued by MeitY. It is also the normal industry practice. Client may consider including the following language: "Purchaser/Client agrees that Consultants total liability for all claims connected with the services or this agreement (including but not limited to negligence), whether in contract, tort, statute, indemnities or otherwise, is limited to one time the professional fees paid / payable for the services. Purchaser/Client agrees that Consultant will not be liable for (i) loss or corruption of data from your systems, (ii) loss of profit, goodwill, business opportunity, anticipated savings or benefits or (iii) indirect or consequential loss."</p>	RfP is adequate and hence no such clause added.

9			<p>No protection to pre-existing OPRs.</p> <p>There are innumerable IPRs that exist with us which we would like to use to your benefit while delivering our services to you. These are our pre-existing IPRs and we use it for all clients. We will not be able to give ownership in such IPRs to you just because we are using them for providing services to you, like we use these for other clients. We request that we are allowed to retain ownership of our pre-existing IPRs, else we might be not be able to use these in providing services to you in order to protect our ownership in them. We request you to kindly include the below clause. This is also the standard mentioned by MeitY in its guidelines.</p> <p>"Notwithstanding anything to the contrary in this agreement, Consultant will retain the ownership of its pre-existing intellectual property rights (including any enhancement or modification thereto) even if such IPRs are used for creating deliverables, are incorporated in the deliverables, etc. To the extent such pre-existing IPRs are included/incorporated in the deliverables, upon receipt of all due and payable payment in full, the Consultant shall grant a non-exclusive, perpetual and fully paid up license to the Purchaser/Client to use such pre-</p>	<p>Suggested clarification accepted.</p>
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			existing IPRs for use of deliverables for the purpose for which such deliverables are meant for client's internal business operations."	
10			<p>There is no restriction on the usage of deliverable. No third party disclaimers.</p> <p>We will be providing services and deliverables to you under the contract. We accept no liability to anyone, other than you, in connection with our services, unless otherwise agreed by us in writing. You agree to reimburse us for any liability (including legal costs) that we incur in connection with any claim by anyone else in relation to the services. Please confirm our understanding is correct.</p>	Suggested clarification accepted.
11	Clause 3 of the Agreement	In case of any default on the part of the party of the first part in completion of the work within time schedule agreed to between the parties as herein above, the party of the second part (the Commission) shall be at liberty to get the work completed from any other agency at the risk and cost of the party of the first part (Consultant)	It is requested to limit liability under this clause to 10% of the value of corresponding goods/services not delivered by us. Please also confirm that client will use government procurement norms (including price discovery) for procurement of such services from third parties.	The agreement is standard agreement being provided with other RfPs as well and adequate and hence no further modification.

12	Clause 8 of the Agreement	Any information of confidential nature, which comes to the knowledge or into the possession of the Consultant or of any of its employees by virtue of the engagement subject matter of this contract; shall not be disclosed by the Consultant or its employees to any person in any manner. Any breach of this clause without prejudice to any other action that may be initiated according to law, shall also subject the Consultant to a liability to pay to the Commission such compensation as may be decided by the Commission keeping in view the nature, manner and motive of the information disclosed and the extent of damage caused by such unauthorized disclosure.	"Confidential information does not include any information which (i) is rightfully known to the recipient prior to its disclosure; (ii) is independently developed by the recipient without use of or reliance on confidential information; or (iii) is or later becomes publicly available without violation of this agreement or may be lawfully obtained from a third party; or (iv) which would be required to be disclosed under the (Indian) Right to Information Act." Consultant may disclose confidential information: (a) to its employees, directors, officers and subcontractors, on a need to know basis, as required for performance of services, provided such employees, directors, officers and subcontractors are bound by confidentiality obligations; (b) where required by applicable law or regulation or for regulatory and compliance (both internal and external) purposes."	The agreement is standard agreement being provided with other RfPs as well and adequate and require no further modification.
13	Clause 10 of Agreement	The party of the first part undertakes to render the required services to the full satisfaction of the Commission and in case of any default on the part of the party of the first part, the party of the second part (the Commission) shall be at liberty to get the work completed from any other agency at the risk and	Request client to limit our liability under this clause to 10% of the value of corresponding goods/services not delivered by us. Please also confirm that client will use government procurement norms (including price discovery) for procurement of such services from third parties.	The agreement is standard agreement being provided with other RfPs as well and adequate and hence no further modification.

		cost of the party of the first part (Consultant).		
14	Clause 11 of Agreement	The Commission reserves its right to foreclose, terminate or cancel the engagement of the Consultant without assigning any reasons. In such cases party of the first part (Consultant) shall be paid remuneration after taking into consideration the portion of work completed prior to such foreclosure, termination or cancellation of the engagement as may be decided by the Commission, and the decision of the Commission shall be conclusive and binding. The remuneration so fixed and paid shall be deemed to be the final payment in such case.	To uphold the principles of natural justice, we request client to notify us and give us a rectification period of at least 30 days, prior to invoking this clause. To uphold the principles of natural justice and to bring parity in the contract, we request client to give us the right to terminate the contract in case client breaches any of its material obligations under the contract, provided a notice for such breach is given to client along with a rectification period of 30 days. Cancellation / Rescission means voiding the contract and making the contract ineffective from its inception, thereby restoring the parties to the positions they would have occupied if no contract had ever been formed. In this scenario, bidder may be deprived of any payment and refund of all payments made already may be sought. Request deletion of term cancellation.	The agreement is standard agreement being provided with other RfPs as well and adequate and hence no further modification.
15	Clause 12 or Agreement	In case of any differences or disputes between the parties arising out of this AGREEMENT, the same shall be referred to arbitration by a person nominated by the Commission. The proceedings shall be subject to the Arbitration and	In order to uphold the principles of natural justice (Nemo judex in causa sua- no one should be judge in ones own case) and the provisions of the Arbitration and Conciliation Act, we request that the arbitrator(s) be appointed with mutual consent of both the parties. Alternatively, a panel of three	The agreement is standard agreement being provided with other RfPs as well and adequate and hence no further modification.

		Conciliation Act 1996, as amended from time to time.	arbitrators may be set up in which one arbitrator is appointed by Consultant, one by the client and the two arbitrators appoint third arbitrator. Please confirm.	
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