

**TERMS OF REFERENCE**  
**FOR**  
**COMPETITIVE Tender from Consultancy Firms for**  
**for providing advisory services to MERC.**

## **1 INTRODUCTION**

**Maharashtra Electricity Regulatory Commission (MERC)** was established on August 5, 1999 under the Electricity Regulatory Commission Act, 1998, a Central Act which was superseded by Electricity Act, 2003 (EA 2003). The Commission under Section 86 of the EA 2003 undertakes various functions, such as, determination of tariff for generation, transmission and wheeling of electricity; bulk or retail supply of electricity, as the case may be, within the State of Maharashtra; regulate electricity purchase and procurement process of Distribution Licensees; issue Licenses for Transmission, Distribution, and Trading of electricity and promote generation /co-generation of electricity from renewable sources of energy.

### **2 Background of the Functions of the Commission;**

Determination of Multy Year Tariff (MYT) Annual Revenue Requirement (ARR), Annual Performance Review (APR) of the Transmission Licensees, Distribution Licensee i.e. MSETCL/MSEDCL, The Tata Power Company Limited, Transmission & Distribution Business, Reliance Infrastructure Limited, Transmission & Distribution Business, BEST, Mula Pravara Electric Coperative Society Ltd, Adani Power Ltd, Transmission Pricing of Intra-State Transmission System (InSTS) of Maharashtra, Any other Transmission Licensee operating in the State of Maharashtra. Determination of Tariff for New Thermal Generating Units, Determination of Tariff for New Hydro Power Plants. Determination of tariffs for Non-Conventional Energy sources.

The Commission issues order on petitions/proposal after following due procedure laid down in Electricity Act and Regulations. Both prior to and post issue of orders, the financial consultants (CA) are expected to evaluate the orders in financial terms which requires thorough knowledge of accounts and strong analytical skill i.e. analysis of statement of Annual Revenue Requirement, capital expenditure, Power Purchase Agreement etc.

**3. MERC** intends to engage technically qualified and experienced consultancy firm registered with the Institute of Chartered Accounts of India (ICAI) and having proven track record of 10 years in practice, for providing advisory services to the Commission for discharging its functions effectively.

The Consultancy firms have to submit their offer for deployment of qualified and experienced Chartered Accountant (CA) on (i) Retainership/Regular basis & (ii) Assignment basis. The firm can assign max 3 candidates for each type. The scope of work, qualifications and other terms and conditions are as under;

### **4 Scope of Work/Job Responsibility:**

- Detailed financial analysis of MERC Tariff Orders (both prior to its issue and thereafter).
- Financial analysis of Capital expenditure proposals with respect of parameters such as cost optimization, cost reduction measures, Capital gearing structure, Interest during construction period, depreciation/amortization etc.

- Capital structuring and project financing arrangements for Power Projects.
- Financial closure of new Power Projects.
- Clauses in Bid documents and their implications.
- Reconciliation of Utilities ARR financial statements with their Final Books of accounts prepared as per the provisions of the relevant applicable statute.
- Analysis of the concept of „Return on Equity“ Vs. „Return on Capital Employed“ and its financial implications for the MYT Regulations.
- Analysis of Impact of Regulatory assets and its carrying cost on the tariff.
- Financial analysis of Power Purchase Agreement.

## **5 Eligibility Criteria of the Practicing Consultancy Firm:**

Request Proposals of only those Practicing Consultancy Firms registered with The Institute of Chartered Accountants of India (ICAI) who are able to demonstrate skills and experience in the following areas will be considered;-

- Should have proven track record in consultancy of atleast 10 years. Preference would be given to firms having experience in Power Sector.
- Ability to understand the assignment and the emerging issues with respect to Regulatory Affairs.
- Selected Consultancy Firm has to engage full time CA on regular/retainer-ship basis in Commission“ s office.

### **Eligibility Criteria of the individual consultant to be deployed by Practicing Consultancy Firms**

- Candidate should not be more than 40 years of age as on 1<sup>st</sup> January 2011.
- Qualified Chartered Accountant (CA) with post qualification experience of minimum 3 years.
- Candidate should have been working with firm for a minimum period of 1 year.
- Experience in project appraisal of power projects, preparation of financial models and reports of high quality standards, will be desirable.
- Should have good communication and interpersonal skills with a strong flair for financial analysis and good drafting skills.
- Should have knowledge of advance usage of spreadsheet (MS Excel).

## **6 Types of appointment:**

There will be two types of appointment – (i) regular basis and (ii) assignment basis. The individual financial consultant (CA) engaged on regular/retainership basis shall work minimum for 3 days in a week from the Commission“ s office whereas the CA engaged on assignment basis would be required to work for MERC as and when the need would arise.

## **7 Accommodation:**

The regular financial consultant (CA) needs to have accommodation facility in Mumbai or nearby places. No accommodation will be provided by the Commission.

## **8 Requirement of Financial Consultant (CA):**

The Commission requires one consultant (CA) on regular/retainer ship basis for work in office of the Commission and one or more as per requirement on Assignment basis. However the Commission reserves its right to engage any number of CA.

The Individual financial Consultant (CA) proposed by the Financial/CA Firm for engagement shall be well acquainted with the Project Finance, Project Appraisal, Recourse & Non-Recourse Financing, Capital Structuring and Financing of Power Projects and the eligibility criteria specified in para 5 above.

Experience: Every such CA/Financial Firm should have minimum 10 years experience after establishing the CA/Financial Firm in the work of Project Finance, Project Appraisal, Recourse & Non-Recourse Financing, Capital Structuring and Financing of Power Projects. The CA/Financial Firm is required to submit documentary evidences in support of the individual experience.

Qualification: The person proposed for appointment by the CA / Financial Firm should be Chartered Accountant (CA) with post qualification experience of minimum 3 years

Contract Period: Initial contract would be for minimum period of 1 year extendable for further period as may be decided by the Commission.

The CA Financial Firm should furnish copies of certificate of registration, PAN, service tax registration etc and documents supporting to claims made by the Firms as above.

## **9 Guidelines for submission of the Tender:**

The duly completed Tender as described below, in a sealed envelope, super- scribed "Offer for services for assistance to the Commission in financial issues/aspects as mentioned in Para 4 of Tender Document" should be submitted so as to reach the office of the Commission on or before **16:00 hrs on 25.1.2011 (Extended date 04.03.2011)** In the event of the specified date for the submission of the tenders being declared a holiday, the Tenders will be received up-to the appointed time on the next working day of Commission's office. Any Tender received after the abovementioned deadline will be rejected and may be returned un-opened.

The Tender shall comprise of two parts, i.e. (i) Technical Offer, and (ii) Financial Offer, as follows:

The Technical Offer, as per the format given at **Annexures I, I-A, I-B, I-C, I-D & I-E.**, shall be submitted in duplicate, sealed in an envelope which must be clearly marked as "Technical Offer for providing advisory services to the Commission" as mentioned para 4 of the Bidding Document" (Technical Offer)"

The Financial Offer, as per the format given at **Annexure-II** – shall be submitted in duplicate, sealed in an envelope which must be clearly marked as "Financial offer for providing financial services to the Commission" as mentioned in Para 2 of Bidding Document" (Financial Offer)"

Note: Technical Offer and Financial Offer should be in two different envelopes marked as mentioned above. These two sealed envelopes should be submitted in a single large envelope / packet marked as "Offer for providing Advisory Services to the Commission".

The Tender, including the Financial Offer shall be valid for three (3) months from the due date of submission of the Tenders, for acceptance by the Commission as well as for issue of a Letter of Intent/ Order by the Commission, and for full duration of the Contract period.

The prospective firms may note that the offers, if sent by them by E-mail, Telex, cable or facsimile, will not be considered as received by the Office of the Commission.

#### **10 Earnest Money Deposit:**

The Technical Offer should be accompanied by an Earnest Money Deposit of Rs.20,000/- (Rupees Twenty Thousand only), in the form of a Demand Draft drawn in favour of „Maharashtra Electricity Regulatory Commission“, payable at Mumbai. The earnest money will be returned to the firm“ s, after appointment of the Consultant. Tenders without the Earnest Money Deposit as above will not be accepted, and will be summarily rejected

#### **11 Deviations:**

The Firms must ensure that Technical and the Financial Offers submitted by them satisfy all the Terms and Conditions specified in the Tender specifications.

In case of any deviations from the requirements of this Tender, the firm shall specifically bring out the same in a separate Sheet enclosed with the Technical Tender, entitled “Schedule of Deviations”, and make a reference to the same in covering note of the Tender. In absence of any such schedule, it shall be deemed that the firm has no deviation, and Firms shall be meeting all the requirements as per the Tender specifications. The Commission reserves the right to reject any Tender, based on any deviation taken by the Firms, or otherwise, without assigning any reason.

Any revision/correction in the Tender after opening of the tender will not be allowed. Any such revision will render the Tender as non-responsive, and also result in forfeiture of Earnest money Deposit.

The firms shall make in their tender such disclosures as may be required to ascertain that the firms has no conflicting interest in undertaking the proposed assignment

#### **12 Terms of Payment:**

The payment would be on the basis of actual working days in a month, subject to a maximum of the approved monthly fee. One working day would constitute work of eight hours. The rate of one working day would be calculated on the assumption that the approved monthly fee is for 22 working days.

The payment would be made to the consultancy firm.

Payment for the consultants (CA) appointed on regular basis would be made every month after their satisfactory working during the month and submission of worksheet of work carried out during the month.

Payment for the consultants (CA) appointed on assignment basis would be made on completion of the respective assignment and delivery of the deliverables as specified by the Commission while awarding the assignment.

#### **13 Tax Deduction at Source:**

The Income Tax or any other tax liable to be deducted, as per the prevailing rules will be deducted at source before effecting the payment, for which the Commission will issue TDS Certificate/s. Service Tax, as applicable shall be payable extra, at the prevalent rates.

#### **14 No extra charge:**

The charges quoted by the firm in their tender, and accepted by the Commission in the Contract, will be inclusive of the costs of Consultant's Teams' travel, lodging and boarding, and also all incidental expenses, professional fees etc., incurred by the teams, in connection with the assignment. No separate charges will be payable by the Commission on any such account. However, in case the financial consultants are required to travel outside Mumbai in the context of the work/assignment, the Commission shall reimburse the actual cost as per the Rules/Regulations of the Commission.

The Consultants shall keep the Commission and all the concerned Utilities (MSEDCL, MSETCL, MSPGCL, BEST TPC, RINFRA, MPECSL) to be visited, indemnified from any damages, on any account.

#### **15 Confidentiality of data and documents**

The Intellectual Property Rights (IPR) of the data collected as well as the deliverables produced for the Commission shall remain with the Commission. No one shall utilise or publish or disclose or part with, to a third party, any part of the data or statistics or proceedings or information collected for the purpose of this assignment or during the course of the assignment for the Commission, without the express written consent of the Commission. The Consultant shall be bound to hand-over the entire set of records of assignment to the Commission before the expiry of the contract, and before the final payment is released by the Commission.

#### **16 Conflict of interest:**

The consultant appointed by the Commission, shall in no case represent or give opinion or advice to others in any matter which is adverse to the interest of the Commission

#### **17 Tender Opening**

The Firms / Offers will be scrutinised by the Commission and the firms who have qualified for further evaluation will be intimated by the Commission. The firms shall clearly mention the name, designation and contact details of the person to be informed in their organisation regarding such intimation and regarding queries /clarifications, if any.

Pre-Tender Discussion: For the benefit of the bidding firms, a pre-bid session will be held at **16.00 hrs on 17.1.2011 (Revised date 23.02.2011)** at the Commission's Office.

Opening of Financial offers: The Financial Offers will be opened on at Commission's office, in the presence of the Firms, who may choose to remain present. The representative of such firms, desirous of attending shall bring with him duly signed Letter of Authority. The qualified firms will be informed of the date of opening of Financial Offer.

#### **18 Contract Finalisation:**

On completion of the evaluation of the technical and financial offers of the Tenders received, and finalisation of the Successful firms/s, the Commission will issue „Letters of Intent“ (LOIs) to the successful firms/s, along with a format of the Contract to be signed.

Within seven days of receipt of the LOI, the successful firms (s) shall enter into a Contract with the Commission in the prescribed format

If the successful firms fails to enter into the said Contract, within 7 days of issue of Order, the Earnest Deposit submitted by the firms will be forfeited, and the Commission may exercise its right to invite the next-in-line „successful firms to award him the Contract. The Commission may also exclude the former firms from all future assignments/ Tender processes.

**19 The Commission reserves the rights, as follows:**

To award the Contract against this Tender, to a single firms for all the work or to a number of firms.

To decide to cancel this Tender, and not to proceed in the matter, at any stage of the tender or analysis of the tender and also accept or reject any or all tenders, without giving any explanation, whatsoever. In case of cancellation, the Commission shall have discretion to decide whether to return or not the un-opened portions of the Firms documents and also how to deal with the documents retained by the Commission.

To disqualify 1) any firm found canvassing in the office of the Commission during the tender process 2) any firm who has worked with the Commission in the past but has failed to deliver appropriate output for similar type of tasks as mentioned in Para 4.

**20 Operation of the Contract:**

Immediately on entering into a Contract for work, as above, the detailed work plan, and dates for the milestones for monitoring progress of various works shall be discussed and finalised for regular Chartered Accountant. As and when needed, the Chartered Accountant on assignment basis would be employed on specific tasks/assignment. The required mandays and terms lines would be finalized at the time of employment. All such decisions would be taken after discussing the matter with the CA Firms.

The CAs named in the proposal shall be actually available for carrying out the work. Commission will not consider any substitutions of persons during the contract period except in cases of unexpected delays in the starting date of a visit due to incapacitation of key professional staff for reasons of health.

The Commission is not responsible for any accidents occurred at the time of execution of the works under this assignment.

**21 Termination of Agreement:** The Commission may terminate a contract to which these Terms apply if:

The Consultant is unable to address the assigned works,

Quality of the assigned works is not to the satisfaction of the Commission

The CA or CA Firm fails in timely achievement of the milestones as finally decide by the Commission.

The CA or CA Firm commits any material or persistent breach of its obligations under the contract (which, in the case of a breach capable of remedy, shall not have been remedied within 15 days of intimation), or

The CA or CA Firm is found lacking in honesty and integrity;

The CA Firm becomes insolvent;

The Commission reserves the right to terminate the contract, by giving fifteen days' notice to the Consultant.

Termination shall be effected by written notice served on the Consultant and shall take effect in 15 days of delivery of such notice. The termination will be without prejudice to either party's rights accrued before termination.

## **22 Governing law:**

The contract shall be governed by and construed in accordance with the laws of the Republic of India.

## **23 Technical Offer:**

The firms for the contract shall provide a brief description of the Firm's organisation and a clear outline of **assignments executed in power sector, if any, in the past 10 years** (as per **Annexure I-A**). The information provided on each assignment shall indicate, inter-alia, the objectives of the assignment, its duration, profiles of the staff engaged, approximate value of contract, and completion status along-with the outcome of the assignment.

The firms shall provide a concept note about their understanding of the task/scope of the work they are supposed to undertake while working with MERC under the present contract (**Annexure I-B**). The note should not be more than 5 pages.

The firms must submit **updated curriculum vitae (CV)** of all the CAs proposed to deploy on Retainership/Regular basis and or Assignment basis. Key information should include: number of years with the firm, professional qualifications and degree of responsibility held in various assignments during the last five years. Curriculum Vitae of the consultants should clearly and separately identify those assignments, directly relevant to the proposed contract. (**Annexure-I-C&I-D**)

The firms shall propose a methodology for transferring knowledge to the staff of the Commission. (**Annexure-I-E**)

The Demand Drafts for Earnest money Deposit (Rs20,000/-) shall be attached with the Technical offer.

## **24 Financial Offer**

The firms shall submit their financial bids in Annexure II. The firms shall quote a monthly fee offer for individual CA willing to work on either on retainership/regular basis and or on

assignment basis or on both, which shall be inclusive of all applicable taxes (except Service Tax) and duties, and Government levies, Octroi (as applicable), insurance, transportation and allied expenses, etc. Service tax will be paid extra at the applicable rates in case the firm/ agency quotes a valid Service Tax Registration number in his bid and in the invoices.

No alteration to the price tender, for any reason or lapses, whatsoever, will be allowed after the Tender opening. Any additional payment to the CA firm, over and above the Contract price, will **NOT** be admissible by the Commission.

The quoted prices shall remain fixed for the duration of the Contract. No additional amount shall become payable by the Commission on account of escalation or any other reason

## **24 Basis for Evaluation of the Offers**

The evaluation of tender/offer will be carried out by the Commission on the basis of required qualification & experience of CAs, work carried during last five years, lowest financial offer (monthly/daily fee) etc.

Additional appointment/deployment of CA either on Retainership/Regular Basis or Assignment basis, if any, belonging to any successful firms may, at the discretion of the Commission be appointed. However the monthly fee should not exceed that of any other appointed CA of the bidder.

The Commission reserve the right to reject the offer/bid without assigning the reason for the same.

\* \* \* \* \*

**Annexure – I**  
(FORMAT)

Date: \_\_\_\_\_

FROM:

TO:

Secretary,

MERC, Mumbai

**Subject:** “Offer for providing advisory services & assign one qualified CA on Regular/Assignment basis for advising the Commission”

Sir,

I/We, \_\_\_\_\_, enclose herewith our Offer for providing services for advising the Commission on financial aspect/issues as mentioned in para “Task/Scope of Work/” in bid documents.

\*We have not taken any deviation from the scope of work or working conditions and confirm compliance to all the conditions specified in the Tender documents/ \*We have taken a few deviations from the terms and conditions of bid documents and details of same are brought out in Annexure-\_\_\_\_.

*(Note: \* = to be appropriately modified by the bidder.)*

The Earnest money deposit of Rs. 20,000/-. (Rupees Twenty Thousand only) is enclosed in the form of the Demand Drafts bearing nos.\_\_\_\_\_.

Yours faithfully,

Signature \_\_\_\_\_

Full Name \_\_\_\_\_

Designation \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Encl.: *(list of all enclosures)*

X - - X - - X

**Annexure – I (A)**

(FORMAT)

**Relevant Experience & Track Record of the CA Firm**

Date: \_\_\_\_\_

A brief description of the CA Firm and the similar nature of work as mentioned in bid documents carried out in the last 10 years after constitution of the Firm.

FROM:

TO: Secretary  
MERC, Mumbai

A. Brief description of the organisation:

1. Name of the Firm
2. Nature of the Firm
3. Business/Profession and number of years in the business
4. Number of staff
5. Registration
6. Affiliation with national and international professional/financial bodies.
7. Annual Turnover (last three years)
8. Any other relevant information

B. Significant nature of work carried out in the last 10 years

*(The following information should be given in respect of each assignment separately.)*

1. Title of assignment
2. Objective of assignment
3. Narrative description of the assignment.
4. Name of the client
5. Address
6. Commencement and completion of the assignment
7. Number of man months as well as the duration period for completion of assignment
8. Outcome of the assignment.
9. Contract value of the assignment
10. Any other relevant information.

Yours faithfully,

Signature \_\_\_\_\_

Full Name \_\_\_\_\_

Designation \_\_\_\_\_ Address \_\_\_\_\_

**Annexure-I (B)**

(NO PRESCRIBED FORMAT)

(Not more than 5 pages)

Concept Note on the Understanding of the Task/Scope of work

**Annexure – I(C)**

**Qualifications, Experience and Competence of the Chartered Accountant**

**Format of Curriculum Vitae (CV) for CA proposed  
for the Assignment basis (separate sheet for each CA)**

Name:

Name of Firm:

Profession:

Age & Date of Birth:

No. of Years with Firm:

Membership of Professional Societies:

Detailed Tasks Assigned:

Key Qualifications:

Education:

(Summarize College/University and other specialised education of each staff member, giving names of schools, dates attended and degrees obtained).

Employment Record:

(Starting with present position, list in reverse order every employment held. List all positions held by the staff members since graduation, giving dated, name of employing organization, title of positions held and location of assignments. For experience in the last ten years, also give types of activities performed and Client references, where appropriate. Use up to three-quarter of a page).

Experience in Utility Business: Position held, Nature of work, Highlights/ Achievements.

Certification:

I, the undersigned, certify that, to the best of my knowledge this bio-data correctly describes myself, my qualifications and my experience.

Signature of Staff Member

Date:

It is certified that the concerned person is a full time employee of the Firm.

Signature of authorised Official from the Firm (with name and designation)

**Annexure – I(D)**

**Qualifications, Experience and Competence of the Consultant for the Assignment basis**  
**(contd)**

**List of the Consultants**

Sr.No.	Name	Position in the parent Organisation (Firm)	Willing to work on regular basis or assignment basis or both	Whether accommodation is available at Mumbai or nearby place
1				
2				
3				
4				
5				

**Annexure I-E**

(No prescribed format)

Methodology for Transferring Knowledge to the Staff of the Commission.

(Not more than three pages)

**Annexure - II**  
(FORMAT)  
**FINANCIAL OFFER**

Date:

FROM:

TO:  
Secretary,  
MERC, Mumbai

Subject:

Sir,

This has reference to our Technical Offer under our reference no. \_\_\_\_\_ dated \_\_\_\_\_, for consulting services for assistance to the Commission to facilitate the works as per Para 4 of Bidding Document”

I/We \_\_\_\_\_ (Firm), hereby furnish our Financial Offer, in respect of the Group-area covered in our Technical Offer, as follows;

Sr. No	Name of the person as per Annexure I – D	Monthly Fee (Not more than Rs.5.00 Lakhs)
1		
2		
3		

We confirm that the above quoted prices are inclusive of all costs (excluding service tax) for carrying out the work as specified in the bidding documents.

Yours faithfully,

Signature \_\_\_\_\_ Full Name \_\_\_\_\_

Designation \_\_\_\_\_ Address \_\_\_\_\_

**Annexure – III**  
**(FORMAT)**

**CONTRACT SECURITY DEPOSIT**

To  
The Secretary,  
MERC

WHEREAS ..... (Name firm) hereinafter called "the firm" has undertaken assignment of Contract No.....dated.....to assist MERC in the matter of ... advisory services as per Para 4 of Bidding Document ..... (hereinafter called "the Contract").

AND WHEREAS it has been stipulated by you in the said Contract that the firm shall furnish you with a bank Guarantee by a scheduled bank for the sum specified therein as security for compliance with the firm's performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the firm a guarantee

THEREFORE WE, ....., (Bank's name and address) hereby affirm that we are Guarantors and responsible to you, on behalf of the firm, up to a total of ..... (Amount of the guarantee in words and figures) and we undertake to pay you, upon your first written demand declaring the firm to be in default the contract and without cavil or argument, any sums within the limit of.....as aforesaid, without your needing to prove or to show the grounds or reasons for your demand or the sum specified therein.

This guarantee shall remain valid until the end of the .....day of....., 20....., for acceptance of your claims in the matter.

Signature and Seal of Guarantors

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Date -----

Address -----