

Laws, Regulations and Rules passed thereunder.

**JAMMU AND KASHMIR STATE WATER RESOURCES REGULATORY
AUTHORITY**

NOTIFICATION

No: 11 /JKSWRRA/2013, Jammu

Dated: 22nd April 2013

In exercise of the powers conferred under sections 144(5) and 198(2)(j) of J&K Water Resources (Regulation and Management) Act, 2010(Act No XXI of 2010) and all powers enabling it in that behalf, the J&K State Water Resources Regulatory Authority, hereby makes the following Regulations, namely:-

CHAPTER – I

1. Short title, commencement and interpretation-(1) These Regulations may be called the J&K State Water Resources Regulatory Authority (Appointment of Consultants) Regulations, 2013.

(2) These Regulations shall come into force from the date of their publication in the Government Gazette.
2. Definitions- (1) In these Regulations unless the context otherwise requires-
 - (a) 'Act' means the Jammu and Kashmir Water Resources (Regulation & Management) Act 2010 (Act No XXI of 2010)
 - (b) 'Chairperson' means the Chairperson of the Authority;
 - (c) 'Authority' means the J&K State Water Resources Regulatory Authority, established under the Act;
 - (d) 'Consultant' includes any individual, firm, body or association of persons, not in the employment of the Authority, who or which possesses or has any specialized knowledge, experience or skill;
 - (e) 'Government' means the Government of Jammu and Kashmir;
 - (f) 'Member' means a Member of the Authority,

- (g) 'Officer' means an officer of the Authority,
- (h) 'Secretary' means the Secretary of the Authority,

(2) Words or expressions occurring in these Regulations and not defined herein but defined in the Act shall bear the same meaning as in the Act or in the J&K State Water Resources Regulatory Authority, (Conduct of Business) Regulations, 2013.

3. Scope of work- (1) The Authority, may from time to time engage consultants for executing specialized tasks for which skills are either not available within the staff of the Authority, or where the nature of jobs is specific and time bound or where the Authority, considers it conducive to its working, to appoint consultants. Consultants will not normally be appointed for routine day-to-day work for which staff is available.

(2)The terms and conditions of engagement of consultants will be drawn up in each case and agreed to between the consultant and the Authority, prior to award of consultancy.

(3)The terms of engagement would specify the exact nature of the tasks to be undertaken by the consultant, the time allowed for completion of each task and the specific outputs that are to be provided by the consultant in relation to each task.

4. Period of engagement- Consultants will be engaged for the minimum period required and in no case the maximum period of initial engagement shall exceed one year. However, on justifiable reasons, extension of contract may be given for a duration of six months, only twice against such contracts.

5. Categorization of consultants-(1) Individual consultants will be categorized into one of the three levels of advisor, senior consultant and consultant based on their expertise and experience, as per the table given below:-

Discipline	Minimum Qualification	Minimum Experience in the relevant field (Number of years)		
		Advisor	Sr. Consultant	Consultant
Economics	Ph. D	15	10	05
	Master's Degree	18	12	10
Engineering	M Tech	15	10	05
	B. Tech	18	12	10

Finance	Chartered Accountant / MBA(Finance) / Cost and Works Accountant / Chartered Financial Analyst	18	12	10
Law	Degree in Law	18	12	10
Statistics	Ph. D	15	10	05
	Master's Degree	18	12	10
Geology	Ph. D with specialization in hydro- geology/ground water issues.	15	10	05
	Master's degree with specialization in hydro-geology/ground water issues	18	12	10

(2)The Authority may in appropriate case, for reasons to be recorded in writing, relax the minimum educational qualifications keeping in view the overall expertise and experience of the person being considered for engagement as a consultant.

6. Fee and charges- (1) For an individual consultant engaged on a monthly basis, consolidated remuneration shall be paid, as may be decided by the Authority from time to time, but shall not exceed rupees one lac per month.

(2) No other payment, apart from a consolidated fee, will be paid except an additional amount to cover contingencies which will be capped at an amount of 10% of the fees payable.

(3) For service on a daily basis, remuneration per day shall be as follows subject to the condition that engagement on daily rate shall not normally be for more than seven days at a time:-

Category	Remuneration
Advisor	Rs. 5000.00
Sr. Consultant	Rs. 3000.00
Consultant	Rs. 2000.00

(4) In the case of institutional consultants, the rates normally will be as determined through competitive bidding. In exceptional cases where single

source selection is required due to reasons explained in Regulation 12, rates of different levels of individual consultants shall form the basis to determine the reasonableness of the cost allocated to consultant-time in the proposals. A maximum of 10% over the cost of consultant-time so arrived may be allowed for overheads for office expenses, wherever required to be paid at rates approved by the Authority.

(5) The consultant, until and unless allowed by the Authority, will work with the Authority at its headquarters. Where the consultant has to incur expenditure on official travel and stay at a place other than the normal place of duty, the Authority will reimburse Daily Allowance by allowing an additional expenditure in lump sum.

The number of days for which this lump sum amount is payable will be determined as appropriate. In each case the cost of travel will be separately reimbursed by an appropriate class of travel as decided by the Authority.

(6) The remuneration of former and retired Government servants engaged as consultants shall be determined in accordance with the provisions of article 259(A) of the Jammu and Kashmir Civil Services Regulations.

7. Appointment of Consultants.- (1) Terms of Reference (ToR) for the appointment of consultants for specific tasks will be prepared and approved by the Authority.

(2) The scope of service described in the ToR shall be compatible with the available budget. The need for such an assignment will decide the scope of work.

(3) The Authority may decide either to invite a combined technical and financial proposal or separate technical and financial proposals.

(4) The Authority will prescribe the minimum qualifying marks for the technical bid.

(5) After approval of the ToR by the Authority, the Secretary will invite proposals from interested consultants ensuring that appropriate publicity is given in each case. It will not however, be necessary to go through the process of issue of public advertisement particularly, where the value of the fee is below rupees two lacs in each case, in which case the Authority may call for applications or offers or nominations from such individuals, firms, companies, association of persons, bodies, institutions as Authority may consider appropriate. The decision of the Authority shall be final in this regard.

8. Request for proposals- The request for proposal shall include the following:-

1. A letter of invitation stating the intention of the Authority to enter into a contract for provision of consulting services, the date, time and address for submission of proposals.
2. Information to consultants shall contain all necessary information that will help them prepare responsive proposals. This will be in the form of evaluation process like evaluation criteria and factors with respective weights and minimum qualification, pre-qualification score etc.
3. 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 consultants in preparation of their proposals. If transfer of knowledge and/or training is an objective, the ToR will detail the number of staff to be trained. The ToR shall also 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.
4. Draft contract as per proforma in schedule.

9. Receipt of proposals.-

(1) The Authority will prescribe the time within which the consultants are required 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 consultants may seek clarifications about the information provided, in the TOR.

(2) The Authority may decide to extend the deadline for submission of proposals, as deemed appropriate by it.

(3) No amendments to the technical or financial proposals shall be accepted after the deadline except before a negotiating committee appointed by the Authority. The proposals shall be submitted in a sealed cover. Where the Authority prescribes that separate technical and financial proposals are to be submitted, they shall be furnished in separate sealed envelopes.

10. Evaluation of proposals.- Proposals will be evaluated both on the basis of quality as well as cost. Where the Authority decides that proposals are to be evaluated separately on technical and financial basis, the evaluators of the technical proposals shall not have access to the financial proposals, until the technical evaluation is completed.

(i) Technical Evaluation:

(1) Technical evaluation will be done by a committee nominated by the Authority on the basis of criteria. Each criterion shall be marked on a scale of 1 to 100

and then the marks for each criteria shall be weighted to become the average technical score. Weights in the following ranges will be used by the committee with the approval of the Authority to calculate the weighted average technical score for each proposal:-

Criterion	Range of Weights
The consultants relevant experience for the assignment	0.10 to 0.40
The quality of the methodology proposed	0.20 to 0.50
The qualification of the key staff proposed	0.30 to 0.60
The extent of transfer of knowledge to the staff of the Authority	0.05 to 0.35

(Note:- Total of the mix of weights approved by the Authority shall be 1)

(2) Where the assignment depends critically on the performance of the key staff, the proposal shall be evaluated on the qualification of the individuals proposed to be using the following criteria:-

- (a) General qualification: General education and training, length of experience, positions held, time with the consulting firms as staff, experience in developing countries etc.
- (b) Adequacy for the assignment, education, training, experience in the specific sector, field, subject and relevance to the particular assignment.
- (c) Regional experience: Knowledge of the administrative system, organization and culture at the local/regional level.

(3) After the technical evaluation is completed, the Authority shall inform those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the terms of reference, and their financial proposals will be returned unopened after completing the selection process. Simultaneously, those consultants who have secured the qualifying marks shall be informed about the date and time for opening the financial proposals giving sufficient notice for the consultants to be present at the opening, should they so desire.

(ii) Financial Evaluation:

(1) The financial proposals of the prequalified consultants will be opened by the committee in the presence of the consultants or their representatives

whose bids are short-listed for financial evaluation. The proposed prices shall be read and recorded in minutes of the proceedings.

(2) The Secretary will cause a review of the financial proposals to be done. Arithmetical errors will be corrected. The cost will be converted to a single currency using uniform exchange rates.

(3) The proposals with the lowest cost will be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.

e. g. Financial Score of consultant A = $100 \times LP/QP$

Where LP = Lowest Price and

QP = Quoted Price of consultant A

11. Evaluation of financial and technical scores.-

(1) The total score shall be obtained by weighting the technical and financial scores and adding them. The weight for the financial score shall be as prescribed by the Authority in each case taking into account the complexity of the assignment and the relative importance of quality. However, the weight shall not exceed 0.3 for the financial score in any case.

(2) The Authority may appoint a negotiating committee to enter into both technical and financial negotiations. Where technical negotiations are conducted, they will be completed prior to pre-qualification of the consultants. Financial negotiations can be entered into for any aspect of the financial proposals including the unit rates for staff-months, contingency amounts, lump sum reimbursement of travel & living expenses and payment terms.

(3) The Authority may reject all proposals if they are found to be unresponsive or unsuitable, either because they represent major deficiencies in complying with the TOR or they involve costs substantially higher than the original estimates.

(4) If the consultants, finally selected for award of contract on the basis of above procedure, fail to enter into a contract within the time limit as may be prescribed by the Authority or failed in the performance even after the signing of the contract, the Authority will invite the consultant who had scored the second highest score on consideration of financial and technical bids for award of the contract.

12. Single source selection.- Single source selection shall be used only in exceptional cases where it is appropriate and represents a clear advantage because:-

- (1) The tasks represent a natural continuation of previous work carried out by the consultant; or
- (2) A rapid selection is essential; or
- (3) Assignments are small and the fee payable does not exceed rupees two lacs in each case; or
- (4) Only one person is qualified or has proven experience for the assignment.

13. Selection of individual consultants.- (1) Individual consultant will be employed for assignments for which teams of personnel are not required, no additional outside (home/office) professional support is required and where the experience and qualifications of the individual are the paramount requirements.

(2) Individual consultants will 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 approached directly by the Authority. Capability will be judged on the basis of academic background, experience, appropriate knowledge of local conditions, administrative systems and government organization.

14. Other terms and conditions.-

(1) Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligation to other clients or that may place them in a position of not being able to carry out the assignment objectively and impartially.

(2) The consultants shall work under the control and supervision of the Chairperson of the Authority or officers as may be authorized by him, but shall be liable to furnish its independent professional expert opinion.

(3) The consultant shall submit his/her report/advice to the Chairperson.

(4) The consultant will not be an officer of the Authority in terms of the Act or Rules or Regulations but other terms of appointment of the consultant in addition to consolidated remuneration and other conditions given in these Regulations, shall be such as may be decided by the Authority.

(5) In case of non-compliance of the Regulations and orders of the Authority, the Authority may take suitable action as per the provisions under the Act, Rules and Regulations or any other action as deemed appropriate.

(6) The Authority shall have full and unrestricted right to appoint a consultant or terminate, curtail or extend the terms of any consultant at its sole discretion.

15. Savings of inherent powers of the Authority.-Nothing in these provisions shall bar the Authority from adopting a procedure which is at variance with any of the provisions of these Regulations, if the Authority, 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 prescribed in the Regulations.
16. General power to amend.- The Authority may, at any time and on such terms as it may think fit, amend any provision of the Regulations for the purpose of meeting the objective with which these Regulations have been framed.
17. Power to remove difficulties.-If any difficulty arises in giving effect to any of the provisions of these Regulations, the Authority may, by a general or special order, do anything not being inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulties.

By order of the Authority

**Sd/-
Secretary**

Schedule

Articles of agreement made on this _____ day of _____ between _____ of the one part and the J & K State Water Resources Regulatory Authority (hereinafter called "the Authority") of the other part, whereas the Authority has engaged the party of the first part as a consultant and the party of the first part has agreed to provide the consultancy services to the Authority, on the terms and conditions hereinafter contained.

Now these present witnesses and the parties hereto respectively agree as follows:-

1. The party of the first part shall submit itself to the orders of the Authority and of the officers and authorities under whom it may from time to time be placed by the Authority.
2. The party of the first part shall complete the assignment as contained in Annex. Within a period of month (s) commencing from _____.
3. The party of the first part shall be paid as under :-
4. The schedule of payments shall be as under:-
5. No TA/DA shall be admissible to the party of the first part for local journeys in connection with the consultancy assignment.
6. The party of the first part shall not disclose to any unauthorized person any information and data that may be supplied to it by the Authority or by any other organization under the directions of the Authority. All such documents or any information that may have come to its knowledge directly or indirectly by virtue of the assignment shall be the property of the Authority.
7. The party of the first part undertakes that this assignment shall neither be in conflict with its prior or current obligation to other clients nor shall it place it in a position of not being able to carry out the assignment objectively and impartially.
8. In case of any default on the part of the party of the first part in completion of the work within the time schedule agreed to between the parties as hereinabove, the party of the second part 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.

9. In case of any difference or dispute between the parties arising out of this Agreement, it shall be referred for arbitration to a person nominated by the Authority. The proceedings shall be subject to the J&K Arbitration and Conciliation Act, 1997, as amended from time to time and will be held either in Jammu or Srinagar.
10. The payment of fee to the party of the first part shall be made by the Authority after the deduction of admissible taxes at source in accordance with the laws for the time being in force.
11. The Authority 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 shall be paid remuneration after taking into consideration the part of the work completed prior to such foreclosure, termination or cancellation of the engagement as may be decided by the Authority, and the decision of the Authority shall be conclusive and binding. The remuneration so fixed and paid shall be deemed to be the final payment in such cases.
12. In respect of any matter for which no provision has been made in this agreement, provisions contained in the general instructions of the Government on the subject of engagement of consultants shall apply.

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

Signed by _____ for _____ the party of the first part in the presence of _____

Signed by _____ the _____ to the Authority for and on behalf of the Authority in the presence of _____.
