

Decision/Comments of the Consultancy Evaluation Committee
on
Queries/views of stakeholders on proposed TOR for Review/investigation of Power Exchanges

S. No.	Reference in TOR	Queries/Views of the stakeholders	Decision/Comments of the Consultancy Evaluation Committee
1.	Clause 2.2 - " The Power Exchange shall also carry out periodic IT system audit for data security, data integrity and operational efficiency and submit its report to the Commission annually. However, this has not been done since 2011."	KPMG - Refer 2.1 in Terms of Reference-it states that Power Exchange shall carry out periodic IT system audit for data security, data integrity and operational efficiency on an annual basis. However this has not been since 2011 and the scope of work does not mention IT system audit. Please clarify: Whether IT systems audit is required to be carried out? <i>If yes, it is not stated in the scope and if no, then how can authenticity of internal controls & other business processes be tested without adequate IT systems assurance since 2011?</i>	It is clarified that IT systems audit is part of the scope of work and is mentioned. It may also be noted that this IT systems audit would not cover Algorithm audit. However, the matching engine of the Power Exchange is required to be tested for compliance with Business Rules and CERC(Power Market) Regulations, 2010 ("Power Market Regulations") based on test data. The scope of the audit is suitably modified.
2.	Clause 5.1 (i) - "Related party transactions since inception of power exchange and the compliance as per the Companies Act, as amended from time to time;"	IEX - IEX has been complying with all the applicable statutory requirements/obligations as applicable under various acts like Companies Act, Income Tax Act, Service Tax, Labour laws etc. In the process, the Company is in compliance with all the applicable provisions on related party transactions as required under the companies Act. All our related party transactions are reviewed by the Statutory Auditors of the Company and are disclosed in the Annual Audited Financials as part of notes to accounts. Further, related party transactions are also not covered under the scope of the Power Market Regulations 2010.	The Related Party Transactions are part of books of accounts which are being maintained by IEX and audited by statutory auditors. Regulation 55(ii) of Power Market Regulations empowers the Commission to investigate into the affairs of the Exchange or the Members of the Exchange including Books of Accounts. Therefore, the Related Party Transactions are covered under Power Market Regulations.

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		<p>The Honourable Commission is, therefore urged, to kindly exclude related party transaction from the scope of the TOR.</p>	
3.	<p>Clause 6.1 (ii) - "Minimum 10 partners who are qualified chartered accountants out of which at least four partners are CISA/DISA qualified;"</p>	<p>Bansal Sinha & Co. - Reduce requirement of Four (4) CISA/DISA Partners to Two (2) as per our suggestion to make the tendering more competitive and fair as more experienced CA firms can also participate. KPMG - Since the Terms of Reference does not mention about IT Systems Audit, so is CISA/DISA qualification mandatory? NRIFintech - We are a company and not a partnership firm. Pursuant to point 6-6.1/ii-the qualification criteria specified therein excludes us from eligibility to bid for the project despite the resources of our company having experience as far as such review/investigation of exchanges. We suggest that these qualifications shall be modified to reflect non-partnership firms like ours.</p>	<p>The requirement of minimum 10 partners who are qualified chartered accountants has been expanded to include cost accountants also. Since, the audit would require understanding of the Information Technology, CISA/DISA certification is mandatory. However, the requirement of four personnel with CISA/DISA qualification is being relaxed to two (2) personnel. In case of a company, it should have atleast 10 persons who are qualified Chartered Accountants / Cost Accountants and atleast 2 personnel should be qualified CISA/DISA.</p>
4.	<p>Clause 6.1 (i) - " Minimum turnover of INR 100 crore in the immediate preceding financial year i.e. 2013-14"</p>	<p>Bansal Sinha & Co. -</p> <ol style="list-style-type: none"> i. Some of the eligibility criterion fixed are not reasonable and restricts the participation in tendering for Big Four CA firms only which is not justifiable. The participation must be on fair grounds and should not be restricted to few firms. ii. The minimum turnover of ₹100 Crore in F/Y 2013-14 should be reduced to ₹1 Crore. iii. Due to the above criterions (including 	<p>CERC follows a transparent and fair process of bidding. Considering the nature and size of the assignment, the draft TOR has been modified wherever necessary to make it more competitive based on the responses of the stakeholders.</p> <p>In the particular instance, the turnover requirement has been amended as ₹10 Crores for FY 2013-14.</p>

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		<p>criteria at S.No. 3) even if the firms having ample of experience in operations of Power Exchanges, in business process risk assessment and other criterions as fixed by you to technically qualify will not allow them to participate. As we know that tendering is a special procedure for generating competing offers from different bidders such aforesaid conditions restricts to few firms and reduces competition.</p> <p>iv. It is an humble request to Reset the eligibility criterion fixed for CA Firms issued in the Terms of Reference by you for Review/Investigation of Power Exchanges.</p>	
5.	Clause 6.1 (iii) - "Personnel on rolls of the firm having experience in operations of Power Exchanges."	NRIFintech -We request the Commission to allow firms to have such personnel on consultancy basis given the scarcity of such skillset and to make this bidding process widely participated.	The clause 6.1(iii) has been modified to include personnel on consultancy basis. Since the Power Exchanges have been in operation for the last six years only, the skillset (experience in operation of Power Exchanges) to make this process widely participated may be scarce. The scope, therefore, has been broadened to include Exchanges instead of only Power Exchanges.
6.	Clause 6.1 (iv) - "Experience of auditing nationalized banks as statutory auditors in IT environment i.e. ERP systems."	Deloitte - Most Nationalized banks do not engage Big 4's since they have been given a levy by RBI to hire their own auditors. Can we change this to banks other than nationalized banks too? PWC - As per this criterion, the bidder should have carried out statutory audit of nationalized banks in IT environment, i.e., ERP Systems. PwC	The clause has been modified as under: Clause 6.1 (iv) - "Experience of auditing <u>scheduled commercial</u> banks as statutory auditors in IT environment i.e. ERP systems."

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		has experience of carrying out statutory audit of private banks in IT environment. Therefore, we request you to modify this restrictive clause to accommodate experience of statutory audit of any bank in the qualification requirement.	
7.	Clause 6.1 (vii) - "In case the bidder firm had been associated in accounting/statutory audit, internal audit or any such other assignment from these two power exchanges during last five years, such a firm would be treated as ineligible to be appointed as consulting firm for review/audit of that particular exchange"	Deloitte - What are other such assignments? Please clarify with specific details.	The clause has been suitably modified to bring more clarity. The clause now reads as: Clause 6.1 (vii) - "In case the bidder firm had been associated in any accounting or audited either of the two power exchanges during last five years, then such a firm would be treated as ineligible to be appointed as consulting firm for review/audit of the particular exchange where accounting or auditing was done by the firm / company."
8.	Clause 6.2 (i) - " Team Leader: Should be a qualified chartered accountant with minimum overall work experience of 12 years across Statutory Audit/Internal Audit/Information System Audit. Weightage will be given to relevant experience like statutory/ internal audit of exchanges, power trading companies, experience of working with the regulators and additional educational qualifications like CISA/DISA." Clause 6.2 (ii) - " Deputy Team Leader: Should be a qualified	NRIFintech -Regarding point 6.2-i and ii, given the nature of the project, we request CERC to amend qualification criteria for Team Leader and Deputy Team Leader to accommodate experienced personnel with a masters and above qualification from the consultancy industry as long as they have enough experience in projects of this nature from the financial markets industry. PWC - As per the qualification criteria at personnel level in point 6.2(ii), the Deputy Team Leader should be a Chartered Accountant or a PhD in Economics. Although we have such personnel, this clause is very restrictive and would rule out such personnel who are electrical engineer with	The Team Leader or the Deputy Team Leader may be a Chartered Accountant or Cost Accountant or MBA/Post Graduate Diploma (Finance) or PhD in Economics. Weightage shall be given to firms whose Team Leader or Deputy Team Leader is CISA/DISA qualified. In light of the above, clause 6.2 has been suitably modified.

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	chartered accountant or a PhD in Economics with minimum overall work experience of 12 years in power sector operations with relevant experience in operations of power markets. Weightage will be given to relevant experience like internal audit/ review/investigations in exchanges, power trading companies, other trading companies, experience of working with the regulators and power sector experience"	MBA/PGDM (Finance) and are otherwise perfectly suitable for this role. We request you to alter the qualification requirement to Chartered Accountant or MBA/Post Graduate Diploma (Finance) or PhD in Economics.	
9.	Clause 6.2 (iii) - " Key personnel of the consulting firm engaged in the assignment would not leave the assignment except in case of compelling circumstances beyond their control and after obtaining NOC from CERC."	PWC - Although we understand and in principle agree with the intent of this clause, this clause does not envisage a scenario where an employee resigns from the firm, on which, the firm has limited control. We request you to allow the bidder to replace such personnel with such personnel which have equal or higher qualification criteria.	The clause has been modified to allow replacement with personnel with equal or higher qualification criteria. Any replacement however has to be intimated to CERC. Clause 6.2 (iii) - "Key personnel of the consulting firm engaged in the assignment would not leave the assignment except in case of compelling circumstances beyond their control and under intimation to CERC. The personnel leaving the assignment has to be replaced by personnel with equal or higher qualification criteria."
10.	Clause 7.1 - "CERC intends to have the review/investigation for both the exchanges conducted concurrently and be completed after preparation of detailed plan of action within a	Deloitte 1. The duration of assignment is 90 days. Can the term be enhanced in case of lack or delay in responses/feedback? Additionally, is this for both exchanges or is it for one exchange? We	It is clearly specified in the clause that review of both the Power Exchanges shall be conducted in parallel. The duration of assignment of 90 days is adequate. Both the Exchanges would be directed by CERC to provide due co-operation

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	period of 90 days from the date of commencement of assignment for each exchange. The period of each review/investigation will include issue of observations and receipt of comments and preparation of review/investigation report with analysis and recommendations"	would need a similar commitment from IEX and PXIL to meet these deadlines. 2. Is there a penalty in case of delays in delivering the engagement? If so, please clarify in the TOR.	to the reviewing agencies. The penalty for delay would be 1% of the total contract fees for each day of delay subject to maximum value of 10% of total contract fees.
11.	Clause 8 - Payment Schedule	Deloitte - Within how many days will the invoice be paid?	In normal circumstances, the invoice shall be paid within 10 days. The TOR has been modified accordingly.
12.	Clause 12.13 - "CERC and the Consulting Firm both would have option to terminate the contract by giving a notice of one month or the equivalent remuneration in lieu thereof. In such cases, the Consulting Firm 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 CERC, and the decision of the CERC shall be conclusive and binding. CERC shall consider the effort spent till the date of foreclosure/ termination/ cancellation. The fees so fixed and paid shall be deemed to be final payment in such cases."	Deloitte - In case of termination of contract, what would be the computation/basis for the remuneration?	The clause has been modified suitably: Clause 12.13 - "CERC and the Consulting Firm both would have option to terminate the contract by giving a notice of one month or the equivalent remuneration in lieu thereof. In such cases, the Consulting Firm 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 CERC, and the decision of the CERC shall be conclusive and binding. CERC shall consider the effort spent till the date of foreclosure/ termination/ cancellation based on details submitted. The fees so fixed and paid shall be deemed to be final payment in such cases."

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13.	Clause 12.14- "The Consulting Firm shall abide by the contract as per Annexure-III."	Deloitte - Are the terms of the contract, as mentioned in Annexure-III of the TOR, negotiable?	No.
14.	Clause 13 - " Important dates for Bid Process"	KPMG - Request you to please mention the date of submission along with the count of days.	All the important dates for bid process have been mentioned.
15.	Annexure II, Point no. 5 - Certificate of authorization in case of Institutes/other organizations (Format enclosed at Appendix-"A")	PWC - We understand that this requirement is not applicable to private consulting firms like PwC. Please clarify.	The requirement has been removed.
16.	Annexure - III, Point 6(i) - "The Consulting Firm 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 it has association"	Deloitte - Kindly specify as to what could be the possible conflicting obligations for this assignment.	Kindly refer to S. No. 7
17.	Annexure - III, Point 6(ii) - "The Consulting Firm further affirms and confirms that it shall hold all Confidential Information in confidence and with the same degree of care it uses to keep 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 CERC, disclose such information to any person for any reason at any time;"	PWC - The Consultant should be able to disclose such information as and when required by law, for which no prior consent should be required. For such similar terms, we request CERC to allow us to propose our standard terms of business at the time of signing the agreement, which may be mutually discussed and agreed.	It is being clarified that the Consultant may disclose such information as and when required by law, for which no prior consent of CERC is required. The clause has been suitably modified.
18.	Annexure - III, Point 6(iii) - "	Deloitte	The Consulting firm/consultant shall not be

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	CERC shall be entitled to, without prejudice to any other right for civil or criminal proceedings, receive from the Consulting Firm a compensation for the damages for violation by it of any of the terms of the agreement which shall be limited to the total fee of the assignment."	<ol style="list-style-type: none"> 1. Will the consulting firm be liable even for any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense? 2. Will the consulting firm be indemnified against 3rd party claims? 	indemnified against any third party claim.
19.	<p>Annexure - III, Point 7(ii) - "With one week notice: The assignment may be terminated by CERC, under any of the following circumstance, by giving one week's notice and after providing an opportunity to the Consulting Firm to offer explanation:</p> <p>(a) It has come to the notice of CERC that the Consulting Firm has resorted to fraud or suppression of material information or submission of false information or unethical means to secure the assignment.</p> <p>(b) It has come to the notice of the Commission that there is a material change in the circumstances of the Consulting Firm based on which the assignment was awarded to the Consulting Firm.</p> <p>(c) The Consulting Firm has failed, without any valid justification, to</p>	Deloitte - Can the notice period be enhanced to 15 days instead of 1 week?	The notice period has been enhanced to 15 days.

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	<p>adhere to the time-frame specified by CERC in the assignment. (d) The Consulting Firm has violated any of the provisions of the agreement."</p>		
20.	Miscellaneous	<p>Deloitte - Would be helpful to clarify the supporting documents that are required to be submitted with the proposal for each eligibility clause.</p>	<p>The consulting firm may refer to the relevant clauses.</p>
21.	Miscellaneous	<p>IEX - Over more than last six years of operations, we have been consistently complying with the regulatory compliances set forth by the Honourable Commission in letter as well as in spirit.</p> <p>The Honourable Commission may kindly agree that there have been no situations, thus far, that have warranted investigations into the operation of the Exchange. Thus, in our view, use of the word "Investigation" in the Terms of Reference (TOR) of the Expression of Interest (EOI) may not be perceived in a positive way by the stakeholders. We thus request the Honourable Commission to kindly exclude the word "Investigation" and limit to "Review" which could be conducted under Regulation 63 (iii) of the Power Market Regulations 2010.</p>	<p>Regulation 55(ii) of the Power Market Regulations allows Commission to direct any person to investigate the affairs of Exchange, among others.</p> <p>Since, the intent of the Commission is to do a overall health check of functioning of power exchanges, the terms of reference has been modified to remove the word Investigate.</p>
22.	Miscellaneous	<p>NRIFintech: As far as the bidding company takes the ownership of the review project we request CERC to allow joint-bidding with a relevant firm to match few of the skill sets which would be</p>	<p>Please refer to S.No. 5</p>

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		required as per the qualifications criteria.	
23.	Miscellaneous	<p>PWC:</p> <ol style="list-style-type: none"> 1. Please clarify whether the report of the Consultant shall be exclusively for CERC or shall be made public. 2. One of the key challenges in carrying out such detailed examination is to issue of non-disclosure or sharing of data/ information by other parties involved. Therefore, we will require active involvement of the counterpart team to enable information/ data sharing to the extent of its relevance to the proposed review and investigation. It may include coordination and facilitation with CERC, Promoters, related vendor party and other stakeholders on securing datasets and key observations on specific projects considered under the review/investigation. 3. We expect the stakeholders to identify counterpart teams for working together with the consultants before finalization of the inception report so that teams working on the assignment are clear on objectives, responsibilities and time lines. 	<p>The report of the Consultant shall be placed on the website of CERC in public domain.</p> <p>As mentioned in S.No. 10, both the Exchanges would be directed by CERC to provide due co-operation to the reviewing agencies.</p> <p>A meeting between the power exchanges and the consultants shall be convened under the aegis of CERC.</p>