

PFC CONSULTING LIMITED

(A wholly owned subsidiary of Power Finance Corporation Limited - A Govt. Of India Undertaking)

BID DOCUMENT

FOR

Appointment of legal consulting firm by PFC Consulting Limited to assist Ministry of Power (MoP) in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) along with the Request for Proposal for MASP (RFP) .

(Only for firms/organisations empanelled with PFCCL vide letter no 08/ORG/12/HR/Empanel/Firms/14 dated 18th May 2012 under Area Code '07')



**Registered Office
1st Floor, "Urjanidhi" 1, Barakhamba Lane, Connaught Place,
New Delhi – 110 001**

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LETTER INVITING PROPOSAL

**(Only for firms/organisations empanelled with PFCCL vide letter no
08/ORG/12/HR/Empanel/Firms/14 dated 18th May 2012 under Area Code '07')**

Ref. No.: 03/04/COM/MoP/SBD

Dated: _____

To

Sub: Request for an offer by PFC Consulting Limited to assist Ministry of Power (MoP)/Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power along with the Request for Proposal for MASP (RFP).

Sir/ Madam,

Ministry of Power has issued Guidelines for short-term procurement of electricity i.e. for a period of less than or equal to one year under section 63 of the Electricity Act, 2003 on 16.05.2012. Based on these guidelines, draft Model Agreement for Supply of Merchant (Short-Term) Power and Request for Proposal have been prepared by Ministry of Power and comments of stakeholders have been invited on these documents from all stakeholders.

PFC Consulting Limited (PFCCL), a wholly owned subsidiary of Power Finance Corporation Limited, invites offers for assisting the Ministry of Power (MoP)/Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power to Distribution Licensees along with the Request for Proposal for MASP (RFP) as per Electricity Act, 2003.

PFCCL wishes to avail services of an organization / firm ("Consultant") on a lump sum basis to assist MoP/Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) to Distribution Licensees as per Electricity Act, 2003 along with the Request for Proposal for MASP (RFP) referred to as "Assignment."

The scope of work and other details are given below:

1. SCOPE OF WORK

The scope of work for the Legal Consultant will be as follows:

- a) Compiling the suggestions/ observations received from various stakeholders on draft documents and preparing appropriate responses on the same
- b) Vetting of appropriate changes in MASP and RFP on the basis of suggestions received from various stakeholders

- c) Participation, as required, in meetings, conferences, interactions at different stages with various stakeholders and Govt. agencies.
- d) Attending meetings conferences and interaction/discussions with the MoP/Planning Commission, any other agency including making/attending presentations as intimated by PFCCL.
- e) Drafting of revised MASP and RFP based on the decisions taken on various issues.
- f) Drafting and vetting of documents like but not limited to, concept papers, various reports and recommendations, procedures in conformity with the government rules and regulations, Electricity Act 2003, other laws and Acts (inter alia Companies Act, Contract Act, Arbitration Act, FEMA etc.), Guidelines of SEBI, as may be applicable.
- g) Advising on and/or carry out any other tasks as required by MoP/Planning Commission/ PFCCL for the successful completion of the Assignment.

2. DELIVERABLES

- a) Compilation of comments received and drafting and finalisation of MASP, RFP and any other document as required by MoP/ Planning Commission.
- b) Vetting of the documents as referred.
- c) Reporting on the issues/aspects referred along with recommendations.
- d) Opinion on various issues, as may be required.
- e) Submission of Final draft documents after incorporating all the changes suggested by PFCCL, MoP, Planning Commission and Committee constituted by MoP.

There may be any other deliverables, which are not specifically mentioned above but may be required for completing the "Assignment". The Consultant shall have to provide such deliverables, as identified by PFCCL for the successful completion of the Assignment to its satisfaction.

3. PERIOD OF ENGAGEMENT

The period of engagement would be for a period of four (4) months from the date acceptance of the appointment by the consultant but not later than 7 days from the date of appointment. of the whichever is later. The total mandays expected to be required for completion of assignment within 4 months, which will be around 50 mandays with 25 days at Expert level, 25 days for Middle level. The period of engagement and mandays can be extended on requirement with the same terms and conditions and subject to satisfactory performance of the consultant.

4. BASIS OF OFFER

The price offer for the Assignment should be quoted on a lump sum basis (Travelling expenses beyond NCR limits will be reimbursed separately as per clause (d) of Other Terms & Conditions) inclusive of all taxes and duties etc. as may be applicable. No escalation for any reason whatsoever shall be allowed over and above the bid price. However, service tax, if any, and educational-cess or any such tax/levy calculated as a

percentage of the service tax at applicable rates, on the date(s) of payment(s) shall be paid in addition to the bid price/fee (price to be quoted as per Form-6).

Provided that if the expended mandays at both the Expert and Middle level increases beyond the estimated mandays of 25 days at Expert level and 25 days for Middle level for reasons not attributable to the consultant then the consultant will extend the services at the same rate for mandays as quoted in the bid at both the levels.

Similarly, if the mandays expended is less than the estimated mandays, the total payment shall be limited to such mandays.

Income tax will be deducted at source, by PFCCL, as per the applicable law and rules and TDS certificate shall be issued to the selected bidder by PFCCL.

For the purpose of calculating the manday more than 4 hours deployed by the consultant will be considered as one manday and upto 4 hour will be considered as half manday.

5. TEAM COMPOSITION, CATEGORISATION AND TEAM STRENGTH

5.1 The team should comprise of at least 3 (three) identified members with at least one Member at Expert Level and at least two members at Middle level with the experience at each level as below:

- a) **Expert Level:** Essentially a Law graduate, having 15 or more years of post qualification experience **or** should be partner in the quoting firm.
- b) **Middle Level:** Essentially a Law graduate having more than 5 years of post qualification experience.

5.2 After award of the work, change in team composition can be made at any stage with the approval of CEO, PFCCL or on request of CEO, PFCCL, if so required, in the interest of the Assignment.

6. SUBMISSION OF BID

6.1 The bid shall consist of two parts i.e. "Technical Proposal" and "Financial Proposal". The "Technical Proposal" and "Financial Proposal" must be submitted in two separate sealed envelopes as detailed below:

The **First envelope** sealed and marked as "**TECHNICAL PROPOSAL to PFC Consulting Limited to assist Ministry of Power (MoP)/Planning Commission on drafting of Model Agreement for Supply of Merchant (Short Term) Power along with the Request for Proposal for MASP (RFP)** from ----- (Name of the Bidder)"

The First envelope should contain Form No. -1, Form No-2, Form No-3, Form No-4 and Form No-5, i.e. Covering Letter, Experience of bidding Organisation, Composition of the team and the team leader, Curriculum vitae for each member of bidder's team and Authorisation letter respectively. This envelope should not contain any cost/price information, whatsoever.

The **Second envelope** sealed and marked as “**FINANCIAL PROPOSAL to PFC Consulting Limited to assist Ministry of Power (MoP)/Planning Commission on drafting of Model Agreement for Supply of Merchant (Short Term) Power along with the Request for Proposal for MASP (RFP) from -----** (Name of the Bidder)”

The second envelope should contain the lump sum price quoted as per Form No-6.

The Forms mentioned in clause 6.1(a) above along with relevant documents, including covering letter will form part of tender documents. Each of the above Forms and also other documents to be submitted as per the bidding documents are to be duly signed on each page and stamped as required by the authorised representative of the bidder, which shall constitute the bid.

- 6.2 The **First envelope** sealed and marked as "TECHNICAL PROPOSAL" and the **Second envelope** sealed and marked as “FINANCIAL PROPOSAL” both shall be submitted together in a **Sealed Cover** marked as “**Technical and Financial Proposal**” on the cover with superscription i.e. **Name of the Package, Bidders Name & Address.**
- 6.3 The Bid consisting of Technical Proposal and Financial Proposal in sealed envelopes mentioned at 7.2 shall be submitted on **04.04.2014 at 15:00 hrs.** (IST) in PFCCL Office at First Floor, Urjanidhi, 1, Barakhamba Lane, Connaught Place, New Delhi – 110001 in the office of

Sh. P.C.Hembram VP PFC Consulting Limited, 1st Floor, Urjanidhi, 1,Barakhamba Lane, Connaught Place, New Delhi -110 001 Tel No: 011-23456145Sh.	OR	Kamlesh Menon Manager PFC Consulting Limited, 1st Floor, Urjanidhi, 1,Barakhamba Lane, Connaught Place, New Delhi -110 001 Tel No: 011-23456131
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Any offer received beyond the stipulated date & time, or received through Fax, Courier, post or e-mail, will not be accepted for consideration. All part(s)/page(s) of the bid should be in original and signed by blue ink.

- 6.4 Bidders are instructed not to approach via e-mail, fax, and telephone or contact any official in PFCCL as regards to this bid after the submission of the bids (apart from responding to communications by PFCCL in writing) and any bidder doing so will be summarily rejected.

7. **TENTATIVE SCHEDULE OF THE BID PROCESS:**

The tentative schedule of the bid process will be as given below:

- (i) Submission of Technical and Financial Bid : D
- (ii) Technical Bid Opening: D+0 Days
- (iii) Financial Bid Opening: D+5 Days

8. OPENING AND EVALUATION OF TECHNICAL PROPOSAL

8.1 Opening of Technical proposal

The **sealed cover marked as "Technical and Financial Proposal"** would be opened. The **First Envelope -Technical Proposal** will be opened in the presence of the authorized representatives of the bidders, who wish to be present. The Technical Proposal would be opened 30 minutes after submission of the bids.

The date, venue and time for opening of the Financial Proposal envelope will be intimated to the bidders who have qualified after technical evaluation.

8.2 Responsiveness Check

The bidder should meet:

- i) The Technical Proposal should contain Form-1, Form-2, Form-3 and Form-4 duly filled and signed by authorised signatory and authority letter as per Form-5.
- ii) The Bidder should agree to the entire scope of work and deliverables. No proposal for part scope of work will be considered.
- iii) The Bidder should submit a Letter of Authority in favour of the authorised signatory submitting the Bid as per Form -5.
- iv) No consortium/ sub-consulting or sub-contracting shall be allowed with/ to other organisations and/ or individuals
- v) There should be no deviations from any or all the contents of the bidding documents or conditional or alternate bids.

Bid of any firm not meeting any of the above criteria, shall be rejected outright.

8.3 Technical Proposal Evaluation

The bids which are found responsive as per clause 8.2 above shall be technically evaluated as follows:

8.3.1 Evaluation of Experience

The bidder's relevant experience in the past years (from FY 2005-06) onwards including the current Financial Year till the date of issue of the tender) will be considered. Experience of the bidders would be evaluated on the following basis:

- A) Experience in Conversant with drafting, vetting and implementation of Guidelines/Standard Bid Documents issued by MoP, Govt. of India and/or other infrastructure sector projects for DBFOT, DBFOO, BOO and/or BOOT or similar basis.: **Max Marks=70 marks**. The marks will be allocated as follows: Max. assignment considered for evaluation = 2, One assignment = 60 marks, Two assignments = 70 marks,.
- B) Undertaken/assisted in framing policy, procedure, regulations or any guidelines for Ministry of Power , Electricity Regulatory Commission(s) at any state or central level or any power utilities etc.: **Max Marks=30 marks**. The marks will be allocated as

follows: Max. assignment considered for evaluation = 2, One assignment = 20 marks, Two assignments = 30 marks.

The mark on experience of the firm will be given based on the number of independent assignment undertaken/carried out to the satisfaction of PFCCL. Additional marks for the same assignment will not be given in case the assignment has been completed in different Financial Year.

PFCCL reserves the right to seek clarifications during the evaluation process of the Technical proposal.

The Bidder obtaining 70 marks or more would be regarded as technically qualified Bidder and considered for opening of “Financial Proposal”.

9. OPENING AND EVALUATION OF FINANCIAL PROPOSAL

9.1. Financial Proposal Opening

The second envelope marked as “Financial Proposal” would be opened only for the technically qualified bidders. The date, time and venue of opening of the “Financial Proposal” of the technically qualified bidders will be intimated along with qualifications of the technically qualified bidders. The Financial Proposal will be opened in the presence of the authorized representatives of the bidders, who wish to be present.

9.2. Financial Proposal Evaluation

Financial Proposals of only such bidders will be opened who have been declared Technically Qualified. Financial Proposal of other Bidders will be returned unopened.

The Assignment will be awarded to the technically qualified bidder who has quoted lowest Lump Sum price, in Indian Rupees, without condition(s) or alternate bid price.

In the event of a tie in financial bid, higher marks, in the technical bid evaluation would be the deciding factor.

The financial bid with condition(s) or alternate price bid will be summarily rejected.

10. CONTRACT AGREEMENT

- 10.1 In the event of award, the selected bidder (“**Consultant**”) will be required to enter in to a Contract Agreement with the PFCCL within 10 (ten) working days from the date of the Letter of Award (LOA) or within such extended time, as may be granted by the PFCCL.
- 10.2 Formal Contract Agreement will be executed on Non-judicial stamp paper of Rs. 100/- (Rs. one hundred only) as per the format provided by PFCCL. Two sets of Non-Judicial Stamp papers of Rs.100/- each and water mark papers to be purchased by the Consultant from Delhi State.
- 10.3 The Agreement will be signed in two originals and the Consultant shall be provided with one signed original Agreement.

- 10.4 The date of execution of the contract agreement in no case shall impact the date of start or completion period of the work.
- 10.5 Till the time a 'Contract Agreement' is prepared and executed, the Letter of Award shall be read in conjunction with the Bidding Documents and will constitute a binding contract.

11. VALIDITY OF BID

Bidders shall keep their bids /proposals valid up to 120 (One hundred Twenty) days from the date of opening of the Financial Proposals. Bidders may be required to further extend the validity of Bid as per the requirement of PFCCL.

12. CONSULTANCY FEES/ TERMS OF PAYMENT:

The terms of payment are as follows:

- i) First payment of 20% of the Contract Value – compilation of comments/ suggestions and preparation of response to various issues/ suggestion of MoP/stakeholders and acceptance of the same by MoP and PFCCL.
- ii) Second payment of 30% of the Contract Value – on finalisation and submission of MASP and RFP after incorporating views and decisions of MoP and any other Ministry/ Agency of GOI &PFCCL to the satisfaction of MoP and PFCCL
- iii) Third payment of 50% of the Contract Value – on notification of both MASP and RFP by MoP

The price offer for the Assignment should be quoted on lump sum basis inclusive of all taxes and duties etc. as may be applicable in Form -6. No escalation for any reason whatsoever shall be allowed over and above the bid price other than as provided in clause 4. However, service tax, if any, and educational-cess or any such tax/levy as related to as a percentage of the service tax at applicable rates, on the date(s) of payment(s) shall be paid over and above the payment due.

In addition to the lump sum price, the Consultant would be reimbursed for the tours undertaken in connection with the Assignment as per the clause (d) of terms and conditions.

If the number of mandays extended at any of the levels is less than the estimated mandays in clause 4, then payments shall be reduced on pro rata basis at each stage of payment.

The Consultant shall submit the bills in duplicate to PFCCL addressed to an executive authorised by CEO, PFCCL, indicating the stage achieved, out of the ones indicated above. All payments would be claimed by the Consultant as per the terms and conditions of the contract and would be accepted for payment by the Competent Authority i.e. CEO, PFCCL based on satisfactory progress and quality of work in his sole discretion.

13. OTHER TERMS & CONDITIONS

- a) The financial proposal by the bidders shall be in Indian Rupees as per format enclosed (Form 6) with no escalation provision for any reason whatsoever till the completion of the Assignment.

- b) The Consultant shall make available the services of the identified personnel as may be required for successful execution of the Assignment and or as may be required by PFCCL on specified dates, venues and time in order to meet the obligations of PFCCL.
- c) All claims shall be raised by the Consultant as per the terms of payment after being due, and would be accepted for payment based on satisfactory progress and quality of the work at the sole discretion of the competent authority.
- d) In case of tours and travels made beyond NCR Limits and undertaken with prior consent / requirement of PFCCL, the biller would be reimbursed To & Fro journey fare, Accommodation expenses, Dearness Allowance and local conveyance at the destination limited to maximum of the entitlements of Associate Vice President (AVP) level in PFCCL on production of documentary evidences / proof(s) of the expenditure incurred. PFCCL would be the sole authority to decide on the number of the member(s) to undertake the tours. PFCCL reserves the right to make tour and travel arrangements on its own. Anything in addition to the above is to be made only with the specific approval of CEO, PFCCL.

No claim for journey fare/accommodation expenses/Local Conveyance for travel within NCR limits will be admissible, in case the Consultant is based in NCR of Delhi

No claim for journey fare/accommodation expenses/Local Conveyance for travel from the firm's office to PFCCL headquarter at New Delhi will be admissible, in case the Consultant is based outside NCR of Delhi

- e) A team consisting of three members with degree in Law or equivalent qualification and competent to undertake the Assignment may be deployed by the bidder. In case the performance of the proposed team member(s) is not satisfactory, the Consultant will be asked to change/replace the team member(s) within three days of receipt of such request from PFCCL with a member acceptable to PFCCL.
- f) Any change in the list of key personnel submitted with the bid shall be made only with the prior approval of CEO, PFCCL or as may be requested by CEO, PFCCL.
- g) PFCCL with the approval of CEO, can cancel the contract at any stage of the work, in case it is found that the knowledge of a team/team member(s) and or his/her performance is not satisfactory, any information given at the time of submission of the bid is found to be incorrect.
- h) Given the nature of the work being entrusted, the firm would have to give an undertaking to the effect that the contents/ essence of any reference/ documents given would not be disclosed to any third person without the express approval of PFCCL, failing which the engagement of the firm could be terminated.
- i) If due to any reason or decision of the MoP/PFCCL the Assignment is dropped and the Consultant is directed to discontinue work, the "Drop Dead Fee" would be limited to the payments received by the Consultant and the claims already raised, as per the payment terms, plus the expenditure incurred, if any, relating to the Assignment, till the point of calling off the Assignment or as mutually agreed.

- j) There shall be 'No Negotiations' on the rates quoted by the bidder.
- k) **Conflict of Interest:** Organisations would not be hired for any work whose interests are in conflict with their prior or current obligations to the other organisations/ clients or that may place them in a position of being unable to carry-out the work assigned to them at any point of time during the currency of engagement by PFCCL or above all enable them to pose a threat to PFCCL's consulting business in future. Without limitation on the generality of the foregoing, organisations would not be hired, under the circumstances set forth below:

Organisations who have close family relationship with a professional staff of PFCCL or PFC, who are directly involved in any part of (a) the preparation of the scope of work, ToR for the consultancy work (b) the selection process for the organisation or (c) the supervision of scope of work of the organisation, may not be offered a contract, unless the conflict stemming from the relationship has been resolved in a manner acceptable to PFCCL or PFC as the case may be throughout the selection process and the execution of the contract.

- l) The Consultant shall keep PFCCL, both during and after the term of this Contract, fully and effectively indemnified against all losses, damage, injuries, deaths, expenses, actions, proceedings, demands, costs and claims, including, but not limited to, legal fees and expenses, suffered by PFCCL or any Third Party, where such loss, damage, injury or death is the result of a wrongful action, negligence or breach of contract by the Consultant, or the Consultant's personnel, including the use or violation of any copyright work or literary property or patented invention, article or appliance
- m) No offer should be sent by Fax or E-mail or courier.
- n) Offers received in the designated office after the due time and date mentioned above shall not be considered.
- o) PFCCL reserve the right to accept or reject any or all Proposals/Offer or annul the bid Process or modify/ change the content of the bid document without assigning any reason.
- p) PFCCL shall not entertain any claim of any nature, whatsoever, including without limitations, any claim of expenses in relation to the preparation, submission or any other activity relating to bidding or any other expense till award of contract.

Yours sincerely,
FOR and on behalf of PFC CONSULTING LTD

(P.C.Hembram)
VP

Encl.: As Above

FORM – 1: COVERING LETTER

(On the letterhead of the organization)

From:	To:
Name:	P.C.Hembram, VP
Designation:	PFC Consulting Ltd.,
Address:	First Floor, Urjanidhi,
	1, Barakhamba Lane,
	Connaught Place,
	New Delhi – 110 001

Sir,

Sub: Assisting Ministry of Power//Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) alongwith Request for Proposal (RFP) for MASP.

We _____(Name of consulting organization) herewith enclose Technical proposal for selection of our organisation as consultant on lump sum basis (Travelling expenses will be reimbursed separately for tours made beyond NCR Limits) by PFC Consulting Ltd. to assist Ministry of Power (MoP)/Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) and Request for Proposal (RFP) for MASP.

We give our unconditional acceptance to the Bid Documents issued by PFCCL or as amended. We shall execute the Contract Agreement as per the provisions of the Bid Document.

Further, we confirm that we agree and seek no deviations from the scope of work, time schedule, deliverables, payment terms and all other terms and conditions as contained in the 'Bid Document'. **The proposal is unconditional.** The Bid will be valid 120 days (One hundred twenty) from the opening of financial bid.

We also declare that by taking this Assignment we do not have any conflict of Interest with any of our prior or current obligations to other organisations/clients and also do not have business or family relationship with member(s) of PFC's and/or PFCCL's employees or persons positioned in or on the Board of these two organisation by whatever process and if found incorrect, we may be debarred from any further engagements by PFCCL forever.

We certify that all the information provided in our bid, including the information regarding the team members are true. We understand that any willful misstatement in the bid may lead to disqualification or cancellation of award if made or termination of contract. We also understand that in such a case we may be debarred from future assignments with PFCCL for a period of maximum three years from the date of such disqualification.

Further, we undertake that in the event of our appointment as Consultant, given the nature of the work being entrusted, the contents/ essence of any reference/ documents given would not be disclosed to any third person without the express approval of PFCCL, failing which the engagement of the organisation would be terminated.

Yours truly,

(Signature)
Full Name)

FORM – 2: EXPERIENCE OF ORGANISATION

1. Brief Description of the Organisation:
2. Outline of experience on assignments:

Sl. No.	Name of Assignment with work order no. and date	Name(s) of member(s) associated with the assignment	Client	Date of Commencement	Date of Completion	Scope in brief
1						
2						
3						

Signature of Authorized Signatory

Full Name

Address

Note:

1. Experience on assignments of the firm from FY 2005-06 onwards including the current Financial Year till the date of issue of the tender is required to be submitted.
2. Please attach documentary proof for claimed experience, the proofs could be namely, copy of Letter of Award and / or any other documentary evidence for proof of completion or proof of payments received against such services etc.

FORM – 3: COMPOSITION OF TEAM AND THE TEAM LEADER TO BE DEPLOYED

	Name
	<u>Team Members</u>
	Expert Level (Please indicate name of team leader)
1	
2	
3	
	Middle Level
1	
2	
3	
4	
5	

Signature of Authorized Signatory

Full Name

Address

FORM – 4: CURRICULUM VITAE FOR EACH MEMBER OF CONSULTANT'S TEAM

Name: _____

Profession/ Present Designation: _____

Total post qualification experience: _____ Years with organisation: _____

Educational Qualification: _____

(Under this heading, summarise college/ university and other specialized education of staff member, giving names of colleges, etc. degrees obtained.)

(Please enclose copy of educational qualifications)

Experience:

(Under this heading, list of positions held by staff member since graduation, giving dates, names of employing organisation, title of positions held and location of assignments.)

Language:

(Indicate proficiency in speaking, reading and writing of each language by 'excellent', 'good' or 'poor')

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to disqualification of the firm.

Signature of Team member

Full Name

Date

Signature
of
Authorised
Signatory

Full Name

Date

FORM – 5: AUTHORISATION LETTER

I _____ certify that I am _____ of the Organisation, organised under the laws of _____ and that _____ who signed the above Proposal is authorised to bind the organisation by authority of its governing body.

Signature:

Full Name:

Address:

(Seal)

FORM – 6: SCHEDULE OF PRICE BID

Sub: Appointment of legal consulting firm by PFC Consulting Limited to assist Ministry of Power (MoP)/Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) alongwith Request for Proposal (RFP) for MASP.

I _____ (Name) on behalf of _____ (Name of the Consultancy Organisation) herewith submit the Financial Proposal for selection of our organisation as Consultant by PFC Consulting Limited to assist Ministry of Power (MoP)/ Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) and Request for Proposal (RFP) for MASP.

SCHEDULE OF PRICE BID

(To be submitted as Financial Proposal in Second Envelope)

Item	Lump Sum Amount (In Rupees)	
	In figures	In words
Assistance to assist Ministry of Power (MoP)/ Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) and Request for Proposal (RFP) for MASP, complete in all respect as per Scope of Work and Deliverables given in the bid document.	Expert Level - ____Rs/manday	
	Total Expert Level 25 x ____-Rs/manday =____	
	Middle Level - ____Rs/manday	
	Total Middle Level 25 x ____-Rs/manday =____	
	Grand Total _____	

Note:

- The price offer for the Assignment should be quoted on lump sum basis (Travelling expenses will be reimbursed separately for tours made beyond NCR Limits as per clause 13 (d)) inclusive of all taxes and duties etc as may be applicable. No escalation for any reason whatsoever shall be allowed over and above the bid price. However, service tax, if any, and educational-cess or any such tax/levy calculated as a percentage of the service tax at applicable rates, on the date(s) of payment(s) shall be paid over and above the bid price.
- In addition to the lump sum price, the Consultant would be reimbursed for the tours undertaken in connection with the Assignment as per the terms and conditions.
- Income tax at source will be deducted by PFCCL as per the applicable law and regulation and TDS certificate shall be issued to the consultant by PFCCL

4. In case of tours and travels made beyond NCR Limits and undertaken with prior consent / requirement of PFCCL, the biller would be reimbursed To & Fro journey fare, Accommodation expenses, Dearness Allowance and local conveyance at the destination limited to maximum of the entitlements of Associate Vice President (AVP) level in PFCCL on production of documentary evidences / proof(s), in original, of the expenditure incurred. PFCCL would be the sole authority to decide on the number of the member(s) to undertake the tours. PFCCL reserves the right to make tour and travel arrangements on its own.

No claim for journey fare/accommodation expenses/Local Conveyance for travel within NCR limits will be admissible, in case the Consultant is based in NCR of Delhi.

No claim for journey fare/accommodation expenses/Local Conveyance for travel from the firm's office to PFCCL headquarter at New Delhi and no claim for journey fare/accommodation expenses/Local Conveyance for travel within NCR limits will be admissible, in case the Consultant is based outside NCR of Delhi

5. In case of more than one bidder at L1 price, the Assignment will be offered to the bidder quoting L1 price and obtaining the highest marks in the technical evaluation.
6. The financial proposal with condition(s) or alternate price bid will be summarily rejected.
7. In case the mandays are required to be enhanced beyond 25 mandays for Expert level and 25 mandays at Middle Level, for reasons not attributable to the Consultant, then the Consultant shall extend the services at the same manday rates at both levels. Similarly, if the mandays expended is less than the estimated mandays, the total payment shall be limited to such mandays.

Signature of Authorized Signatory

Full Name

Address

FORMAT FOR CONTRACT AGREEMENT

(To be on non-judicial stamp paper of Rs 100/- applicable to Delhi)

This CONTRACT (hereinafter, together with all Appendices attached hereto and forming an integral part hereof, called the "Contract") is made on _____ between PFC Consulting Ltd. (PFCCL) having its Registered office at First Floor, Urjanidhi, 1, Barakhamba Lane, Connaught Place, New Delhi – 110001 (hereinafter called the "Client") of the one part and _____ having its Registered/Corporate office at _____ (hereinafter called the "Consultant") which expression shall include its successors, executors, permitted assigns) of the other part.

WHEREAS

- (A) the Client intends to appoint a consultant to assist MoP/ Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) to Distribution Licensees as per Electricity Act, 2003 along with the Request for Proposal for MASP (RFP).
- (B) the Client has appointed M/s _____ as Consultant for assisting the Client on "Legal & Regulatory related aspects" as per Letter of Invitation of Bid (Appendix A), Price Offer of the Consultant as accepted by the Client (Appendix B) and Letter of Award (Appendix C) for the successful execution of the Assignment;
- (C) the Consultants, having represented to the Client that they have the required professional skills, personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

1. GENERAL PROVISIONS

1.1. Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) "Applicable Law" means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (b) "Contract" means this Contract together with all Appendices/ Attachments;
- (c) "Effective Date" means the date on which this Contract comes into force
- (d) "Personnel" means persons hired by the Consultant as employees/individual retainer(s) and assigned to the performance of the Services or any part thereof
- (e) "Party" means the Client or the Consultant, as the case may be and Parties collectively;
- (f) "Assignment" means assistance to MoP/ Planning Commission in drafting Model Agreement for Supply of Merchant (Short-Term) Power (MASP) to Distribution Licensees as per Electricity Act, 2003 along with the Request for Proposal for MASP (RFP)

- (g) "Services" means the work to be performed by the Consultants pursuant to this Contract for the purposes of the Assignment, as described in Appendix C hereto;
- (h) "Starting Date" means the date referred to in Clause 2.2 hereof; and
- (i) "Third Party" means any person or entity other than the Government, the Client, the Consultants or a Consultant.

1.2. Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of personnel performing the services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3. Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

1.4. Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5. Headings

The headings shall not limit, alter or affect the meaning of this Contract.

1.6. Notices

- 1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the following address:

For the Client:

**PFC Consulting Ltd.
First Floor, Urjanidhi
1, Barakhamba Lane
Connaught Place
New Delhi-110 001
Telefax : 011-23456140**

For the Consultant:

1.6.2 Notice, except the notice for requisitioning of services (which will be eight hours from the call made by Client), will be deemed to be effective as follows:

- (a) in the case of personal delivery or registered mail, twenty four (24) hours on delivery;
- (b) in the case of facsimiles, seventy two (72) hours following confirmed transmission.

1.6.3 Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to this Clause.

1.7. Location

The Services shall be performed at Delhi or at such location required by the Client, hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.

1.8. Authorised Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract, may be taken or executed:

- (a) on behalf of the Client by _____ or his designated representative;
- (b) on behalf of the Consultants by _____ or his designated representative.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1. Effectiveness of Contract

This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultants confirming that the Contract has been accepted by the Client.

2.2. Commencement of Services:

The Consultants shall begin carrying out the Services as per the scope of work laid down in the letter of award not later than the Effective Date, or on such later date as the Parties may agree in writing.

2.3. Expiration of Contract

Unless terminated earlier pursuant to Clause 2.7 hereof, this Contract shall terminate when, pursuant to the provisions hereof, the Services have been completed and the payments of remuneration and reimbursable expenditures have been made.

2.4. Entire Agreement

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

2.5. Force Majeure:

2.5.1 Definition

- (a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance or its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) Force Majeure shall not include:
 - (1) Any event which is caused by the negligence or intentional action of a Party or such Party's Sub-consultants or agents or employees, nor
 - (2) Any event which a diligent Party could reasonably have been expected to both
 - I. take into account at the time of the conclusion of this Contract, and
 - II. avoid or overcome in the carrying out of its obligations hereunder.
- (c) The Consultant shall not be paid/reimbursed any further price or cost or any additional cost in re-activating the services after the end of Force Majeure event.

2.5.2 No Breach of Contract

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.5.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove his inability to fulfil its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal

conditions as soon as possible.

- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.5.4 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure or because of delays in providing data/input/ decisions by the Client to the Consultant.

2.5.5 Consultation

Not later than thirty (30) days after the Consultants, as the result of an event of Force Majeure, have become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.6. Suspension

The Client may, by written notice of suspension to the Consultants, suspend all payments to the Consultant and invoke Contract Performance Guarantee hereunder if the Consultant fails to perform any of their obligations under this Contract, including carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultants to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultants of such notice of suspension.

2.7. Termination

2.7.1 By the Client

The Client may, by not less than thirty (30) days' written notice of termination to the Consultant (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days), such notice to be given after the occurrence of any of the events specified in paragraphs (a) to (f) of this Clause 2.7.1, terminate this Contract:

- (a) if the Client comes to the knowledge that Consultant has misrepresented or had concealed the facts in the bid getting the award.
- (b) if the Client comes to the knowledge that Consultant has willfully misstated the facts in the bid, the Client has right to debar the Consultant for future assignments with PFCCCL for a period of maximum three years.
- (c) if the Consultant fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.6 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing;
- (d) if the Consultant becomes insolvent or bankrupt or enter into any agreements with

their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;

- (e) if the Consultants fail to comply with any final decision reached as a result of proceedings pursuant to Clause 8 hereof;
- (f) if the Consultant submits to the Client a statement which has a material effect on the rights, obligations or interests of the Client and which the Consultant know or discover during the course of assignment to be false;
- (g) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (h) if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.7.2 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses 2.7 hereof, or upon expiration of this Contract pursuant to Clause 2.3 hereof, all rights and obligations of the Parties hereunder shall cease, except

- (a) such rights and obligations as may have accrued on the date of termination or expiration,
- (b) the obligation of confidentiality set forth in Clause 3.2 hereof,
- (c) any right which a Party may have under the Applicable Law.

2.7.3 Cessation of Services

Upon termination of this Contract by notice to pursuant to Clauses 2.7 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

2.7.4 Payment upon Termination

Upon termination of this Contract pursuant to Clauses 2.7 hereof except due to false submission/misrepresentation of facts, the Client shall make the following payments to the Consultant:

Remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the effective date of termination in the sole discretion of the Client.

2.7.5 Drop Dead Fees

If due to any reason or decision of the MoP/PFCCL, the Assignment or any part of the Assignment is dropped and the Consultant is directed to discontinue work, the "Drop Dead Fee" would be limited to the payments received by the Consultant and the claims already

raised, as per the payment terms, plus the expenditure incurred (on tour, travels etc.), if any, relating to the Assignment, till the point of calling off the Assignment or as mutually agreed.

3. OBLIGATIONS OF THE CONSULTANTS

3.1. General

3.1.1 Standard of Performance

The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted consulting standards recognised by professional bodies, and shall observe sound management methods. The Consultants shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Consultants or Third Parties.

3.1.2 Law Governing Services

The Consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that all Personnel of the Consultants, comply with the Applicable Law.

3.2 Conflict of Interest

The Consultant shall hold the Client's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their corporate interests.

3.3 Benefit from Commissions, Discounts etc.

Payment to the Consultant shall constitute the Consultant's only payment in connection with this Contract or the Services, and the Consultant shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultant shall use their best efforts to ensure that the Personnel shall not receive any such additional benefits.

3.4 Confidentiality

The Consultant, and their Personnel shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any information relating to the Assignment, the Services performed under this contract, this Contract or the Client's business or operations to any third party interacted with during the period of providing services without the prior written consent of the Client.

3.5 Prohibition of Conflicting Activities

The Consultant shall not engage Sub-Consultants, and shall cause their Personnel as well as their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

3.6 Insurance to be Taken Out by the Consultant

The Consultants shall take out and maintain at their own cost insurance coverage against the risks of their personnel and properties relating to this assignment.

3.7 Liability of the Consultant

The Consultant shall be liable to the Client for the performance of the Services in accordance with the provisions of this Contract and for any loss suffered by the Client as a result of a default of the Consultant in such performance, subject to the following limitations:

- (a) The Consultants shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Consultant's Personnel; and
- (b) The Consultant shall not be liable for any loss or damage caused by or arising out of circumstances over which the Consultant had no control.

3.8 Indemnification of the Client by the Consultants

The Consultant shall keep the Client, both during and after the term of this Contract, fully and effectively indemnified against all losses, damage, injuries, deaths, expenses, actions, proceedings, demands, costs and claims, including, but not limited to, legal fees and expenses, suffered by the Client or any Third Party, where such loss, damage, injury or death is the result of a wrongful action, negligence or breach of Contract by the Consultant, or the Consultant's Personnel, including the use or violation of any copyright work or literary property or patented invention, article or appliance.

3.9 Reporting Obligations

The Consultants shall submit to the Client the reports and documents as per the Letter of Award (Appendix C), in the form, in the numbers and within the time periods desired by the Client, including any supporting data required by the Client.

3.10 Documents Prepared by the Consultants to Be the Property of the Client

All reports and other documents prepared by the Consultant in performance of the Services shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents but shall not use them for purposes unrelated to this Contract without the prior written approval of the Client.

4 CONSULTANT'S PERSONNEL

- 4.1 The Consultants shall employ/engage and provide such Personnel as are indicated in the Offer of the Consultant as accepted by Client including Price Offer against the terms of the letter of invitation of bids (Appendix B) to carry out the Services.

4.2 Removals and/or Replacement of Personnel

- 4.2.1 Except as the Client may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Personnel, the Consultants shall forthwith provide as a replacement a person of equivalent or better qualifications, and relevant experience for the particular position.

- 4.2.2 If the Client:

- (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or
- (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel,

then the Consultant shall, at the Client's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Client.

- 4.2.3 The new personnel provided as a replacement shall be governed by the same terms and conditions of employment as the replaced personnel.

- 4.2.4 The Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement.

- 4.3 Any other personnel of Consultant (including trainees, apprentices etc.) may be allowed to work/ tour with the team with the prior approval of the Client but no claims for their effort/ tours would be admissible.

- 4.4 The augmentation of the team strength/change in members would have to be made within 7 calendar days of an instruction to this effect from the Client. The inclusion of additional members/ any change in existing members would have to be approved by the Client.

5 OBLIGATIONS OF THE CLIENT

5.1 Payment

In consideration of the Services performed by the Consultants under this Contract, the Client shall make to the Consultants such payments and in such manner as is provided by Clause 6 of this Contract.

6 PAYMENTS TO THE CONSULTANT

6.1 Payment Terms

- a) The Consultant shall have to deploy the team as per requirement of the Client. All such requisition shall be made by CEO of the Client or any other official authorised by CEO of the Client. The lump sum price shall be firm till completion of the Assignment.
- b) The Consultant shall submit the bills in duplicate to the Client addressed to an executive authorised by CEO of the Client, indicating the Stage achieved as per terms of payment of Letter of award.
- c) All payments would be claimed by the Consultant from the Client after being due, and would be accepted for payment by CEO of the Client or any other official authorised by CEO of the Client , as per the terms and conditions and based on satisfactory progress and quality of the work in his sole discretion.
- d) In case of tours and travels made beyond NCR Limits and undertaken with prior consent / requirement of PFCCL, the biller would be reimbursed To & Fro journey fare, Accommodation expenses, Dearness Allowance and local conveyance at the destination limited to maximum of the entitlements of Associate Vice President (AVP) level in PFCCL on production of documentary evidences / proof(s) of the expenditure incurred. PFCCL would be the sole authority to decide on the number of the member(s) to undertake the tours. PFCCL reserves the right to make tour and travel arrangements on its own. Anything in addition to the above is to be made only with the specific approval of CEO, PFCCL.

No claim for journey fare/accommodation expenses/Local Conveyance for travel within NCR limits will be admissible, in case the Consultant is based in NCR of Delhi

No claim for journey fare/accommodation expenses/Local Conveyance for travel from the firm's office to PFCCL headquarter at New Delhi will be admissible, in case the Consultant is based in outside NCR of Delhi

- e) The lump sum price would be inclusive of all taxes and duties etc as may be applicable. No escalation for any reason whatsoever shall be allowed over and above the lump sum price. However, service tax, if any, and educational-cess or any such tax/levy as related to as a percentage of the service tax at applicable rates, on the date(s) of payment(s) shall be paid over and above the bid price.

Provided that if the expended mandays at both the Expert and Middle level increases beyond the estimated mandays of 25 days at Expert level and 25 days for Middle level for reasons not attributable to the consultant then the consultant will extend the services at the same rate for mandays as quoted in the bid at both the levels.

Similarly, if the mandays expended is less than the estimated mandays, the total payment shall be limited to such mandays.

Income tax at source will be deducted by Client as per the applicable law and regulation and TDS certificate shall be issued to the Consultant by Client.

7 FAIRNESS AND GOOD FAITH

7.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

7.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties shall use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

8 SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.

8.2 Settlement through a Committee

Any dispute between the Parties/matters arising pursuant to this Contract which cannot be settled amicably will be decided by the Committee constituted by CEO of the Client.

9 JURISDICTION AND APPLICABLE LAW

This agreement including all matter connected with this Agreement, shall be governed by the laws of India (both substantive and procedural) for the time being in force and shall be subject to exclusive jurisdiction of the Indian Courts/Tribunals at Delhi.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

FOR AND ON BEHALF OF PFC Consulting Limited

By **Subir Mulchandani**
Authorized Representative

FOR AND ON BEHALF OF _____

By _____

Authorized Representative

LIST OF APPENDICES ALONG WITH THE CONTRACT AGREEMENT

- A - Letter of Invitation of Bid
- B - Price Offer of the Consultant as accepted by the Client
- C - Letter of Award to the Consultant

