

F. No. 15-18/1/2020-H-II
Government of India
(Bharat Sarkar)
Ministry of Power
(Vidyut Mantralay)

Shram Shakti Bhawan, Rafi Marg
New Delhi, the 5th October, 2021

1. Chief Secretaries of All the State Governments / UTs (As per list)
2. The Chairperson, Central Electricity Authority
3. The Chairman, Central Water Commission
4. CMDs of all the CPSUs under Ministry of Power (As per list)

Subject: Invitation for Expression of Interest (Eoi) for Empanelment of Independent Engineer (IE) in Hydro Contracts for Dispute Avoidance- regarding.

Sir,

With the approval of Hon'ble Union Cabinet Minister for Power and New and Renewable Energy, a Dispute Avoidance Mechanism through Independent Engineer has been introduced in hydro CPSUs in order to minimize / resolve contractual disputes at the inception stage itself. In this regard, Expression of Interest is hereby invited from eligible candidate(s) for empanelment as 'Independent Engineer' for Dispute Avoidance in hydro contracts of CPSUs under administrative control of this Ministry. It is requested that the enclosed notification may be given wide publicity in order to ensure maximum participation of eligible candidates.

Encls: as above.

Yours faithfully,


(Arun Aggarwal)

Under Secretary to the Government of India
Tel.: 23705841

Copy to:

- ✓ In-charge, NIC Cell – with request to upload the Notification on the website of Ministry for wider publication.

Government of India
Ministry of Power

Notification No. 15-18/1/2020-HYDEL-II(MoP) Date: ~~5.10~~ 2021 / 05.10.2021

INVITATION FOR EXPRESSION OF INTEREST (EoI) FOR EMPANELMENT OF INDEPENDENT ENGINEER (IE) IN HYDRO CONTRACTS FOR DISPUTE AVOIDANCE

1.0 Background

Delays in addressing disagreements or claims related to execution of contracts, results in significant financial and economic losses besides time and cost over runs in hydro power projects. Further, dispute resolution is a long-drawn process leading to unjustified and inflated claims with adverse impact on timely completion of projects involving termination of contracts and/or leading to arbitration. Fair and just resolution of disagreements related to contracts at inception stage, is key to successful performance of the contract as per scheduled timelines leading to effective utilization of budget as well as prevention of time and cost over runs.

Ministry of Power, Govt of India, has decided to address the aforementioned issues through a mechanism of an independent third party's intervention i.e by way of engaging Independent Engineer for the specific contracts of CPSEs of Ministry of Power. Independent Engineer shall be expert having domain knowledge of the subject as well as commercial and legal principles and who can have regular oversight over the project with open communication with all the key stakeholders that can play an effective role in the avoidance of disputes.

The main objectives of engaging 'Independent Engineer' are as follows:

- i. To reduce the conversion of initial disagreements over issues into full-fledged disputes.
- ii. For expeditious elimination of disagreements in a just and fair manner.
- iii. To avoid time and cost overruns to ensure timely completion of the Projects.

With the above objectives in view, Ministry of Power, Govt of India, intends to select and empanel domain specific experts with high level of integrity and proven track record, by adopting a transparent and objective selection process as per the requirements set out in this EoI.

2.0 Expression of Interest

Expression of Interest (EoI) is invited from domestic domain specific individual experts in hydro power sector (Engineering design/Civil works/Hydro Mechanical Works/Electro-Mechanical works/Electrical Switchgear/Geology/Quality Assurance & Inspection etc.), for advising hydro sector clients (Developer and Contractor) and addressing their issues under Dispute Avoidance Mechanism.

3.0 Eligibility and Experience Requirements

A retired person with the following qualifications and experience shall be eligible to apply to be empanelled as an 'Independent Engineer' (IE) for Hydro Power Sector :

- Has held the post of Chairman and Managing Director/Managing Director, Chief Executive

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Officer, Functional Director of the Board, Executive Director (E-9) or above of any CPSE of Govt. of India engaged in development / implementation , operation and maintenance of projects in Hydro Sector including Hydro Power plants / Pumped Storage Plants / Multipurpose Power projects;

OR

- Has held the post of Chief Engineer in Central Electricity Authority / Central Water Commission or equivalent in any other body of Govt. of India / State Govt. engaged in planning /designing/ development of projects in Hydro Sector including Hydro Power plants / Pumped Storage Plants / Multipurpose Power projects;

4.0 Broad Scope of Work

The broad scope of work of the IE shall include the following:

- The role of 'Independent Engineer' under 'Dispute Avoidance Mechanism' is an impartial and fair exercise, where the 'Independent Engineer' has to act as a neutral third-party facilitator. Success of resolving the contentious issues / small disagreements relies to a large degree not only on the thorough understanding of the 'Independent Engineer' but also to the constant involvement of Independent Engineer in day-to-day construction activities at the project site.;
- In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature;
- It will be mandatory for the IE to visit the site once in every two (2) months to be constantly aware of the ongoing project activities and to have a fair idea of any situation that may lead to disagreement between the parties. Further, additional visits may also be undertaken as and when called upon to address issues of disagreements.
- The IE will examine all the work fronts of the project to familiarize with the ongoing works and prepare and maintain a detailed diary of activities including the observations on the mobilization of resources vis-à-vis the provisions of contract signed between the parties (Client and Contractor). He will also ascertain the compliance of all provisions of the contract signed between the parties and make comments on technical specifications, quality control aspects, risk occurrence register, geological mapping, sample collections, instruments monitoring and measurement etc.;
- In order to resolve any contentious issues/ disagreements and evaluate the financial implications of any contentious issue in accordance with the provisions of contract signed between the parties, the IE shall examine the hindrance registers, daily progress report register, approved construction and engineering drawings and methodology, details of notification of incident by the contractor substantiated with details/documents, details of idling of equipment & manpower, variation instructions, inspection and test reports, certificates and other documents pertinent to the performance of the contract.
- IE shall invariably keep the duration of site visits not less than five (5) days excluding

the travel time. In case of special invitation to address any contagious issue, the IE shall give opinion / recommendations within ten (10) days of reference.

- IE shall submit a report after each bimonthly visit. The bimonthly progress and review report prepared by the IE shall be exhaustive and sequentially connected with the just previous one to maintain the continuity. The report would critically comment on work progress, hindrances, shortage of any resources, non-compliances with the contract provisions and any such clarifications to eliminate the difference of opinions whatsoever. The report of the IE shall be in a standard format and shall be submitted to both the parties (Client and Contractor) simultaneously within five (5) days of completing the visit.
- Any contentious issues / disagreements either by Client's Engineer or by the contractor, shall be referred to the IE. The representatives of both the parties shall present themselves before the IE to present the facts related to the positions taken by the respective side. All these proceedings shall be held during the site visits of the IE.
- The IE shall strictly follow the Standard Operating Procedure(SOP) as set out in **Schedule 1** and will also document and maintain all the records. At the end of the term of IE or as requested by the Client (Developer and Contractor), all the documents and records would be submitted to the Client.
- Resolution by IE shall commence when the claimant Party submits detailed information to IE for intervention as per Standard Format for Disagreement Case filing attached as per **Schedule 2** along with the necessary documentary evidences. Demand for IE intervention will not be admissible without initial documentary evidence.
- Necessary information sought by IE during the course of investigation shall be provided in a time bound manner by both the Parties and non-compliance of the same shall lead to imposition of penalties, elaboration of which shall be made by the CPSEs in their respective contracts depending upon the criticality of the contract.
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- IE will examine the issue(s) raised by the Parties concerned by conducting inspections involving field measurements as may be required to further investigate and to also conduct hearing/mediation with both the parties.
- Based on the preliminary hearing of the parties, IE shall prescribe resolution timeline depending upon the number and nature of disagreements subject to a maximum duration of thirty (30) days or within extended timeline under extraordinary circumstances and for reasons to be recorded in writing.

5.0 Process of selection of IE

By evaluating the EoI submitted by the applicants, Ministry of Power, Govt of India, would assess their capabilities for empanelment as IE for the proposed scope of work. Ministry of Power may use available independent data for evaluation of the applicant(s) and information that has been submitted against this document. Ministry may also call for original of the supporting documents for verification, if so deemed fit and also cross check any detail as furnished by the applicant from any other source.

The experts selected through this process shall be empaneled by Ministry of Power. The panel so prepared shall be published by the Ministry of Power on its website. The CPSE & Contractor shall

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jointly select one Member from such panel of experts for each package of works. The expert would be designated as 'Independent Engineer' (IE) for each contract.

In case of adverse findings about IE such as not performing duties or lack of integrity, that Expert would be dropped by the Ministry from the panel itself and a new Expert would be selected by the CPSE and Contractor jointly from the panel for performing the duties of IE.

Ministry reserves the right to reject any applicant to the EoI, if:

- i. At any point of time, it is found that the applicant has a Conflict of Interest. Applicant should not have been engaged for providing any other services to any of the parties i.e. either Owner or Contractor in the last three years (s).
- ii. At any point of time, it is found that the applicant(s) has misrepresented the facts or information; or
- iii. The applicant does not reply promptly and thoroughly to the request for supplementary information, as may be required for evaluation.

6.0 Tenure of Engagement

The initial term of engagement of IE in a hydro project, would be for a period of five (5) years or contract period whichever is lesser and may be further renewed on a year-on-year basis as may be mutually agreed between the CPSE and the Contractor subject to the consent of IE and final approval by the Ministry of Power.

7.0 Terms and Conditions for Payment to IE

- a. **Retainership Fee** : A retainer fee of Rs.100,000 per month fixed for FY 2021-22 for 'Independent Engineer' for a specific project shall be considered after his engagement in the project, as payment in full for:
 - i. being available on a notice of two weeks for all site visits and hearings;
 - ii. becoming and remaining conversant with all the project developments and maintaining relevant files;
 - iii. compensating all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties.The retainer fee of Experts shall be increased annually by 10%. Further, an Expert, shall not be in the retainership of more than two Hydro power contracts concurrently in the same CPSE. In case of two contracts, expert shall draw retainership fee limited to one contract only i.e. Rs.100,000 referred to for FY 21-22. The duration of retainership shall be for such duration as may be mutually decided by the owner and Contractor but shall not, in any case, extend beyond three (3) months after the completion of works as per the contract. The retainership fee shall be shared by the CPSE and the Contractor equally but shall initially be paid to the IE by the concerned CPSE.
- b. **Site visit Fee** : A daily visiting fee of Rs 20,000/- to either project site or project office, anywhere in India, limited to a maximum of 10 days in a month for Expert, shall be paid for hearing, preparing reports etc initially by the Client fixed for FY 21-22. The daily visiting fee of Expert, as mentioned above, shall be increased on yearly basis @ 10%.
- c. **Reimbursement of travel, boarding/lodging expenses incurred by 'Independent Engineer'**: The travel, boarding/lodging expenses of the 'Independent Engineer', as per entitlement of Executive Director of CPSE, would be made initially by the Client i.e. Owner or Contractor. If any expert of 'Independent Engineer' does not receive payment of the amount due within 30 days after submitting claim, the expert shall be free to suspend his/her services

without notice until the payment is received.

- d. **Meeting Expenses:** All the payments for holding the meeting would be initially borne by the Client i.e. Owner or Contractor, as the case may be, and shall be shared equally by the Owner and Contractor.
- e. **Sharing of Expenses on Independent Engineer:** All the payments for holding the meeting, site visits, reimbursement of travel, boarding/lodging expenses and monthly compensation of 'Independent Engineer' shall be shared equally by both the parties i.e. Owner and Contractor.

8.0 Submission of Expression of Interest (EOI)

Interested applicants are requested to submit their application complete in all respects, with details as outlined below. The application submitted by the Applicant shall include;

1. EOI Letter from the Applicant;
2. Detailed Curriculum Vitae (CV) showcasing the required eligibility and qualification requirements and relevant experience as per this EOI request;
3. Documents justifying the relevant experience of the Applicant including certificates/letters of position held, roles delivered and other statements of tenure;
4. List of relevant experience of Applicant and any specific cases successfully handled pertaining to dispute avoidance or dispute settlement in various projects.
5. Confirmation regarding Conflict of Interest provision as outlined in para 5 of this EOI request.
6. Confirmation on Scope of Work, Payment Terms and other terms and conditions specified in EOI.
7. Confirmation on adherence to Standard Operating Procedure (SOP) and Standard format for disagreement case filing as provided in Schedule 1 and 2 of this EOI request.

8.1 All documents as required above shall be furnished by the applicant **through** email at email id i.e *hydro2-mop@gov.in*. Each page of the document submitted, shall be duly authenticated by the applicant.

8.2 The application (in response to this EOI) and all correspondence incidental to the application shall be written in ENGLISH language only. Any printed literature and document submitted in any other language shall be accompanied by authenticated English translation, in which case, for the purpose of interpretation of the application, English translation shall govern. Responsibility for correctness in translation shall lie with the applicant.

9.0 Submission Details

The interested applicant should submit the information/documents through email on above mentioned email id mentioning the subject as "*EXPRESSION OF INTEREST (EOI) for EMPANELMENT OF INDEPENDENT ENGINEER (IE) IN HYDRO CONTRACTS FOR DISPUTE AVOIDANCE MECHANISM*".

The Expression of Interest from interested candidates should reach this Ministry, on the aforesaid

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email i.e i.e *hydro2-mop@gov.in*, within 21 days from the date of issuance of this notification on the website of Ministry of Power. EoI(s) received after the stipulated time-frame shall not be entertained.

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10.0 No Contractual Obligation

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Ministry shall not be bound contractually or in any other way to any applicant to this EoI. Ministry is not liable for any costs or compensation in relation to the consideration of this EoI.

All Expression of Interest documents, upon submission by any applicant to this EoI shall become the property of Ministry.

11.0 Disclaimer

Issue of this document does not in any way commit or otherwise obliges Ministry to proceed with all or any part of a tender process. The EOI Request is not the subject of any process contract or any contractual obligations between Ministry and the applicants to the EOI.

Further, Ministry may, at its absolute discretion either modify or abandon any part or whole of the document and / or process, without giving prior notice to any or all the applicant.

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Schedule 1

Standard Operating Procedure for IE

Investigations by Independent Engineer for any contentious issue / disagreement shall be as per pre-defined Standard Operating Procedure (SOP). IE shall strictly follow the SOP and will also document and maintain all the records. Following is a representation of the SOP for IE for processing key tasks, roles and responsibilities and commensurate timelines.

Based on the preliminary hearing with the Parties, IE shall prescribe resolution timeline depending upon the number and nature of disagreements subject to a maximum duration of thirty (30) days.

Key Task	Stakeholder involvement	Activity Description	Proposed Timeline
1 Disagreement Filing	Contractor Client	Case Filing – A disagreement case begins when claimant party submits a demand for intervention by IE in the prescribed format along with documentary evidence. Demand without initial documentary evidence will not be admissible for IE intervention.	Day 0

2 Preliminary Hearing & Scheduling	Independent Engineer Contractor Client	Preliminary hearing and scheduling process- IE to organize a preliminary hearing with the parties and prescribe suitable timeline for resolution or settlement.	Day 1 to Day 6

3 Finalization of Issues	Independent Engineer	After due examination and diligence to finalize the issues requiring resolution.	Day 3 to Day 9

4 Hearing/ Mediation	Independent Engineer Contractor Client	Hearing / Mediation - The parties and IE meet in person to conduct the hearings.	Day 4 to Day 12

5 Inspection	Independent Engineer	Inspection- IE conducts the inspections involving field measurements if any to further investigate evidence conferred to the IE by both parties during the hearing	Day 5 to 17

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6 Post Inspection Independent
Briefs [REDACTED] Engineer Contractor Client
Post-Inspection Briefs -After the inspection takes place; both the parties may come up with additional testimony, as permitted by the IE. **Day 10 to Day 30**

7 Closure Independent
[REDACTED] Engineer
Closure - IE closes the report on the case and issues a decision, along with any claim settlement, if applicable. **Day 10 to Day 30**

Schedule 2

Standard format for disagreement case filing

In line with the SOP, an IE expert should follow a standard format provided below for disagreement case filing and further investigations.

Disagreement Documentation Report (to be filled by Independent Engineer)

1. Name of Party	2. Disagreement Reporting Date	3. Has the documentary Evidence been Submitted
4. Contract Reference number	5. Party Representative Name Reporting Disagreement	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not Applicable
Name: Contact Details:		
6. Name of Independent Engineer (IE)	7. IE Contact Details	8. Disagreement Reference Number Allocated by IE
Name: Contact Details:		
9. Supplementary Note Recording the Disagreement		
[Text]		
<i>Documentary Evidences to be Annexed</i>		
10. Critical Engineering Expertise Relevant to investigate the Disagreement (Check All Required)		
<input type="checkbox"/> Engineering Design <input type="checkbox"/> Geology	<input type="checkbox"/> Civil Works <input type="checkbox"/> Hydro Mechanical	<input type="checkbox"/> Electrical Switchgear <input type="checkbox"/> Quality Assurance & Inspection
<input type="checkbox"/> Electro Mechanical		
11. Record Notes of Preliminary hearing Organized by IE with the parties		
[Text]		
<i>Documentary Evidences by Parties along with MoM to be Annexed</i>		
12. Brief Narration on discovery process - after Preliminary hearing & listing of next step to examine the issues and procedural difficulties relating to the case		

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[Text]
Documentary Evidences to be Annexed

13. Record notes of Hearing/Mediation between the parties and IE
[Text]
Documentary Evidences with Video Records to be Annexed

14. Inspection Records with Field Measurements Conducted by IE
[Text]
Documentary Evidences to be Annexed

15. Record notes of Inspection Briefs by IE along with additional testimony by the Parties if any
[Text]
Documentary Evidences & Inspection Reports to be Annexed

16. Closure Report by IE with Decision & Claim settlement if applicable
[Text]
Documentary Evidences to be Annexed

Final Acceptance by All the Parties

Signature By IE	Signature By Contractor	Signature By Owner
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