

The Gazette of Pakistan

EXTRAORDINARY

PUBLISHED BY AUTHORITY

KARACHI, FRIDAY, FEBRUARY 12, 2021

PART II

Statutory Notifications containing Rules and Orders issued by all Ministries and Divisions of the Government of Pakistan and their Attached and Subordinate Offices and the Supreme Court of Pakistan

GOVERNMENT OF PAKISTAN

PRIME MINISTER OFFICE

[NAYA PAKISTAN HOUSING AND DEVELOPMENT AUTHORITY]

NOTIFICATION

Islamabad, the 3rd February, 2021

Naya Pakistan Housing and Development Authority
(Public Private Partnership) Regulations, 2020

S.R.O. 3(KE)/2021 :

In exercise of the powers conferred under Section 58 read with Section 20(2) and Section 5(2)(q) of the Naya Pakistan Housing and Development Authority Act, 2020, the Naya Pakistan Housing and Development Authority is pleased to make the following Regulations:

1. **Short title and commencement.** (1) These Regulations may be called the Naya Pakistan Housing and Development Authority (Public Private Partnership) Regulations, 2020.

(2) They shall come into force at once.

(95)

Price : Rs. 40.00

2. **Application.** - These Regulations shall apply to any schemes or part thereof to be undertaken by the Authority on Public Private Partnership (PPP) basis under the Act.

3. **Definitions.**- (1) In these Regulations:

- (a) **"Act"** means Naya Pakistan Housing and Development Authority Act, 2020 (Act No. V of 2020);
- (b) **"Authority"** means the Authority as defined in Section 3(d) of the Act;
- (c) **"Bid"** means a technical and financial proposal submitted by a person who is eligible under the Act, Regulations and bidding documents to undertake a scheme;
- (d) **"Consortium"** means two or more persons acting in concert for submission of bid, participating in the bidding process and undertaking of scheme or part of a scheme pursuant to a PPP Agreement;
- (e) **"Government"** means the Federal Government, a Provincial Government or a Local Government, as applicable;
- (f) **"Most Advantageous Bid"** means:
 - (i) A bid or proposal for goods, works or services that after meeting the eligibility or qualification criteria, is found substantially responsive to the terms and conditions as set out in the bidding or request for proposals document; and
 - (ii) Evaluated as the highest ranked bid or proposal on the basis of cost or quality or qualification or any combination thereof, as specified in the bidding documents or request for proposal documents which shall be in conformity with the selection techniques to be issued by the Authority;";
- (g) **"Private Party"** means a person who enters into a PPP Agreement with the Authority;
- (h) **"Public Private Partnership" or "PPP"** means a commercial agreement between the Authority and a private party pursuant to which the private party:
 - (i) Undertakes a scheme or part of a scheme on behalf of the Authority by, amongst other things planning, designing, constructing, financing, operating, insuring, marketing or maintaining such a scheme or part thereof; or

- (ii) Performs any function of the Authority on its behalf; or
- (iii) Assumes substantial financial, technical, operational or environmental risks in connection with undertaking the development or implementation of such a scheme or any part thereof; or
- (iv) Receives a benefit for performing the Authority's functions or from undertaking a scheme or part of a scheme on behalf of the Authority, either by way of:
 - (a) Consideration to be paid by the Authority; or
 - (b) Price, charges or fees to be collected by the Private Party from any person in lieu of works, goods or services provided to them; or
 - (c) A combination of such consideration and such prices, charges or fees
- (i) **"PPP Agreement"** means any and all agreements in writing between the Authority and a Private Party for the purposes of a Public-Private Partnership.
- (j) **"Person"** means a company, entity, firm, association of persons, body of individuals, or a sole proprietor other than a department, attached department of a Government, or a body corporate owned or controlled by a Government except such governmental organizations which are mandated to perform commercial functions or activities ;
- (k) **"Policy Board"** has the same meaning as provided in Section 3(o) of the Act;
- (l) **"Regulations"** means the Naya Pakistan Housing and Development Authority (Public Private Partnership) Regulations, 2020;
- (m) **"Scheme"** means a scheme as defined in Section 3(t) of the Act;
- (n) **"Solicited Proposal"** shall have the same meaning as ascribed thereto in Regulation 6;
- (o) **"Unsolicited Proposal"** means any proposal containing a unique and innovative idea and approach which is not submitted in response to any procurement request, however is aligned with the mission and objectives of the Authority and is subject to competitive selection process by soliciting counter proposals challenging the initiator's proposal in all the technical and financial aspects.

- (p) **"User Levy"** means a levy without limitation, including annuity, charge, fee, tariff, toll which may be collected under a PPP agreement.
 - (q) **"Viability Gap Fund (VGF)"** means the funds or other assets the Government which are made available to the private party to support the project including funds for covering revenue shortfalls by means of grants, subsidies, guarantees, or any other mode approved by the Policy Board.
- (2) All other terms and expressions used but not defined in these Regulations shall have the same meaning as ascribed to them in the Act.

4. Role of Authority.- Subject to the terms of the Act, the Chairman shall, *inter alia*—

- (1) Identify suitable schemes or part thereof and prioritize them;
- (2) Prepare, consider and approve a concept paper for any scheme or part thereof in the form of pre-feasibility study;
- (3) Where necessary, hire transaction advisors for the preparation of proposals and tendering of schemes;
- (4) Prepare a feasibility for a scheme and, if its outcome is positive, submit a scheme proposal along with estimated cost of the scheme, type of PPP Agreement and the details of Government support, if required, to the Policy Board;
- (5) Conduct a competitive tendering process for a scheme approved by the Policy Board, including a pre-qualification process and bidding by the pre-qualified bidders to select the suitable private party;
- (6) Carry out bid evaluation;
- (7) Negotiate and sign the PPP Agreement with the selected private party;
- (8) Monitor and evaluate implementation and operation of the scheme or part thereof;

5. Constitution of Committees.— The Chairman may constitute one or more committees or subcommittees in accordance with Section 15 of the Act for the purposes of undertaking public private partnerships under the Act and these Regulations.

6. Scheme Identification and Preparation.- (1) The Chairman shall identify and prepare a scheme proposal using criteria such as supply and demand gaps, social and economic benefits, financial attractiveness, risks and uncertainties involved and readiness for implementation.

- (2) A scheme proposal shall consist of *inter alia* an analysis of feasibility and sustainability of the scheme including detailed business case and financial model justifying the scheme's financial and economic viability over the expected duration of scheme or part of scheme as applicable, initial environmental examination or environmental impact assessment, risk analysis, analysis of the need for Government support, the affordability of the scheme and determination of the PPP modality. Bid documents including a draft PPP Agreement shall also be prepared along with the scheme proposal.
- (3) The Policy Board may, after the review of a scheme proposal, approve it for selection of a private party for the scheme.
- (4) The selection of a private party for the scheme shall take place through competitive public tendering using a process of pre-qualification and bidding in accordance with Regulations 8 to 13 here under.
- (5) A scheme proposal prepared and approved in the manner stated in Regulation 6 shall be known as a "Solicited Proposal".

7. Approval of Government Support.- (1) The Chairman shall include all requests for Government support, along with their justification and eligibility, analysis of fiscal impact of the related direct and contingent liabilities, as an integral part of a scheme proposal.

- (2) The Policy Board shall review the scheme proposal and evaluate the need and amount of Government support requested and send its recommendations to the Government concerned for provision of support to the scheme.
- (3) The Authority may set up a Viability Gap Fund which may be funded through any permissible sources under the Act.
- (4) The Chairman shall indicate the Government support, if any, approved by the Government concerned for a scheme or part of a scheme.
- (5) The Government support may take the following forms:-
 - (a) Administrative support to the private party in obtaining licenses and other statutory and non-statutory clearances from a Government, any public sector organization or any authority for purposes of the scheme on such terms and conditions as may be determined;

- (b) Provision of utility connections for power, gas and water at scheme site; clearance of right of way or acquisition of land necessary for the scheme; and, rehabilitation and resettlement necessitated because of the execution of the scheme;
 - (c) Government equity, in the form of land or infrastructure facilities owned by a Government or the Authority, to be calculated with reference to the current market value of land or infrastructure or future value of discounted cash flows accruing or arising from asset to be offered, with reference to the scheme cost and its capital structure or debt equity ratio;
 - (d) Direct financial assistance from the Viability Gap Fund or otherwise. Subject to applicable laws such support may be offered for schemes which, in the opinion of the Authority, are economically and socially viable, but may not be financially attractive enough for investment;
 - (e) Government guarantees for political risks under a Government's control such as changes in the law, delay of agreed user levy adjustments, early termination of the PPP Agreement owing to no fault of the private party, and expropriation; provided that these will not include force majeure risks, i.e. risks occasioned by force majeure such as floods, earthquakes or other natural disasters or civil commotion, riots and unrest. For avoidance of doubt, the PPP Agreement shall provide for consequences of force majeure events.
 - (f) Government guarantees for other risks such as demand risk, and default by the Authority on payments due under a PPP Agreement.
- (6) Where the Authority decides to offer the approved Government support on first come first serve basis, it shall invite proposals through wide publicity in accordance with these Regulations.

8. Pre-qualification.— The Authority shall conduct prequalification, where necessary keeping in view the complexity and requirements of a scheme or part of scheme, in the following manner:-

- (1) A public notice, inviting participation in pre-qualification for undertaking a scheme shall be published on the website of the Authority, and also in at least two national newspapers for national competitive bidding and additionally in one international paper for international competitive bidding providing at least fifteen (15) days for national competitive bidding and thirty (30) days for international competitive bidding for preparation of pre-qualification application;

- (2) If so required by the Policy Board, for a scheme with a total cost equal to or exceeding Rs. 10,000,000,000/- (Rupees Ten Billion), the pre-qualification notice shall also be published in at least one international newspaper;
- (3) A person who intends to participate in the pre-qualification shall provide information with regard to his legal, technical, managerial and financial capacity to undertake the scheme in such form, along with such particulars, as may be specified by the Authority;
- (4) In case the person is a consortium, its members and their roles and proposed shareholding shall be disclosed at the pre-qualification stage, and the consortium shall provide a written and legally enforceable undertaking from its members to be jointly and severally liable for the performance of obligations under the contract, if awarded;
- (5) The Authority shall examine the information and other particulars submitted by the person and shall, within thirty (30) days, or as expeditiously as may be possible thereafter, decide as to whether such person fulfills the criteria for prequalification as laid down by the Authority;
- (6) A person who fulfills the criteria shall be a pre-qualified person;
- (7) If less than three persons are pre-qualified, the Authority may analyze the reasons for such response and either proceed for bidding after recording the reasons, or revise scheme structuring, and reinstate the pre-qualification process for additional participants;
- (8) If a consortium is a pre-qualified person, the lead consortium member shall not be replaced during the applicable lock-in period, to be prescribed in the bidding documents, without the prior approval, in writing, of the Authority. No such approval shall be given unless the consortium finds a suitable replacement which in the sole and absolute discretion of the Authority is both suitable and has equal or better qualifications than the withdrawing member;
- (9) Subject to prior written approval by the Authority, any other member of a consortium may, prior to execution of the PPP Agreement or during the term of the PPP Agreement, withdraw, provided that the remaining members are, in the sole and absolute discretion of the Authority, legally, technically and financially capable of successfully carrying out the implementation and operation of the scheme, or that suitable substitute with equal or better qualifications is available to replace the withdrawing member; and

(10) Any change in the shareholding, including any rights attached to such shareholding, of the consortium shall also be subject to the prior written approval of the Authority; and

(11) If the consortium fails to comply with the requirement of sub-clause (8), (9) or (10) of this Regulation 8, the consortium shall cease to be a prequalified person.

9. Bidding.— (1) After the selection of pre-qualified persons, the Authority shall, within thirty (30) days from the completion of the pre-qualification process, issue bid documents to the prequalified persons and shall give adequate time (not exceeding sixty (60) days) to such pre-qualified persons for preparation and submission of bids.

(2) Where pre-qualification is deemed not necessary by the Authority, in its sole and absolute discretion, the Authority shall within thirty (30) days from the approval of the scheme or part thereof, by the Policy Board, issue bid documents and shall give adequate time (not exceeding sixty (60) days) for preparation and submission of bids.

(3) The bid documents shall include—

(a) Instructions to bidders;

(b) Minimum design and performance standards and specifications;

(c) Draft PPP Agreement;

(d) Bid form, specifying the information required to evaluate the bid and the bid evaluation criteria;

(e) Bid security form and performance bond form; and

(f) Any other document deemed relevant by the Authority, in its sole and absolute discretion, to the scheme, including but not limited to the feasibility study and environmental impact assessment.

(4) To provide clarifications to bidders and to discuss the terms and conditions of the PPP Agreement, the Authority may, within such period as is deemed reasonable, conduct a pre-bid meeting with the bidders and may, if necessary, issue addendum(s) to the bidding documents.

(5) If only one valid bid is received up to the last date for submission of bids, the Authority may evaluate it, and depending on the results of such evaluation and after recording reasons—

- (a) Negotiate or enter into the PPP Agreement with the said single bidder; or
 - (b) After a market research to ascertain the reasons for the poor response to the call for bids, restructure the scheme proposal and the proposed Government support and submit the revised proposal to the Policy Board.
- (6) The Policy Board shall deal with the revised proposal in the same manner as is prescribed for a new proposal for a scheme.
- (7) The Authority may levy a reasonable fee for submission and processing of bids depending on the complexity of the relevant tender. Such fee shall not exceed Rs. 10,000,000/- (Pakistani Rupees Ten Million)
- (8) A bidder shall deposit with the Authority the bid security amount as determined by the Authority provided that insofar as possible, the Authority will, in determining such bid security amount be guided by the cost of the scheme.
- (9) The Authority may, within thirty (30) days of the expiry of the bid validity period, return the bid security amount to all unsuccessful bidders.

10. Procedures of Open Competitive Bidding.— Save as otherwise provided in these Regulations, a single stage two envelope, bidding procedure, or a single stage three envelope bidding procedure or a two stage two envelope bidding procedure may be approved by the Authority to conduct open bidding for the selection of a private party.

11. Single Stage Two Envelopes Bidding Procedure.— The procedure for a single stage two envelopes bidding shall be as follows:

- (1) The bid shall comprise a single package containing two separate envelopes, one for the financial and the other for the technical proposal;
- (2) The envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" respectively.
- (3) First, the envelope marked as "TECHNICAL PROPOSAL" shall be opened;
- (4) The envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the Authority without being opened;

- (5) The Authority shall evaluate the technical proposal in such manner as may have been made public, in advance, without reference to the price and shall reject any proposal which does not conform to the specified requirements;
- (6) During the technical evaluation, the Authority shall not permit any amendment in the technical proposal;
- (7) After the evaluation and approval of the technical proposal, the Authority shall publicly open the financial bids, received from the bidders who are technically qualified and shall return un-opened all the financial bids received from the bidders who are not technically qualified;
- (8) The Authority shall communicate the time, date and venue to the bidders, in advance, provided that the time so communicated, shall not be beyond the bid validity period; and
- (9) The most advantageous bid shall be awarded the PPP Agreement.

12. Single Stage Three Envelope Bidding Procedure:- Notwithstanding any thing contained in regulations 8 and 9 above, When pre-qualification is to be done together with inviting technical and financial bids or through a single stage three envelope bidding, the Authority shall adopt the following procedure:

- (1) The bid shall comprise single package containing three separate envelopes, two containing separately the financial and the technical proposals and third containing the pre-qualification documents as specified in the bid documents;
- (2) The envelopes shall be marked as "FINANCIAL PROPOSAL", "TECHNICAL PROPOSAL" and "PRE-QUALIFICATION";
- (3) First, the envelope marked as "PRE-QUALIFICATION" shall be opened;
- (4) The envelopes marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" shall be retained in the custody of the Authority without being opened;
- (5) The Authority shall evaluate the pre-qualification documents in such manner as may have been made public, in advance, and shall reject any proposal which does not conform to the specified requirements;

- (6) After submission of the documents, the Authority shall not permit any amendment in the technical or financial proposals;
- (7) After pre-qualifying the bidders, the Authority shall return the unopened envelopes containing the technical or financial proposals to the bidders who fail to pre-qualify;
- (8) The Authority shall next open the technical proposals of the pre-qualified bidders at the given time and date in the presence of all the bidders who are present provided that the time so communicated shall not be beyond the bid validity period; provided further that the procedure shall not be deemed incomplete or defective if a bidder, although invited, does not participate in the proceeding for any reason what so ever, and
- (9) The Authority shall follow the same procedure for opening of technical and financial proposals and award of the PPP Agreement as contained in Regulation 11.

13. Two Stage Two Envelope Bidding Procedure:- (1) The Authority may adopt a two stage two envelope bidding procedure for a scheme, which the Authority in its sole and absolute discretion deems large and complex, or where it is of the view that technically unequal proposals are likely to be encountered, or where being aware of its options in the market it is of the view that for a given set of performance requirements, there are two or more equally acceptable technical solutions available to the Authority.

- (2) In case of a two stage two envelope bidding, the Authority shall adopt the following procedure:

First Stage

- (a) The bid shall comprise a single package containing two separate envelopes containing the financial proposal and the technical proposal;
- (b) The envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL";
- (c) First, only the envelope marked as "TECHNICAL PROPOSAL" shall be opened;
- (d) The envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the Authority without being opened;

- (e) The technical proposal may be discussed with the bidders with reference to the Authority's technical requirements;
- (f) The bidders willing to meet the requirements of the Authority may be allowed to revise their technical proposals following discussions; and
- (g) Bidders not willing to conform their technical proposal to the revised requirements of the Authority may be allowed to withdraw their respective bids without forfeiture of their bid security.

Second Stage

- (a) After agreement between the Authority and the bidders on technical requirements, bidders who are willing to conform to the revised technical specifications and whose bids have not already been rejected shall submit a revised technical proposal and supplementary financial proposal, according to the technical requirements;
- (b) The revised technical proposal alongwith the original financial proposal and supplementary financial proposal will be opened at a date, time and venue announced in advance by the Authority provided the time so communicated shall not be beyond the bid validity period;
- (c) In setting the date for the submission of the revised technical proposal and supplementary price proposal, the Authority will allow sufficient time to the bidders to incorporate the agreed changes in the technical proposal and to prepare the required supplementary financial proposal; and the Authority may evaluate the whole proposal in accordance with the evaluation criteria.
- (d) The bid found to be most advantageous bid shall be accepted.

14. Bid Evaluation.— (1) In case of Solicited Proposals, the Authority may, within fifteen (15) days from the receipt of the bids, or as soon as it may be possible thereafter, evaluate the bids.

- (2) On receipts of bids, the Authority shall assess the technical, operational, and environmental responsiveness of the bids received, according to the requirements, criteria, minimum standards, and basic parameters specified in the bid documents, and shall reject non-responsive bids.

(3) After the technical evaluation of the bids, the Authority may conduct a financial evaluation of the responsive bids; and, depending on the type of the scheme, it may use one or more of the following criteria for evaluation:-

- (a) Lowest proposed tariff, toll, fee or charge at the start of operation of the scheme if a parametric formula for periodical tariff adjustment is specified in the bid documents;
- (b) Lowest present value of the proposed tariffs, tolls, fees and charges for the period covered under the PPP Agreement if there is no such formula;
- (c) Lowest present value of payments from the Authority and/or Government;
- (d) Lowest present value of Government subsidy to be provided for the period covered under the PPP Agreement;
- (e) Highest present value of the proposed payments to the Authority, such as concession fees, lease or rental payments, fixed or guaranteed payments or variable payments and percentage shares of revenues for the period covered by the PPP Agreement; or
- (f) Such other criteria as may be determined by the Authority.

(4) Notwithstanding anything in these Regulations:

- (a) Negotiations may be permissible after the financial bids are open; where the Authority has valid reasons, which must be recorded in writing, that the financial offers are not providing best value for money or need changes, the Authority may invite sealed revised financial bids from all qualified bidders or through open bidding. The Authority shall keep complete minutes of the negotiation process;
- (b) Direct negotiations may be resorted to when there is only one complying bidder left as defined hereunder:
 - (i) If, in response to advertisement, only one interested bidder responds for prequalification, and meets the pre-qualification criteria;
 - (ii) If after advertisement, more than one interested bidders respond for pre-qualification, if any but only one of them meets the prequalification criteria;

- (iii) After pre-qualification, if any, more than one interested bidders respond, and only one of them submits a bid, which is found by the Authority to be complying;
- (iv) After pre-qualification, if any, more than one interested bidders submit the bid, but only one is found by the Authority to be compliant.
- (5) The Authority may, for reasons to be recorded in writing, reject a speculative or unrealistic bid as non-responsive but such rejection of a bid shall not lead to the termination of the bidding process.
- (6) If the result of bidding process leads to a bid conforming to the scheme estimate, type of PPP Agreement and Government support approved by the Authority, the Authority may proceed with execution of the PPP Agreement.
- (7) If the lowest bid is higher than the scheme estimate or in case there is a need to restructure the scheme or type of PPP Agreement, the same shall be reconsidered for approval by the Policy Board.
- (8) The Authority may announce the result of the bidding process and issue a notice for execution of PPP Agreement to the selected private party within ten (10) days of the bid evaluation or as soon as it may be possible thereafter.

15. Grievance Committee & Appellate Committee.— (1) The Authority shall constitute a Grievance Committee comprising an odd number of persons, with proper powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the PPP Agreement.

- (2) Any bidder feeling aggrieved by any act of the Authority after the submission of his bid may lodge a written complaint concerning his grievances not later than ten (10) days after the announcement of the bid evaluation report.
- (3) The committee shall investigate and decide upon the complaint within fifteen (15) days of the receipt of the complaint.
- (4) Any bidder feeling aggrieved of the decision of the Grievance Committee under Regulation 15 (3) may prefer an appeal to the Appellate Committee. The Appellate Committee shall comprise odd number of members of the Policy Board to be nominated by the Chairman. The Appellate Committee shall grant an opportunity of hearing to the concerned parties and decide the matter within fifteen (15) days of receipt of the appeal.

- (5) Mere fact of lodging of a complaint before the Grievance Committee or an appeal before the Appellate Committee shall not warrant suspension of the procurement process but the Grievance Committee or the Appellate Committee, as the case may be, may consider suspension of the procurement process in appropriate cases.

16. Preparation and Negotiation of PPP Agreement.— (1) The draft PPP Agreement which forms part of the bid documents shall clearly define the legal relationship between the Authority and the selected private party, their rights and responsibilities including the specific Government support for the scheme.

- (2) The draft PPP Agreement may contain the following provisions, where applicable:-

- (a) Type of the scheme;
- (b) General terms and conditions of contract;
- (c) Special conditions of contract;
- (d) Scope of works and services to be provided under the scheme;
- (e) Main technical specifications (where applicable, construction standards including seismic resistance standards) and performance standards;
- (f) Environmental and safety requirements;
- (g) Implementation milestones and completion date of the scheme;
- (h) Cost recovery scheme through appropriate means including user levies and mechanism for their periodical adjustment;
- (i) Performance bonds for construction works and operation;
- (j) Minimum insurance coverage;
- (k) Acceptance tests and procedures;
- (l) Rights and obligations of the parties including risk sharing;
- (m) Type and amount of Government support;
- (n) Transfer of assets, if any, at the conclusion of the term of the PPP Agreement;

- (o) Warranty period and procedures after the transfer;
- (p) Requirements and procedure for variations of the PPP Agreement;
- (q) Grounds for and effects of termination of the PPP Agreement including force majeure;
- (r) Procedures and venue for disputes resolution;
- (s) Financial reporting by the private party; and
- (t) Supervision mechanism of the Authority.

(3) The Authority may not enter into a PPP Agreement except in accordance with the procedure mentioned in the Act and these Regulations.

(4) The Authority may ensure conclusion of contract negotiations with the selected private party within sixty (60) days or as soon as it may be possible thereafter.

(5) The negotiations shall focus on the terms and conditions not specified in the bid documents but no post-bid changes in the terms and conditions mentioned in the bid documents as binding and which formed part of the bid evaluation may be allowed as a consequence of contract negotiations.

(6) Notwithstanding the foregoing, post-bid changes may be allowed which have the effect of:

(a) Reducing the cost of the scheme to be borne by the Authority, or a Government or the public without adversely altering or affecting the scope of work or the performance standards; or

(b) Increasing or improving the scope of work or performance standard without increasing the cost of the scheme to be borne by the Authority, or a Government or the public.

17. Unsolicited Proposal.- (1) An unsolicited proposal received by the Authority from any individual or agency, private or public, consistent with the mission of the Authority, shall be assessed by the Assessment Committee, consisting of at least three technical experts, to be notified by the Authority. The Assessment Committee shall ascertain the viability of the proposal.

- (2) An Unsolicited Proposal will be accompanied by a feasibility study, social and environmental impact statement/assessment, and a draft PPP Agreement, analysis of need for Government support and determination of the public private partnership modalities.
- (3) The Authority may consider an Unsolicited Proposal from all aspects including technical, environmental and financial aspects, and in case of requirement of additional information, the Authority may request for the submission of an amended or modified proposal.
- (4) Within ten (10) days from the receipt of an Unsolicited Proposal or as soon as it may be possible thereafter, the Authority may require the initiator to submit details about legal, technical, managerial and financial capability of the person, as well as the cost of preparing the Unsolicited Proposal with relevant supporting evidence for its consideration and such information shall be submitted to the Authority within fifteen (15) days from the receipt of such requirement.
- (5) Within fifteen (15) days from the receipt of information required under sub-clause (4) or as soon as it may be possible thereafter, the Authority may evaluate the Unsolicited Proposal and, if it is found to be economically, technically and environmentally feasible and the information submitted by the person about his own legal, technical, managerial and financial capability is satisfactory, the Authority shall submit the same for approval before the Policy Board. The Authority may communicate the decision of the Policy Board with regard to the Unsolicited Proposal in writing to the initiator within fifteen (15) days.
- (6) In case of bidding competition, if the bid of initiator does not emerge as the most advantageous bid, the Authority shall give the initiator an opportunity to make his bid at par with the most advantageous bid, however, if the initiator does not want to accept the challenge to match the proposal, he shall be given right of refusal without forfeiture of bid security.
- (7) If the initiator fails to match the best bid, the Authority shall direct the successful bidder to reimburse to the initiator the amount specified in the bid documents as the cost of preparing the Unsolicited Proposal provided that the reasonableness of the cost of preparation of Unsolicited Proposal will be determined by the Authority, in its sole and absolute discretion.
- (8) If the other valid competitive bids, except the bid of the initiator, are not received, the Authority may negotiate and enter into the PPP Agreement with the initiator or decide to undertake the bidding process afresh.

- (9) The proprietary information of the initiator contained in the proposal shall remain confidential and shall not be disclosed to any interested bidder.
- (10) The Authority shall not be responsible for any intellectual property rights accruing to the proposal of the initiator
- (11) Unless otherwise expressly stated in writing by the initiator, the Authority may, if it considers necessary, disclose any information of the Unsolicited Proposal or the bidder as part of procurement process.
- (12) Failure to observe the timelines stated in this Regulation will not have the effect of invalidating any action or decision taken by the Authority after the lapse of the time provided for such decision or action.
- (13) The Authority may, in its discretion, condone any delay by a private party in complying with the above stated timelines.

18. Time Frame to Invite Tenders for Unsolicited Scheme.— (1) A public notice, inviting offers for participation for undertaking a scheme will be posted on the website of the Authority and published in at least two national newspapers in case of national competitive bidding and in one international paper in case of international competitive bidding for prequalification or selection of bidders to undertake the scheme.

- (2) The Authority may allow minimum of fifteen (15) days to the parties for national competitive bidding and thirty (30) days for an international competitive bidding to submit documents.
- (3) The pre-qualification may be according to the procedure stated in Regulation 8 above.
- (4) The Authority shall complete the evaluation process within thirty (30) days of the last date of submission of the documents or as soon as it may be possible thereafter.
- (5) The Authority will issue bidding documents as described in Regulation 9 above.
- (6) In case the Authority is not inclined to carry out the pre-qualification process separately then it may adopt the "Single Stage Three Envelopes" bidding procedure.
- (7) The Authority may hold one or more pre-bid meeting(s) within a reasonable time depending upon the complexity of the scheme but preferably within fifteen (15) days from the date of issuance of bid documents.

- (8) The Authority will give adequate time to the bidders for due diligence, preparation and submission of bids.
- (9) The Authority will complete the technical evaluation process preferably within fifteen (15) days.
- (10) The Authority shall publicly open the financial proposals on the date and time already communicated to the bidders.
- (11) The Authority shall complete the financial evaluation process preferably within fifteen (15) days from the last day fixed for submission of bids and process the case under sub-clauses (5), (6) and (7) of Regulation 14.

19. Negotiated Procurement of Scheme- Notwithstanding anything contained in these Regulations, the Authority may enter into a negotiated procurement of a public private partnership scheme or part thereof, in any one of the following circumstances, namely:

- (1) Where the scheme or part of a scheme is being undertaken on the basis of any Federal Governments bilateral treaty or arrangement; or
- (2) In any other case where the Federal Government authorizes such an exception on the recommendation of the Policy Board in the public interest.

20. Scheme Implementation and Operation.- (1) Before signing the PPP Agreement with the Authority, the private party may establish, without changing its shareholding and subject to conditions set forth in the bidding documents, a special purpose vehicle for implementation and operation of the scheme and such special purpose vehicle shall assume all the rights and obligations of the private party under the PPP Agreement.

- (2) The private party shall prepare a detailed design and implementation plan in accordance with the technical specifications contained in the PPP Agreement, and shall submit these to the Authority for its consent prior to the start of work. The private party shall execute the scheme in accordance with the performance standards and technical specifications contained in the PPP Agreement and the design and implementation plans approved in accordance with the PPP Agreement.

- (3) If required by the Authority:

- (a) to guarantee its performance, of the construction works, the private party shall submit a bond or furnish a bank guarantee, as the Authority may require for an amount specified by the Authority, which shall be valid up to the acceptance of the completed works by the Authority; and

- (b) for schemes which include operation and maintenance by the private party, the private party shall also post or furnish another performance bond or bank guarantee, for an amount specified by the Authority, upon the acceptance of the completed works to guarantee compliance with the operational and maintenance parameters and standards specified in the PPP Agreement.

The PPP Agreement may provide for progressive reduction or adjustment of such performance bond or bank guarantee subject to the satisfactory completion of specified obligations and milestones, by the private party, under the PPP Agreement.

- (4) Within three hundred and sixty five (365) days of the signing of the PPP Agreement or such other period as may be specified in the PPP Agreement, the private party shall achieve financial closure for the scheme.

- (5) The Authority may allow variations in the PPP Agreement during the implementation and operation of the scheme keeping in view *inter alia* the following guidelines:-

- (a) There is no increase in the agreed tariffs except the periodic formula based tariff adjustments, unless the scope of works or performance standards are increased;

- (b) There is no reduction in the scope of works or performance standards, fundamental change in the contractual agreement or extension of the term of the PPP Agreement, except in cases of breach by the Authority of its obligations. Provided, that a reduction in scope of works may be allowed in appropriate circumstances, where the Authority considers it necessary in the public interest, on the basis of practical and/or commercial considerations;

- (c) There is no additional Government guarantee or increase in the financial exposure of a Government or the Authority;

- (d) The variation in the PPP Agreement is necessary due to an unforeseeable event beyond the control of the Authority or the private party.

Provided that the Authority may allow a variation to be made in the PPP Agreement during the implementation and operation of the scheme for any other reason not contained in the above guidelines, in the public interest and for reasons to be recorded in writing.

- (6) The Authority shall monitor and evaluate the scheme during its implementation and operation to ensure its conformity with the plans, specifications, performance standards and user levies set forth in the PPP Agreement, and to assess its outcomes.

21. Setting and Adjustment of User Levies.—(1) The Authority may set the user levies at levels that ensure financial viability of the scheme by fully covering the capital, operation and maintenance costs plus a reasonable rate of return to the private party or the Authority. Provided that the Authority may utilize any other method, in substitution to or in addition to imposition of user levies, to achieve the aforesaid object.

- (2) Notwithstanding anything contained in any other law, the private party will have the right to receive or collect tariffs or payments in accordance with and at the rates set forth in the PPP Agreement, either from end users or from the Authority.

- (3) Unless specified in the bid documents, the Authority will determine the user levies through bidding and the user levies shall be adjusted periodically during the term of the PPP Agreement in accordance with the terms and conditions of the PPP Agreement.

- (4) If the Authority keeps the user levies at lower levels to make the services provided by the scheme affordable to the end users, the Authority will compensate the private party for the difference by making appropriate payments if so agreed in the PPP Agreement.

22. Record of Proceedings.— The Authority shall maintain a record of any proceedings undertaken for the purposes of entering into a PPP Agreement along with all associated documentation for a minimum period of ten (10) years;

23. Transparency.—(1) The Authority shall, immediately upon entering into a PPP Agreement make the evaluation report of the bid, if applicable, and the PPP Agreement public by posting these on the website of the Authority.

- (2) Provided that where the Authority is satisfied that disclosure of any information related to the PPP Agreement is against the public interest or may jeopardize national security, it may in its sole and absolute discretion withhold such information from public disclosure, subject to the prior approval of the Patron.

24. Integrity Pact.—The Authority shall, for every scheme, enter into an integrity pact with the private party along with the PPP Agreement.

25. Transfer of the Scheme.— If a scheme is transferred to the Authority in accordance with the provisions of the PPP Agreement, all the rights granted under the PPP Agreement to the private party in respect of the scheme shall stand transferred to the Authority.

26. Indemnity by the Private Party.—The private party shall indemnify the Authority against any defect in design, construction, maintenance or operation of the scheme and be liable to reimburse all costs, charges, expenses, losses and damages suffered by the Authority or an end user due to any such defect.

27. Recovery of Costs, Dues and Fees.— The Authority may recover any sum due from a private party as arrears of land revenue in accordance with applicable laws.

28. Valuation of Land.— Subject to any specific Regulations that may be prescribed by the Authority in this regard, for the purposes of assessing the value of any land to be provided or procured for a scheme or part of scheme, the Authority shall obtain latest land valuation through at least two (2) reputable land valuers on the panel of Pakistan Bankers Association/State Bank of Pakistan.

29. Protection of Action Taken in Good Faith.—No suit, claim or other legal proceedings shall lie against the Policy Board or the Authority, as the case may be. The Authority or any member, director, officer, servant, adviser or a representative of the Policy Board or Authority in respect of anything done or intended to be done in good faith under these regulations.

30. Extension of Time.— Notwithstanding anything contained in these Regulations, the Authority may in the public interest and for reasons to be recorded in writing extend the timelines for various steps or actions as set out in these Regulations.

31. Dispute resolution.— (1) In case of any dispute between Authority and a private party in relation to or arising out of the PPP Agreement, the parties shall resolve the dispute in the following manner:-

(a) The parties shall first deliberate to achieve a consensus;

(b) If no consensus is achieved, the parties shall settle the dispute in an amicable manner by mediation by an independent and impartial person appointed by the Chairman; and

- (c) If no amicable settlement of the dispute has been reached, the parties shall resolve the dispute by arbitration in the city of Islamabad or any other place, agreed to by the parties, in Pakistan in accordance with the arbitration clause contained in the PPP Agreement and the arbitral award may be enforced in any court of competent jurisdiction.
- (2) The disputes shall be decided in accordance with the laws of Pakistan and pursuant to the Arbitration Act, 1940 (X of 1940), or any amending/repealing law thereof or under any other law as may be specified in the PPP Agreement.

[No. F.1(8)/2020/Mgmt/NAPHDA].

**HAFIZ SHAHZAD MASOOD,
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