

S. R. O. _____/2022.- In exercise of the powers conferred under Section 29 of the Balochistan Public Private Partnership Act, 2021, the Government of Balochistan, with the recommendation of the PPP Board, hereby makes the following rules:

Balochistan Public Private Partnership Rules, 2022

- 1. Short Title and Commencement–** (1) These rules shall be called the Balochistan Public Private Partnership Rules, 2022.
- (2) They shall come into force at once.

PART I GENERAL PROVISIONS

- 2. Definitions–** (1) In these Rules, unless there is anything repugnant in the subject or context–
 - (a) **“Applicant”** means a Private Party who has submitted a Pre-Qualification Application in respect of a Pre-Qualification Process;
 - (b) **“Balochistan Public Procurement Regulatory Authority”** means the Balochistan Public Procurement Regulatory Authority established under the Balochistan Public Procurement Regulatory Authority Act, 2009 (Act No. 8 of 2009), as may be amended, modified, supplemented or re-enacted from time to time;
 - (c) **“Best Evaluated Bid”** means the Bid, which attains the highest score under the criteria laid down in Rule 22, read with the respective Bidding Documents;
 - (d) **“Bid”** has the meaning given to it in Section 2(1)(c) of the PPP Act;
 - (e) **“Bid Evaluation Report”** means the bid evaluation report prepared in accordance with Rule 27;
 - (f) **“Bidder(s)”** has the meaning given to it in Section 2(1)(d) of the PPP Act;
 - (g) **“Bidding Documents”** means the documents issued by the Implementing Agency for preparation and submission of Bids as per the requirements set out in Rule 15, as approved by the PPP Board for a Project;
 - (h) **“Bidding Process”** means the procedure under which Bids are invited, received, examined and evaluated for the purpose of selecting a Successful Bidder for a Project, in terms of these Rules and the Bidding Documents;
 - (i) **“Bid Security”** means a security in the form of a bank guarantee issued by a scheduled bank in Pakistan or from a foreign bank duly counter guaranteed by a scheduled bank in Pakistan in favour of the Implementing Agency, valid for a period of 28 days beyond the Bid validity date;
 - (j) **“Complaint Redressal Committee”** means a committee constituted pursuant to the guidelines prescribed by the PPP Board, with appropriate powers and authorizations, to address complaints of Applicants or Bidders, as the case may be, that may arise during the Pre-Qualification Process or the Bidding Process, as applicable, for a Project;

- (k) **“Complaint Review Committee”** means a complaint review committee constituted pursuant to the guidelines prescribed by the PPP Board, with appropriate powers and authorizations, to hear appeals from the decisions of, *inter alia*, the Implementing Agency with regards to blacklisting of Private Parties in terms of these Rules;
- (l) **“Concessionaire”** has the meaning given to it in Section 2(1)(e) of the PPP Act;
- (m) **“Concession Period”** means the period of time specified in the PPP Agreement, during which, the Concessionaire is obligated to perform its obligations under the PPP Agreement;
- (n) **“Consortium”** means an Applicant or a Bidder, comprised of two or more persons and formed in accordance with the requirements of the Prequalification Documents or the Bidding Documents, as the case may be, to submit a Prequalification Application or a Bid in relation to a Project;
- (o) **“Corrupt and Fraudulent Practices”** includes:
- (i) the offering, giving, receiving or soliciting of anything of value to influence the actions of a public official in the Pre-Qualification Process, the Bidding Process or in the execution of a PPP Agreement, to the detriment of the Implementing Agency; or
 - (ii) misrepresentation of facts in order to influence a Pre-Qualification Process, Bidding Process or the execution of a PPP Agreement; or
 - (iii) collusive practices among Applicants or Bidders (prior to or after Pre-Qualification Application or Bid submission, as the case may be) designed to establish the Bid prices at artificial and non-competitive levels and to deprive the Implementing Agencies of the benefits of free and open competition; or
 - (iv) any request for, or solicitation of, anything of value by any public official in the course of the exercise of their duty in relation to a Project;
- (p) **“Government”** means the Government of Balochistan;
- (q) **“Government Agency”** has the meaning given to it in Section 2(1)(h) of the PPP Act;
- (r) **“Government Support”** means the Government support for a Project, as applicable, in terms of Section 17 of the PPP Act;
- (s) **“Implementing Agency”** has the meaning given to it in Section 2(1)(i) of the PPP Act;
- (t) **“Initiator”** means any person or entity submitting an Unsolicited Proposal;
- (u) **“Letter of Award”** means the letter of award issued by the Implementing Agency to the Successful Bidder in accordance with Rule 31;

- (v) **“Multilateral Financial Institutions”** has the meaning given to it in Section 2(1)(l) of the PPP Act;
- (w) **“Multilateral Institution”** means a multilateral institution, including Multilateral Financial Institutions, to be engaged by the PPP Authority in terms of the PPP Act and these Rules for the provisions of transaction advisory services for Projects;
- (x) **“Negotiation Committee”** has the meaning given to it in Section 2(1)(m) of the PPP Act;
- (y) **“PDF”** or **“Project Development Facility”** means the project development facility, established under Section 20 of the PPP Act;
- (z) **“PDF Funding”** means the funding from the PDF to the PPP Authority for engagement of transaction advisers for provision of transaction advisory services in respect of a Project;
- (aa) **“PPP”** or **“Public Private Partnership”** has the meaning given to it in Section 2(1)(t) of the PPP Act;
- (bb) **“PPP Act”** means the Balochistan Public Private Partnership Act, 2021 (Act No. XXV of 2021);
- (cc) **“PPP Agreement”** has the meaning given to the term *“Public Private Partnership Agreements”* in Section 2(1)(u) of the PPP Act;
- (dd) **“PPP Authority”** has the meaning given to the term *“Public Private Partnership Authority”* in Section 2(1)(v) of the PPP Act;
- (ee) **“PPP Board”** has the meaning given to it in Section 2(1)(p) of the PPP Act;
- (ff) **“PPP Unit”** has the meaning given to it in Section 2(1)(q) of the PPP Act;
- (gg) **“Pre-Qualification Application”** means the pre-qualification application submitted by an Applicant in response to the Pre-Qualification Documents;
- (hh) **“Pre-Qualification Documents”** means the documents issued by the Implementing Agency for pre-qualification of potential Bidders for a Project, in accordance with these Rules;
- (ii) **“Pre-Qualification Process”** means the procedure under which Pre-Qualification Applications are invited, received, examined and evaluated for the purpose of pre-qualification of potential Bidders for a Project, in terms of these Rules and the Pre-Qualification Documents;
- (jj) **“Private Party”** means a person who is eligible to submit Pre-Qualification Application or a Bid for a Project in terms of the Pre-Qualification Documents or the Bidding Documents, as the case may be, and includes an Applicant and a Bidder, as the case may be;
- (kk) **“Project”** has the meaning given to it in Section 2(1)(r) of the PPP Act;

- (ll) **“Project Proposal”** means the Project proposal prepared by an Implementing Agency for a Project, in accordance with the terms of the PPP Act read with any rules, regulations and guidelines prepared thereunder, and includes an Unsolicited Proposal;
- (mm) **“Province”** means the Balochistan Province;
- (nn) **“Rules”** means these Balochistan Public Private Partnership Rules, 2022;
- (oo) **“Successful Bidder”** means the Bidder whose Bid is determined to be the Best Evaluated Bid, as per these Rules and requirements of the Bidding Documents;
- (pp) **“Unsolicited Proposal”** has the meaning given to it in Section 2(1)(y) of the PPP Act;
- (qq) **“User Charges”** means the charges the Concessionaire is permitted to charge the end-users or consumers in connection with the performance of its obligations in respect of services provided under a PPP Agreement;
- (rr) **“Value For Money”** means that the development of a project in PPP mode provides value for money in comparison to traditional public procurement or any other mode of development in terms of, *inter alia*, quality, timeliness, reliability, up-gradeability, price, source and the combination of whole-life cost and quality to meet the Implementing Agency’s requirements;
- (ss) **“VGF”** means the viability gap fund established by the Finance Department of the Government under Section 19 of the PPP Act; and
- (tt) **“Schedule”** means a schedule appended with these rules.

(2) The expressions used but not defined in these Rules shall have the same meanings as are assigned to them in the PPP Act.

3. Scope and Applicability– (1) Save as otherwise provided in the PPP Act, these Rules shall apply to all Projects carried out by Implementing Agencies, within or outside the Province, for the selection of Private Party upon the approval of a Project Proposal in terms of the PPP Act.

(2) Unless otherwise decided by the PPP Board in terms of Section 31(3) of the PPP Act, a project with a total estimated cost of PKR 300 million or less, may be processed by a Government Agency as per the applicable laws.

4. Principles of Competitive Bidding– An Implementing Agency, before entering into a PPP Agreement, shall ensure that the Pre-Qualification Process or the Bidding Process, as the case may be, is conducted in a fair and transparent manner, the object of engagement of Private Party brings Value For Money to the Implementing Agency and the Government, as the case may be, and the Pre-Qualification Process or the Bidding Process, as the case may be, is efficient and economical.

5. Language–All communication and documentation relating to the Pre-Qualification Process and the Bidding Process, as the case may be, including notice inviting Prequalification Applications and notice inviting Bids, shall be either in Urdu or English or in both.

PART II ADVERTISEMENTS

6. Methods of Advertisement– (1) Subject to sub-rule 19 of Rule 9, a notice inviting Pre-Qualification Applications or Bids for a Project, as the case may be, shall be advertised through the following means:

- (a) for both national and international competitive bidding, on the websites of the PPP Authority, the PPP Unit, the relevant Government Agency (if applicable) and/or the Balochistan Public Procurement Regulatory Authority;
- (b) for national competitive bidding, in at least two (2) widely circulated local English language and Urdu language national newspapers; and
- (c) for international competitive bidding, in at least two (2) widely circulated local English language newspapers, and shall also be placed in at least one (1) international magazine, newspaper or international journal of repute having wide international circulation.

(2) In addition to the requirements stated in sub-rule (1), in cases where a Government Agency is the Implementing Agency and it has its own website, it may also post all advertisements inviting Pre-Qualification Applications or Bids for a Project on such website.

(3) The notice inviting Pre-Qualification Applications or Bids shall contain the following information:

- (a) name, postal address, telephone number and email address of the Implementing Agency;
- (b) purpose and scope of the Project;
- (c) schedule of availability of Pre-Qualification Documents or the Bidding Documents; place from where Pre-Qualification Documents or the Bidding Documents would be procured, submitted and opened; and time for submission and opening of Pre-Qualification Applications or Bids;
- (d) amount and manner of the payment of any fee (if applicable);
- (e) in case of notice inviting Bids, amount and manner of submitting the Bid Security; and
- (f) any other information that the Implementing Agency may deem appropriate to disclose in the said notice.

(4) The Implementing Agency utilizing electronic media shall ensure that the information posted on the website is complete for the purposes for which it has been posted and contains all the information specified in sub-rule (3) above, and such information shall remain available on that website until the closing date for the submission of Pre-Qualification Applications or Bids.

7. Response Time– (1) The Implementing Agency may decide the response time for receipt of Pre-Qualification Applications or Bids (as the case may be), keeping in view Project’s nature, scope and magnitude. However, under no circumstances, shall the response time be less than [fifteen (15) days] for national competitive bidding, and [thirty (30) days] for international competitive bidding, from the date of publication of the advertisement of notice.

(2) The response time shall be calculated from the date of first publication of the advertisement in a newspaper or posting on a website, as the case may be, whichever is later.

(3) In situations where publication of such advertisements or notices has occurred in both electronic and print media, the response time shall be calculated from the date of its first publication in the printed newspapers.

PART III PRE-QUALIFICATION, QUALIFICATION AND DIS-QUALIFICATION

8. Pre-qualification– (1) An Implementing Agency, prior to conducting Bidding Process, may engage in pre-qualification of interested parties to ensure that only the Applicants having adequate financial, technical, managerial and legal capacity to undertake the Project are invited to participate in the Bidding Process.

(2) Pre-qualification of Applicants shall be based entirely upon the capability, competence and resources of the Applicants relevant to performance of works and services for a particular Project, taking into account (at minimum) the following:

(a) relevant experience and past performance;

(b) financial position;

(c) appropriate managerial capability; and

(d) any other factor, not inconsistent with these Rules, that an Implementing Agency may deem relevant.

(3) The Pre-Qualification Process carried out for a Project shall be applicable only to that particular Project.

9. Pre-Qualification Process– (1) The Implementing Agency engaging in the Pre-Qualification Process, shall specify in the Pre-Qualification Documents, all information required for pre-qualification, including instructions for preparation and submission of Pre-Qualification Applications, evaluation criteria, list of documentary evidence required from Applicants to demonstrate their respective qualifications and any other information that the Implementing Agency deems necessary for pre-qualification.

(2) The Implementing Agency shall provide a set of Pre-Qualification Documents to any interested party on request, and subject to payment of a fee (if any) as determined by the PPP Authority.

(3) An interested party, who has obtained Pre-Qualification Documents in accordance with the requirements specified in the notice inviting Pre-Qualification Applications, may request for clarification of contents of the Pre-Qualification Documents in writing, and the Implementing Agency shall respond to such queries in writing within [five (5)] days, provided they are received at least [seven (7)] days prior to the date of opening of Pre-Qualification Applications;

Provided that any clarification in response to a query by an Applicant shall be communicated to all parties who have obtained Pre-Qualification Documents and such clarifications shall be published on the relevant website of the Implementing Agency.

To provide clarifications to prospective Applicants and to discuss the terms and conditions of the Pre-Qualification Documents, the Implementing Agency shall, within such period as is deemed reasonable, conduct one or more conferences with the prospective Applicants and may, if necessary, issue an addendum or corrigendum to the Pre-Qualification Documents within a reasonable time period that allows sufficient time to complete and submit the Pre-Qualification Applications by the Pre-Qualification Applications submission date.

(4) The Implementing Agency shall re-issue the Pre-Qualification Documents, in accordance with these Rules, if it is convinced that there is a material infirmity or ambiguity in the Pre-Qualification Documents, which cannot be addressed without modifying the contents of Pre-Qualification Documents or through a clarification. In case of an amendment to Pre-Qualification Documents, the Implementing Agency shall advertise such amendment in a manner similar to the original advertisement, giving such revised timelines for submission of Pre-Qualification Applications as it may deem appropriate.

(5) The date for opening of Pre-Qualification Applications and the last date for the submission of Pre-Qualification Applications shall be the same, as specified in the Pre-Qualification Documents.

(6) The Pre-Qualification Applications shall be opened within one (1) hour of the deadline for submission of Pre-Qualification Applications. All Bids shall be opened publicly in the presence of all the Applicants, or their representatives, who may choose to be present in person, at the time and place announced in the notice inviting Pre-Qualification Applications.

(7) The Implementing Agency shall read aloud the names of the Applicants along with any other information as it may be deemed appropriate, and such information shall be recorded. All Applicants in attendance shall sign an attendance sheet.

(8) Pre-Qualification Applications submitted after the time prescribed in the notice inviting Pre-Qualification Applications, as well as those not opened and read out at the opening of the Pre-Qualification Applications due to any procedural flaw, shall not be considered, and shall be returned without being opened.

(9) The Implementing Agency shall issue the minutes of the opening of the Pre-Qualification Applications and shall also mention over-writing or cutting, if any.

(10) All Pre-Qualification Applications shall be evaluated in accordance with the evaluation and qualification criteria and other terms and conditions set forth in the Pre-Qualification Documents. Conditional Pre-Qualification Applications shall not be entertained by the Implementing Agency.

(11) Within thirty (30) days, or such time period as may be determined by the PPP Authority, from the date of submission of the Pre-Qualification Applications by the Applicants, the Implementing Agency shall evaluate the Pre-Qualification Applications and all documents submitted therewith, to examine whether the Applicants fulfill the criteria for pre-qualification as laid down in the Pre-Qualification Documents.

(12) No Applicant shall be allowed to alter or modify its Pre-Qualification Application after the Pre-Qualification Applications have been opened. However, the Implementing Agency may seek and accept clarifications and any information or document relating to the Pre-Qualification Applications that do not change the substance of the submitted Pre-Qualification Applications. Any request for clarification to the Pre-Qualification Applications, made by the Implementing Agency, shall invariably be in writing. The response to such a request shall also be in writing and the same shall constitute part of the Pre-Qualification Applications.

(13) The Implementing Agency may verify the information provided by the Applicants in the Pre-Qualification Applications. In case the information is found to be wrong or incorrect in any material way or the Applicant is found to be lacking in the capability or resources to successfully perform the relevant works and / or services in terms of the Pre-Qualification Documents, the Applicant shall not be pre-qualified.

(14) An Applicant may be conditionally pre-qualified, if in the opinion of the Implementing Agency, the Pre-Qualification Application has minor flaws or deficiencies, as determined by the Implementing Agency, in meeting one or more requirements of the Pre-Qualification Documents that can be easily redressed before the deadline for submission of Bids, with the prior approval of the Executive Committee. In such cases the participation of the Applicant in the Bidding Process shall be conditional on its meeting the requirements imposed on it in the “*conditional pre-qualification*”.

(15) The Implementing Agency shall announce the result of pre-qualification on the websites of the PPP Authority, the Government Agency, the PPP Unit and [the Balochistan Public Procurement Regulatory Authority]. The Implementing Agency shall also promptly notify each Applicant, whether or not it has been pre-qualified. The Implementing Agency shall communicate to those Applicants who have not been pre-qualified, the reasons for not pre-qualifying them, though it shall not be obliged to justify such reasons.

(16) An Applicant that is pre-qualified, conditionally or otherwise, shall be required to comply with any additional requirements stated in the Bidding Documents.

(17) If less than three (3) Applicants are pre-qualified for a Project, the Implementing Agency may, after analyzing and recording the reasons for such response, proceed to bidding, or may revise Project structuring, subject to the approval of the PPP Board, and reinitiate the Pre-Qualification Process.

(18) The Implementing Agency shall make available to any Applicant, upon request, the names of all the Applicants who have been pre-qualified. Only Applicants who have been pre-qualified or conditionally pre-qualified shall be entitled to participate further in the Bidding Process.

(19) If a Pre-Qualification Process has been conducted, the provisions of Rule 6 shall not apply with respect to issuance and advertising of notices for inviting Bids and the Bidding Documents shall be made available to the Applicants that are pre-qualified or conditionally pre-qualified only, subject to payment of a fee (if any) as determined by the PPP Board.

(20) The Pre-Qualification Process shall be valid for a period as may be determined by the Implementing Agency.

10. Requirements regarding shareholding– (1) The requirements with respect to maintenance of shareholding in the Concessionaire shall be specified in the Pre-Qualification Documents or the Bidding Documents. After signing of the PPP Agreement, in the event of any non-compliance with the shareholding requirements, the Implementation Agency shall proceed in accordance with terms of the PPP Agreement.

(2) In case an Applicant or a Bidder (as the case may be) is a Consortium, its members and their roles and proposed shareholding shall be disclosed at the pre-qualification stage (if a Pre-Qualification Process is conducted) or the bidding stage and the Consortium members shall be required to comply with the shareholding requirements specified in the Pre-Qualification Documents or the Bidding Documents, as the case may be.

(3) Any change in the shareholding amongst the Consortium members shall also be subject to approval of the Implementing Agency.

(4) If an Applicant or a Bidder (including any Consortium members, in case of a Consortium) fails to comply with the requirement of this Rule 10, the Applicant or a Bidder shall be disqualified from the Pre-Qualification Process and the Bidding Process, as the case may be, and if applicable, the award of Project to the Bidder (if it is the Successful Bidder) shall be cancelled by the Implementing Agency.

11. Qualification– An Implementing Agency, at any stage of the Pre-Qualification Process or the Bidding Process, as the case may be, having credible reasons for, or prima facie evidence of, any defect in the Private Parties' capacities, may require the Private Parties to provide information concerning their professional, technical, financial, legal or managerial competence, whether already pre-qualified or not.

Provided that such qualification shall only be laid down after recording reasons thereof in writing. Such reasoning shall form a part of the records of that Pre-Qualification Process or the Bidding Process, as the case may be.

12. Disqualification– (1) The Implementing Agency shall disqualify a Private Party from the Pre-Qualification Process or the Bidding Process, as the case may be, if it finds, at any time, that:

- (a) any information submitted by the Private Party was false and materially inaccurate or was incomplete;
- (b) the Private Party is engaged in Corrupt and Fraudulent Practices; or

(c) the Private Party has participated in more than one Pre-Qualification Application during the Pre-Qualification Process or the Bid during the Bidding Process, either individually or as part of a Consortium.

(2) A Private Party shall not be considered to be in a conflict of interest with another Private Party, if such Private Parties are the subsidiaries of a common parent company or one Private Party is the parent company of the other Private Party, provided that the following conditions are satisfied:

(i) such parent company is a sovereign state or a sovereign state-owned enterprise;

(ii) the sovereign state, sovereign state-owned enterprise and the relevant subsidiaries of the sovereign and / or sovereign state-owned enterprise participating in the Pre-Qualification Process or the Bidding Process (as the case may be) conduct their business operations on an independent basis, are independent legal persons, have independent management and boards and are free from each other's financial obligations including independent auditing and accounting; and

(iii) such Private Party has provided a legal opinion duly issued by a reputable, qualified legal counsel in its jurisdiction of incorporation confirming (i) and (ii) above.

(3) The circumstances provided above which may constitute a conflict of interest are not exhaustive, and the Implementing Agency shall be the sole determinant of when a conflict of interest shall arise.

(4) In the event the Implementing Agency becomes cognizant of such misrepresentation after the signing of the PPP Agreement, it shall proceed in accordance with the terms of the PPP Agreement.

13. Blacklisting of Private Parties– (1) The following events shall result in blacklisting of Private Parties who have participated in the Pre-Qualification Process or the Bidding Process, either individually or collectively as part of Consortium:

(a) conviction for fraud, corruption, criminal misappropriation, theft, forgery, bribery or any other criminal offence;

(b) involvement in Corrupt and Fraudulent Practices for the award of a Project;

(c) final decision by a court or tribunal of competent jurisdiction that the Private Party is guilty of tax evasion;

(d) failure to remedy underperforming contract(s) in which Implementing Agency has been involved, where underperforming is due to the fault of the Private Party.

(2) The Implementing Agency may, on its own motion, or upon information provided by any party, carry out an investigation to determine, whether there is sufficient cause for blacklisting a Private Party. If the Implementing Agency is satisfied that such a cause exists, it shall initiate the process of blacklisting in accordance with the procedure set out in Schedule-I to these Rules.

(3) As a result of the scrutiny process, as mentioned above in sub-rule (2), the Implementing Agency may decide to either blacklist the Private Party, or to debar it for a specified time or may require the Private Party to take the specified remedial actions within a specified time period failing which the Private Party may be blacklisted.

Provided that the Implementing Agency shall duly publicize and communicate its decision to the PPP Authority, the PPP Unit, the PPP Board and the Government departments, and also post it on its own website.

(4) The Private Party may file a review petition before the [Complaint Review Committee] within thirty (30) days of communication of the decision of the Implementing Agency after depositing the prescribed fee as notified by the [PPP Board] from time to time, and the [Complaint Review Committee] shall evaluate the case and decide within ninety (90) days of filing of review petition. The decision of the [Complaint Review Committee] shall be considered as final.

PART IV METHODS OF PROCUREMENT

14. Submission of Bids– (1) The Bids shall be submitted in a sealed package or packages in such manner that the contents are fully enclosed and cannot be known until duly opened, as per the requirements specified in the Bidding Documents.

(2) Conditional Bids shall not be entertained by the Implementing Agency.

15. Bidding Documents– (1) Implementing Agencies shall formulate precise and unambiguous Bidding Documents that shall be made available to the Bidders immediately after the publication of the invitation to Bid.

(2) The Bidding Documents shall include (at minimum) the following information:

- (a) invitation to Bid;
- (b) instructions to Bidders;
- (c) data sheet containing information about the Project;
- (d) evaluation criteria;
- (e) drafts of the relevant PPP Agreement(s), as determined by the Implementing Agency;
- (f) specifications and drawings or performance criteria (where applicable);
- (g) minimum design and performance standards and specifications;
- (h) land and economic parameters (as applicable);

- (i) amount and format of all securities required (where applicable);
- (j) monetary rules and regulations governing foreign exchange remittances, if applicable;
- (k) revenue sharing arrangements, if applicable;
- (l) expected commissioning date;
- (m) manner of Government Support (if any) being provided for the Project;
- (n) minimum design and performance standards or specifications for the proposed Project, including applicable environmental standards;
- (o) economic and financial parameters, among others, such as:
 - (i) discount rate and foreign exchange rate as prescribed by the Government of Balochistan or the Federal Government (as the case maybe), where applicable;
 - (ii) maximum period for construction of the Project;
 - (iii) fixed term or variable term for operation of the Project and collection of User Charges (where applicable) as authorized or approved by the Government;
- (p) other financial features embedded in the Project to enhance its Value for Money;
- (q) success fee (if any) along with PDF reimbursement fee or fee to be reimbursed to the Initiator in case of an Unsolicited Proposal; and
- (r) any other details or documents, not inconsistent with these Rules, that the Implementing Agency may deem necessary.

(3) The instructions to Bidders shall, as far as necessary and practicable, include but not be limited to the following information:

- (a) general description and objectives of the Project;
- (b) Bid submission procedures and requirements, which shall include information on the manner, place, date and time for submission of Bids and permissible mode of transmission of Bid;
- (c) manner, place, date and time for opening of Bids;
- (d) Bid validity period;

- (e) method and criteria, including the minimum amount and form of equity, for the evaluation of the Bids;
- (f) formulas and indices to be used in the adjustments of User Charges, availability and other payments, where applicable;
- (g) requirements of concerned regulatory bodies, if any; and
- (h) any other information that the Implementing Agency may deem necessary.

(4) Any information that becomes necessary for bidding or for Bid evaluation after the issuance of the Bidding Documents, shall be provided by the Implementing Agency in a timely manner and on an equal opportunity basis. Furthermore, where notification of any change, addition, modification or deletion to the Bidding Documents becomes essential, such notification shall be communicated by the Implementing Agency to all prospective Bidders who have procured the Bidding Documents as per the requirements specified in the notice inviting Bids, without having to be re-advertised in a manner similar to the original advertisement.

(5) The Implementing Agency shall provide a set of Bidding Documents to any prospective Bidder, on request, or where a Pre-Qualification Process has been conducted, to the pre-qualified Applicant (as the case maybe) and subject to payment of a fee (if any) as determined by the PPP Board. For the purpose of this Rule 15(4), fee means the cost of printing and providing the Bidding Documents only.

(6) To provide clarifications to prospective Bidders and to discuss the terms and conditions of the Bidding Documents, including the PPP Agreement(s), the Implementing Agency shall, within such period as is deemed reasonable, conduct one or more pre-bid meetings with the prospective Bidders and may, if necessary, issue an addendum or corrigendum to the Bidding Documents within a reasonable time period that allows sufficient time to complete and submit the Bids by the Bid submission date.

(7) A prospective Bidder, who has obtained Bidding Documents as per the manner specified in the notice inviting Bids, may request for clarification of contents of the Bidding Document in writing, and Implementing Agency shall respond to such queries in writing within [five (5)] days, provided they are received at least [seven (7)] days prior to the date of opening of Bids. Any clarification in response to a query by any Bidder shall be communicated to all parties who have obtained Bidding Documents.

(8) The Implementing Agency shall re-issue the notice inviting Bids and the revised Bidding Documents, in accordance with these Rules, if it is convinced that there is a material infirmity or ambiguity in the Bidding Documents, which cannot be addressed without modifying the contents of Bidding Documents or through clarifications.

16. Reservations– Implementing Agencies shall allow all prospective Bidders to participate in the Bidding Process without regard to nationality, except in cases in which any Implementing Agency decides to limit such participation to national Bidders only, or the Bidders which are incorporated in countries with whom Pakistan has trade relations, and prohibit participation of Bidders of some nationalities, [in accordance with the policy of the Government].

17. Bid Security– (1) A Bidder, at the time of bidding, shall deposit with the Implementing Agency the Bid Security equivalent to the amount as determined by the Implementing Agency.

(2) The Implementing Agency shall, within thirty (30) days after the award of the PPP Agreement, return the Bid Security to all unsuccessful Bidders.

(3) The Implementing Agency may forfeit Bid Security of the Bidder (including the Successful Bidder, as may be applicable) if it, after the prescribed time period within the Bidding Documents:

- (a) fails to furnish the performance guarantee;
- (b) fails to sign the PPP Agreement within the time period specified in the Bidding Documents;
- (c) withdraws its Bid during the Bid validity period; and / or
- (d) due to any other event as may be specified in the Bidding Documents.

18. Bid Validity– (1) An Implementing Agency, keeping in view the nature of the Bidding Process, shall subject the Bid to a Bid validity period.

(2) Bids shall be valid for the period specified in the Bidding Documents, provided that such period shall not be more than 90 days in case of national competitive bidding and 120 days in case of international competitive bidding.

(3) The Implementing Agency shall ordinarily be under an obligation to process and evaluate the Bids within the stipulated Bid validity period. However, under exceptional circumstances and for reasons to be recorded in writing, if an extension is considered necessary, all those who have submitted their Bids shall be asked to extend their respective Bid validity period. Such extension shall not be for more time than the original Bid validity period.

(4) Bidders who-

- (a) agree to the extension of their Bid validity period shall also extend the validity of the Bid Security for the extended period of the Bid validity;
- (b) agree to the Implementing Agency's request for extension of Bid validity period shall not be permitted to change the substance of their Bids;
- (c) do not agree to an extension of the Bid validity period shall be allowed to withdraw their Bids without forfeiture of their Bid securities.

19. Extension of Time for Submission of Bids– Where an Implementing Agency has already prescribed a deadline for the submission of Bids and due to any reason, the Implementing Agency finds it necessary to extend such deadline, it shall do so only in an equal opportunity manner and after recording its reasons in writing. Advertisement of such extension in time shall be done in a manner similar to the original advertisement.

PART V
OPENING, EVALUATION AND REJECTION OF BIDS

20. Opening of Bids– (1) The date for opening of Bids and the last date for the submission of Bids shall be the same, as specified in the Bidding Documents.

(2) The technical proposal shall be opened within one (1) hour of the deadline for submission of Bids.

(3) All proposals shall be opened publicly in the presence of all the Bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to Bid.

(4) The Implementing Agency shall read aloud the names of the Bidder, the Bid price, in case of financial proposals, and any other information as may be deemed appropriate by the Implementing Agency, and such information shall be recorded.

(5) All Bidders in attendance shall sign an attendance sheet.

(6) All Bids submitted after the time prescribed in the Bidding Documents as well as those not opened and read out at the opening of the Bids due to any procedural flaw, shall not be considered, and shall be returned without being opened.

(7) The Implementing Agency shall issue the minutes of the opening of the Bids and shall also mention over-writing or cutting, if any.

21. Evaluation Criteria– (1) All Bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the Bidding Documents.

(2) The Implementing Agency shall assess the Bids according to the requirements, criteria, minimum standards and basic parameters specified in the Bidding Documents, and shall reject Bids that are not viable or non-responsive in terms of the foregoing.

(3) The Best Evaluated Bid shall be determined based on the following criteria:

(a) lowest proposed tariff, toll, fee or charge at the start of operation of the Project if a parametric formula for periodical tariff adjustment is specified in the Bidding Documents;

(b) lowest present value of the proposed tariffs, tolls, fees and charges for the Concession Period if there is no such formula;

(c) lowest present value of availability or other payments for services and goods rendered that are payable by the Government;

(d) lowest present value of Government subsidy to be provided for the Concession Period;

- (e) highest present value of the proposed payments to the Government, such as concession fees, lease or rental payments, fixed or guaranteed payments or variable payments and percentage shares of revenues for the Concession Period; or
- (f) such other parameters as are determined by the PPP Board in the Bidding Documents on the recommendation of the Implementing Agency or the PPP Unit.

(4) The Implementing Agency shall announce the result of the Bidding Process on the websites of the PPP Authority, the relevant Government Agency, the PPP Unit and/or the Balochistan Public Procurement Regulatory Authority and issue a notice for execution of PPP Agreement to the Successful Bidder within [thirty (30) days] of the Bid evaluation.

(5) After the execution of a PPP Agreement, the Concessionaire shall prepare and submit biannual progress reports regarding status of the Project to the Implementing Agency.

22. Evaluation of Bids– (1) All Bids shall be evaluated in accordance with the evaluation criteria provided in Rule 21, and other terms and conditions set forth in the Bidding Documents.

(2) For the purpose of comparison of Bids quoted in different currencies, price shall be converted into a single currency specified in the Bidding Documents. The rate of exchange shall be the selling rate prevailing seven (7) working days before the date of opening of the Bids specified in the Bidding Documents, as notified by the State Bank of Pakistan.

(3) A Bid once opened in accordance with the prescribed procedure shall be subject to only those rules, regulations and policies that are in force at the time of issuance of the Bidding Documents.

23. Clarification of Bids– (1) No Bidder shall be allowed to alter or modify its Bid after the Bids have been opened. However, the Implementing Agency may seek and accept clarifications to the Bid that do not change the substance of the Bid.

(2) Any request for clarification to the Bid, made by the Implementing Agency, shall invariably be in writing. The response to such a request shall also be in writing.

24. Discriminatory Conditions– Save as otherwise provided, no Implementing Agency shall introduce any condition, which discriminates among Bidders. In ascertaining the discriminatory nature of any condition, reference shall be made to the ordinary practices of that sector, trade, business or service to which that particular Project is related.

25. Rejection of All Bids– (1) The Implementing Agency may reject all Bids at any time prior to the acceptance of a Bid. The Implementing Agency shall, upon request, communicate to any Bidder who submitted a Bid, the grounds for its rejection of all Bids, but is not required to justify those grounds. In the event of rejection of all Bids pursuant to this Rule, where Pre-Qualification Process has been conducted, the Implementing Agency shall not be required to reconduct the Pre-Qualification Process, provided that the validity period of the Pre-Qualification Process has not expired.

(2) The Implementing Agency shall incur no liability, solely by virtue of its invoking rule 25(1) towards Bidders who have submitted Bids.

(3) Notice of the rejection of all Bids shall be given promptly to all Bidders, [either electronically or physically].

26. Re-bidding– (1) If the Implementing Agency has rejected all Bids under Rule 25, it may call for a re-bidding.

(2) The Implementing Agency, before issuing an invitation for re-bidding, shall assess the reasons for such rejection and may revise specifications, evaluation criteria or any other condition for Bidders as it may deem necessary.

(3) Notwithstanding the aforesaid, prior to rejecting all Bids under Rule 25, in the event the financial Bids have been opened and the Implementing Agency has valid reasons, to be recorded in writing, that the financial offers are not providing the best Value for Money or require revisions, the Implementing Agency may invite sealed revised financial Bids from all qualified Bidders.

27. Announcement of Bid Evaluation Report– Subject to Section 13(2) of the PPP Act, an Implementing Agency shall prepare a Bid Evaluation Report to announce the results of Bid evaluation, giving justification for acceptance or rejection of Bids received for a Project. The Bid Evaluation Report shall be released at least ten (10) days prior to the issuance of the Letter of Award for a Project.

28. Procedures of Competitive Bidding– Save as otherwise provided in these rules, the following procedures shall be permissible for competitive bidding, namely:

(a) Single Stage – Two Envelope Procedure:

- (i) the Bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the technical proposal and the financial proposal;
- (ii) the envelopes shall be marked as “TECHNICAL PROPOSAL” and “FINANCIAL PROPOSAL” in bold and legible letters to avoid confusion;
- (iii) initially, only the envelope marked as “TECHNICAL PROPOSAL” shall be opened;
- (iv) the envelope marked as “FINANCIAL PROPOSAL” shall be retained in the custody of the Implementing Agency without being opened;
- (v) the Implementing Agency shall evaluate the technical proposal in a manner prescribed in the Bidding Documents, without reference to the price and reject any proposal which does not conform to the specified technical requirements;
- (vi) no amendments in the technical proposal shall be permitted during the technical evaluation;
- (vii) the financial proposals of technically qualified Bids shall be opened publicly at a time, date and venue announced and communicated to the Bidders in advance, in the presence of those Bidders who choose to be present for the proceedings, but the procedure shall not be vitiated for the reason that a Bidder, although invited, failed to participate in the proceedings;

- (viii) the financial proposal of Bidders found technically non-responsive shall be returned unopened to the respective Bidders; and
- (ix) the Bid found to be the Best Evaluated Bid shall be accepted.

(b) Single Stage - Three Envelope Bidding Procedure:

- (i) the Bid shall comprise a single package containing three separate envelopes, two containing separately the technical and the financial proposals, and third one shall contain Pre-Qualification Application as required in the Bidding Documents;
- (ii) the envelopes shall be marked as “PRE-QUALIFICATION”, “TECHNICAL PROPOSAL” and “FINANCIAL PROPOSAL”;
- (iii) initially, the envelope marked as “PRE-QUALIFICATION” shall be opened;
- (iv) the envelopes marked as “TECHNICAL PROPOSAL” and “FINANCIAL PROPOSAL” shall be retained in the custody of the Implementing Agency without being opened;
- (v) the Implementing Agency shall evaluate the Pre-Qualification Applications in a manner prescribed in advance and shall reject any proposal which does not conform to the specified pre-qualification requirements;
- (vi) after submission of the proposals, the Implementing Agency shall not permit any amendment in the Pre-Qualification Applications, technical or financial proposals;
- (vii) after pre-qualifying the Bidders, the Implementing Agency shall return unopened the envelopes containing the technical and financial proposals to the Bidders who fail to pre-qualify. Conditional pre-qualification shall not be permitted in the Single Stage - Three Envelope Bidding Procedure;
- (viii) subsequent to pre-qualification of Bidders, the Implementing Agency shall open the envelopes marked as “TECHNICAL PROPOSAL” of the pre-qualified Bidders at the given time and date, in the presence of those pre-qualified Bidders who choose to be present for the proceedings, but the procedure shall not be vitiated for the reason that a pre-qualified Bidder, although invited, failed to participate in the proceedings;
- (ix) the Implementing Agency shall evaluate the technical proposal in the manner prescribed in the Bidding Documents, without reference to the price and shall reject any proposal which does not conform to the specified technical requirements;
- (x) the financial proposals of technically qualified Bidder shall be opened publicly at a time, date and venue announced and communicated to the Bidders in advance, in the presence of those Bidders who choose to be present for the proceedings, but the procedure shall not be vitiated for the reason that a Bidder, although invited, failed to participate in the proceedings;
- (xi) the financial proposal of Bidders found technically non-responsive shall be returned unopened to the respective Bidders; and
- (xii) the Bid found to be the Best Evaluated Bid shall be accepted.

(c) Two Stage Bidding Procedure:

First Stage

- (i) the Bidders shall first submit, according to the required specifications, a technical proposal without price;
- (ii) the technical proposal shall be evaluated in accordance with the specified evaluation criteria and may be discussed with the Bidders regarding any deficiencies and unsatisfactory technical features;
- (iii) after such discussions, all the Bidders shall be permitted to revise their respective technical proposals to meet the requirements of the Implementing Agency:

Provided that such revisions, deletions, modifications or additions are communicated to all the Bidders equally at the time of invitation to submit final Bids, and that sufficient time is allowed to the Bidders to prepare their revised Bids;

Provided further that such allowance of time shall not be less than fifteen (15) days in the case of national competitive bidding and thirty (30) days in the case of international competitive bidding; and

- (iv) the Bidders not willing to conform their respective Bids to the Implementing Agency's technical requirements may be allowed to withdraw from the bidding without forfeiture of their Bid Security.

Second Stage

- (i) the Bidders, whose technical proposals or Bids have not been rejected and who are willing to conform their Bids to the revised technical requirements of the Implementing Agency, if required, shall be invited to submit a revised technical proposal along with the financial proposal;
- (ii) the financial proposals of only those Bidders whose original or revised technical proposals are found to be conforming to the agreed technical standards and requirements, shall be opened at a time, date and venue announced and communicated to the Bidders in advance, in the presence of those Bidders who choose to be present for the proceedings, but the procedure shall not be vitiated for the reason that a Bidder, although invited, failed to participate in the proceedings;
- (iii) the revised technical proposal and the financial proposal shall be evaluated in the manner prescribed in these Rules; and
- (iv) the Bid found to be the Best Evaluated Bid shall be accepted:

Provided that in setting the date for the submission of the revised technical proposal and financial proposal, an Implementing Agency shall allow sufficient time to the Bidders to incorporate the agreed upon changes in the technical proposal and prepare their financial proposals accordingly.

- (d) Two Stage - Two Envelope Bidding Procedure:

First Stage

- (i) the Bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately, the technical proposal and the financial proposal;
- (ii) the envelopes shall be marked as “TECHNICAL PROPOSAL” and “FINANCIAL PROPOSAL” in bold and legible letters to avoid confusion;
- (iii) initially, only the envelope marked “TECHNICAL PROPOSAL” shall be opened;
- (iv) the envelope marked as “FINANCIAL PROPOSAL” shall be retained in the custody of the Implementing Agency without being opened;
- (v) the technical proposals shall be discussed with all the Bidders, or their representatives present together with reference to the Implementing Agency’s technical requirements;
- (vi) the Bidders willing to meet the requirements of the Implementing Agency shall be allowed to revise their technical proposals following these discussions; and
- (vii) Bidders not willing to conform their technical proposals to the revised requirements of the Implementing Agency shall be allowed to withdraw their respective Bids without forfeiture of their Bid Security.

Second Stage

- (i) after agreement between the Implementing Agency and the Bidders on the 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;
- (ii) the revised technical proposal along with the original financial proposal and supplementary financial proposal shall be opened at a date, time and venue announced to the Bidders in advance by the Implementing Agency, in the presence of those Bidders who choose to be present for the proceedings, but the procedure shall not be vitiated for the reason that a Bidder, although invited, failed to participate in the proceedings:

Provided that in setting the date for the submission of the revised technical proposal and supplementary financial proposal, an Implementing Agency shall allow sufficient time to the Bidders to incorporate the agreed upon changes in the technical proposal and to prepare the required supplementary financial proposal;
- (iii) the Implementing Agency shall evaluate the whole proposal in accordance with the evaluation criteria provided in these Rules; and
- (iv) the Bid found to be the Best Evaluated Bid shall be accepted.

29. Conditions for Use of Relevant Bidding Procedures— The appropriate procedure for a competitive bidding shall be selected by the Implementing Agency, subject to the approval of the PPP Board or the Cabinet, as the case may be.

30. Evaluation Committees– (1) The Implementing Agency shall, with the approval of the PPP Board, constitute and notify as many evaluation committees, as it deems fit, each comprising odd number of persons, and shall ensure that at least one of the members of the evaluation committee is from the agencies or departments other than the Implementing Agency.

(2) Where the evaluation committees comprise three members, all three members shall form quorum. Where the evaluation committees comprise more than three members, the two-third of the members shall form the quorum.

(3) The decision of the evaluation committee shall be taken on the basis of majority of votes of the total strength of the committee.

(4) Evaluation committee shall be responsible for:

- (a) reviewing Pre-Qualification Documents and the Bidding Documents;
- (b) carrying out evaluation of the Pre-Qualification Applications;
- (c) carrying out technical and financial evaluation of Bids;
- (d) preparing evaluation report;
- (e) making recommendations for the award of PPP Agreement to the Implementing Agency; and
- (f) perform any other function ancillary and incidental to the above.

PART VI

ACCEPTANCE OF BIDS AND AWARD OF PPP AGREEMENT

31. Acceptance of Bids– (1) The Successful Bidder, if not in conflict with any other law, rules, regulations or policy of the Government, shall be awarded the Project and issued a Letter of Award, within the original or extended period of Bid validity in accordance with the PPP Act read with these Rules.

(2) Before signing the PPP Agreement with the Implementing Agency, the Successful Bidder may (and if required in terms of the Bidding Documents, shall) establish, subject to conditions set forth in the Bidding Documents, a special purpose company / entity as the Concessionaire for execution of the PPP Agreement and implementation of the Project. In such case, the Successful Bidder (and where Successful Bidder is a Consortium, each member of the Consortium) shall be required to maintain shareholding in the Concessionaire in accordance with the PPP Agreement and any submissions made by the Successful Bidder during the Pre-Qualification Process or the Bidding Process, as the case maybe.

32. Performance Guarantee– (1) As expressed in the Bidding Documents, the Implementing Agency shall require the Successful Bidder to furnish a performance guarantee in an amount and having the validity as may be specified by the Implementing Agency in the Bidding Documents, to guarantee its

performance for the construction works and such other obligation, in each case as specified in the PPP Agreement.

(2) The performance guarantee shall be in the form of a bank guarantee issued by a scheduled bank in Pakistan or from a foreign bank duly counter guaranteed by a scheduled bank in Pakistan in favour of the Implementing Agency.

(3) The performance guarantee shall be maintained by the Concessionaire and shall be encashable by the Implementing Agency in accordance with the PPP Agreement.

33. Negotiations– (1) Subject to the provisions of the PPP Act, the Successful Bidder shall be invited for negotiation of the PPP Agreement with the Negotiation Committee led by the Implementing Agency, in accordance with the PPP Act. The Implementing Agency shall keep complete minutes of the negotiation process.

(2) The Negotiation Committee shall be constituted by the Implementing Agency 10 days prior to the issuance of Letter of Award.

(3) Save as otherwise provided, the negotiations shall focus on the terms and conditions not specified in the Bidding Documents and no post-Bid changes shall be allowed with respect to the terms and conditions provided in the Bidding Documents as a consequence of such negotiations.

(4) Additionally, negotiations may be permitted in the following scenarios:

(a) in the event the Successful Bidder offers a voluntary financial discount on the price quoted in its Bid; or

(b) where only one (1) valid Bid is received up to the last date for submission of Bids, the Implementing Agency may evaluate it, and depending on the results of such evaluation and after recording reasons:

(i) negotiate and enter into the PPP Agreement with the said single Bidder; or

(ii) after market research to ascertain the reasons for the poor response to the Bidding Documents, restructure the Project Proposal and submit the revised Project Proposal to the PPP Board for review and approval.

(5) Notwithstanding anything contained in these Rules, in the event negotiations with the Successful Bidder under this Rule 33 are unsuccessful or the Successful Bidder fails to sign the PPP Agreement, the Implementing Agency may, subject to the approval of the Executive Committee or the Board of Directors, in case of a Government Agency with functional Board of Directors, revoke / cancel the issued Letter of Award and issue a new Letter of Award to the Bidder who submitted the second Best Evaluated Bid. Following issuance of a new Letter of Award to the Bidder who has offered the second Best Evaluated Bid, such Bidder shall be deemed to be the Successful Bidder. Thereafter, the process of negotiating the PPP Agreement under this Rule 33 shall be repeated with such Successful Bidder.

34. Confidentiality– An Implementing Agency shall keep all information regarding the evaluation of Bid confidential until the time of the announcement of the Bid Evaluation Report in accordance with the requirements of Rule 27.

35. Award of Project– (1) Notwithstanding anything contained in these Rules, the award of the Project to the Successful Bidder shall be based on the evaluation criteria prepared by the Implementing Agency in accordance with these Rules, and published in the Bidding Documents.

(2) A PPP Agreement shall come into force from the date on which the signatures of both the Implementing Agency and the Concessionaire are affixed to the written PPP Agreement. Such affixing of signatures shall take place within three (3) months, or such other time period as approved by the PPP Board, following completion of the Bidding Process and selection of the Successful Bidder.

Provided that where the coming into force of a PPP Agreement is contingent upon fulfillment of certain conditions precedent, the PPP Agreement shall take effect from the date of fulfillment of such conditions precedent.]

PART VII MAINTENANCE OF RECORD AND FREEDOM OF INFORMATION

36. Maintenance of Record– (1) All Implementing Agencies shall maintain a record of each Pre-Qualification Process and Bidding Process along with all associated documentation for a minimum period of five (5) years.

(2) Such maintenance of record shall be as prescribed by the PPP Board from time to time.

37. Public Access and Transparency– (1) After the award of the PPP Agreement, the Implementing Agency shall make all documents related to the evaluation of the Bids and award of Project public through uploading on the Implementing Agency’s website.

(2) Where the disclosure of any information related to the award of a PPP Agreement is of proprietary nature or where the Implementing Agency is convinced that such disclosure shall be against the public interest, it can withhold only such information from public disclosure, subject to the prior approval of the PPP Board.

38. Removal of Difficulties– To remove the difficulties with respect of any issue relating to open competitive bidding, award or execution of the PPP Agreement not expressly covered in these Rules, the Implementing Agencies shall refer the matter to the PPP Board for resolution.

39. Mis-procurement– (1) Any unauthorized breach of these rules shall amount to mis-procurement.

(2) An aggrieved Bidder may submit a complaint against any alleged mis-procurement to the Complaint Redressal Committee Guidelines as per the guidelines prescribed by the PPP Board.

PART VIII
UNSOLICITED PROPOSALS

40. Submission of an Unsolicited Proposal– (1) An Initiator may, on its own initiative, submit an Unsolicited Proposal for a Project to the PPP Authority.

Provided however that prior to submission of the Unsolicited Proposal to PPP Authority, the Initiator may submit draft of the Unsolicited Proposal to a Government Agency and may seek inputs and comments thereon.

(2) Upon submission of the Unsolicited Proposal to the PPP Authority, the PPP Authority may seek such assistance and facilitation from the relevant Government Agency in terms of Section 31 of the PPP Act as may be required by PPP Authority.

(3) In case more than one Unsolicited Proposal is submitted for a specific Project to the PPP Authority, the PPP Board may accept the best-case option out of the submitted Unsolicited Proposals on the recommendations of the PPP Authority, through PPP Unit and thereafter, such Unsolicited Proposal shall be processed in the manner as stated in these Rules. The PPP Authority shall communicate the decision regarding such acceptance or rejection to the relevant parties in writing.

41. Contents of Unsolicited Proposal– (1) The Unsolicited Proposal shall be accompanied by project documents, which shall include, but are not limited to the following:

- (a) an analysis of the feasibility and sustainability of the Project including technical, legal, financial and socio-economic viability over the expected duration of the Project;
- (b) an environmental impact assessment, as per applicable laws;
- (c) requisite information pertaining to required Government Support for such Project in accordance with the PPP Act;
- (d) affordability of the Project;
- (e) determination of the appropriate PPP modality under which the Project shall be undertaken;
- (f) risk analysis and risk management strategy;
- (g) a draft PPP Agreement;
- (h) a detailed financial feasibility and market study to ascertain the viability of the Project; and
- (i) any other document that may be required to evaluate the Unsolicited Proposal and to justify the placement of the Unsolicited Proposal before the PPP Board.

42. Review and Evaluation of Unsolicited Proposal– (1) The PPP Authority shall review and evaluate the Unsolicited Proposal and other documents or information submitted therewith.

(2) Upon initial review of the Unsolicited Proposal, the PPP Authority, if deemed necessary, may require the Initiator to submit additional information regarding the relevant Project and / or details about the Initiator’s legal, technical, managerial and financial capabilities, along with details regarding the cost of preparing the Unsolicited Proposal, in each case, with relevant supporting evidence.

(3) The information requested in terms of sub-rule (2) above, shall be submitted to the PPP Authority by the Initiator within the time period specified by the PPP Authority.

(4) Within fifteen (15) days of receipt of the requested information and documentation from the Initiator under sub-rule (2), or as soon as it may be possible thereafter, the PPP Authority shall review and evaluate the Unsolicited Proposal, along with other submitted documents and information from all aspects.

(5) If the Project is found to be economically, technically, legally, financially and environmentally feasible and the information submitted by the Initiator about its legal, technical, managerial and financial capability (along with details of costs of preparation of the Unsolicited Proposal), is satisfactory to the PPP Authority, acting in its sole discretion, the PPP Authority may submit the Unsolicited Proposal to the PPP Unit for review, appraisal and onward submission to the PPP Board for consideration.

(6) The PPP Authority may also either reject the Unsolicited Proposal if it is found to be non-feasible or return the Unsolicited Proposal to the Initiator to resubmit an amended Unsolicited Proposal and / or provide additional information / documentation (within the timeline as specified by the PPP Authority to the Initiator) if the PPP Authority considers it necessary for the purposes of review and evaluation of the Unsolicited Proposal. If the revised Unsolicited Proposal is found feasible by the PPP Authority, the PPP Authority may submit the Unsolicited Proposal to the PPP Unit for review, appraisal and onward submission to the PPP Board for consideration.

(7) PPP Authority shall within fifteen (15) days of issuance of the decision of PPP Board in respect of the Unsolicited Proposal, communicate such decision to the Initiator, in writing.

(8) If required, the PPP Authority may access PDF funds to hire a Transaction Adviser for review and evaluation of the Unsolicited Proposal.

43. Bidding Process for Unsolicited Proposals– (1) If the PPP Board approves the Unsolicited Proposal, as per the PPP Act, the Implementing Agency that will invite competitive bids for the Project shall be: (i) the PPP Authority; or (ii) the Government Agency, provided that as per Section 12(6) of the PPP Act, no funds from PDF were availed for review of USP and no funds are required from VGF, as the case may be, and such Implementing Agency shall award the Project and enter into the PPP Agreement.

(2) The procedure set out in these Rules with respect to conducting of Pre-Qualification Process and the Bidding Process, as the case may be, shall be followed.

(3) The Initiator shall be exempted from the Pre-Qualification Process and shall be allowed to directly participate in the Bidding Process.

(4) If the Bid of the Initiator does not emerge as the Best Evaluated Bid, the PPP Authority give the Initiator an opportunity to match his Bid with the Best Evaluated Bid. In case if the Initiator does not agree to match its Bid with the Best Evaluated Bid, it shall be given the right of refusal without forfeiture of its Bid Security.

(5) If the Initiator fails to match the Best Evaluated Bid, the Successful Bidder shall be directed to reimburse the amount specified in the Bidding Documents as the cost of preparing the Unsolicited Proposal to the Initiator. The reasonability of the cost of preparation of the Unsolicited Proposal shall be determined by the PPP Authority.

(6) If other valid competitive Bids, except the Bid of the Initiator, are not received, then subject to the approval of the Executive Committee, the PPP Agreement may be negotiated and / or entered into with the Initiator or a fresh Bidding Process may be conducted.

(7) At the request of the Initiator, the proprietary information of the Initiator contained in the Unsolicited Proposal shall not be disclosed to third-parties.

PART IX ENGAGEMENT OF MULTILATERAL INSTITUTIONS

44. Engagement of Multilateral Institutions- (1) In terms of Section 11(1)(f) of the PPP Act, the PPP Authority may directly engage Multilateral Institutions, without conducting a competitive bidding process, to provide transaction and financial advisory services for large and complex Projects, subject to approval of the Executive Committee or the PPP Board, as the case maybe, in accordance with the PPP Act.

(2) The PPP Authority may avail PDF Funding for engaging Multilateral Institutions to provide transaction and financial advisory services in Projects.

(3) The mechanism and procedure for the utilization of PDF Funding, prescribed pursuant to the guidelines approved by the PPP Board, for payments to Multilateral Institutions shall be followed.

PART X CREATION OF SECURITY OVER LAND

45. Creation of Security over Land – (1) Subject to the approval of the PPP Board or the Cabinet, as the case may be, and in accordance with the PPP Agreement, the Concessionaire may create a security interest over Project land in favour of the lenders of the Project, provided that enforcement of such security interest shall be in accordance with the PPP Agreement.

(2) The Implementing Agency shall, at the time of preparation of a Project Proposal or review of the Unsolicited Proposal, assess and determine whether creation of security interest over Project land in favour of lenders would be viable and increase the bankability of the Project, and make such assessment and determination as part of the Project Proposal or the Unsolicited Proposal.

PART XI

ARRANGEMENT OF GUARANTEES BY INTERNATIONAL FINANCIAL INSTITUTIONS

46. Facilitation in arranging Guarantees– (1) In terms of Section 17(1)(f) of the PPP Act, the Government may provide such support and facilitation to the Concessionaire, as it may deem necessary, to enable the Concessionaire to procure guarantees from Multilateral Development Banks, Multilateral Financial Institutions and lenders to enhance a Project’s creditworthiness and bankability.

(2) The Implementing Agency shall, at the time of preparation of a Project Proposal or review of the Unsolicited Proposal, assess and determine whether facilitation by the Government, as set out in sub-rule (1) above, may be viable and increase the bankability of the Project and may enhance the Project’s creditworthiness. Such assessment and determination shall be made by the Implementing Agency by keeping in view the:

- (a) specific requirements of the Project;
- (b) market conditions applicable with such type of support;
- (c) impact of such support on the sustainability of the Government’s financial budget;
- (d) relevant approvals under Pakistani law that may be required by the Government for provision of such support; and
- (e) potential impact of the obligations of the Government, that any proposed arrangement with Multilateral Development Banks, Multilateral Financial Institutions and lenders may have for providing such support.

PART XII

INTEGRITY PACT

47 Integrity pact– The Implementing Agency shall, for every Project, enter into an integrity pact with the Concessionaire along with the PPP agreement, in the form and substance as attached herewith as Schedule-II.

SCHEDULE I
Part III
{ See Rule 13 }
BLACKLISTING PROCEDURE

1. The Implementing Agency may, on information received from any resource, issue a show cause notice to a Private Party who has participated in the Pre-Qualification Process or the Bidding Process.
2. The show cause notice shall contain:
 - (a) the allegation against the Private Party;
 - (b) the maximum period for which the Implementing Agency proposes to debar the Private Party from participating in any competitive bidding process of the Implementing Agency; and
 - (c) the statement, if needed, about the intention of the Implementing Agency to make a request to the PPP Board for debarring the Private Party from participating in competitive bidding process in the Province.
3. The Implementing Agency shall give minimum of seven (7) days to the Private Party for submission of written reply of the show cause notice.
4. In case, the Private Party fails to submit written reply within the requisite time, the Implementing Agency may issue notice for personal hearing to the Private Party and the Implementing Agency shall decide the matter on the basis of available record and personal hearing, if availed.
5. In case the Private Party submits written reply of the show cause notice, the Implementing Agency may decide to file the matter or direct issuance of a notice to the Private Party for personal hearing.
6. The Implementing Agency shall give minimum of seven (7) days to the Private Party for appearance before the specified officer of the Implementing Agency for personal hearing.
7. The Implementing Agency shall decide the matter on the basis of the available record and personal hearing of the Private Party, if availed.
8. The Implementing Agency shall decide the matter within fifteen (15) days from the date of personal hearing unless the personal hearing is adjourned to a next date and in such an eventuality, the period of personal hearing shall be reckoned from the last date of personal hearing.
9. The Implementing Agency shall communicate to the Private Party the order of debarring the Private Party from participating in any competitive bidding with a statement that the Private Party may, within thirty (30) days, file a review petition against the order before the Complaint Review Committee, after depositing the prescribed fee as notified by the PPP Board from time to time.

10. The Implementing Agency may decide to either blacklist the Private Party, or to debar it for a specified time or may require the Private Party to take the specified remedial actions within a specified time period failing which the Private Party may be blacklisted.
11. The Implementing Agency shall, as soon as possible, communicate the order of blacklisting to the PPP Authority, the PPP Unit and the PPP Board with the request to upload the information on their website, if any.
12. If the Implementing Agency wants the PPP Board to debar the Private Party from participating in any competitive bidding process in the Province, the Implementing Agency shall specify reasons for such dispensation.
13. The PPP Board shall publish or cause to be published, the information and decision of blacklisting on the relevant websites.
14. In case of the aggrieved Private Party files a review petition before the Complaint Review Committee, the Complaint Review Committee shall issue a notice for personal hearing to the parties and may call for the record of the proceedings. The parties may file written statements and documents in support of their contentions.
15. In every order of blacklisting, the Implementing Agency shall record reasons of blacklisting and also reasons for short, long or medium period of blacklisting.
16. The name of a Private Party shall immediately be removed from the list of blacklisted persons on expiry of period of blacklisting or order of the competent authority to that effect, whichever is earlier.
17. An effort shall be made for electronic communication of all the notices and other documents pursuant to this mechanism or process.

SCHEDULE II
Part “XII”
{ See Rule 47 }

FORM OF INTEGRITY PACT

Dated _____

[*name of Concessionaire*] (the “**Concessionaire**”) hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Balochistan, the Implementing Agency, any administrative subdivision or agency thereof or any other entity owned or controlled by Government of Balochistan (collectively to be hereinafter referred to as the “**GoB**”) through any corrupt business practice.

Without limiting the generality of the foregoing, the Concessionaire represents and warrants that it has fully declared the brokerage, commission, fees etc., paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder’s fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoB, except that which has been expressly declared pursuant hereto.

The Concessionaire certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoB and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

The Concessionaire accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoB under any law, contract or other instrument, be voidable at the option of GoB.

Notwithstanding any rights and remedies exercised by GoB in this regard, The Concessionaire agrees to indemnify GoB for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoB in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder’s fee or kickback given by The Concessionaire as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoB.

Name of Implementing Agency: _____

Signature:

[Seal]

Name of Bidder: _____

Signature:

[Seal]