



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 12TH SEPTEMBER, 2017.

GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH DEPARTMENT

NOTIFICATION

Dated: 21st August, 2017.

No.E&A/II/3-56/A.-In exercise of the powers conferred by section 15 of the Khyber Pakhtunkhwa Health Foundation Act, 2016 (Khyber Pakhtunkhwa Act No. VII of 2016), the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA HEALTH FOUNDATION PUBLIC PRIVATE PARTNERSHIP RULES, 2017

1. **Short title and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Health Foundation Public Private Partnership Rules, 2017.

(2) These shall come into force at once.

2. **Definitions.**---In these rules, unless the text or context otherwise requires,-

(a) "Act" means the Khyber Pakhtunkhwa Health Foundation Act, 2016 (Khyber Pakhtunkhwa Act No. VII of 2016); and

(b) "Advisory Committee" means the Advisory Committee as constituted under the Khyber Pakhtunkhwa Health Foundation Conduct and Business Regulations; and

(c) "bid" means the technical and financial proposal submitted by the private party for a Health Project.

(2) Words and expressions used but not defined in these rules shall have the same meanings as assigned to them in the Act.

3. **Project identification.**---(1) Subject to the provisions of the Act, a Health Agency shall identify and prepare a Health Project for its implementation through public private partnership and shall submit an advance report to this effect to the Foundation.

(2) The potential Health Project identified by the Health Agency shall be based

(3) The Health Agency shall privatize the potential Health Project within its geographical area using criteria such as supply and demand gaps, social benefits, economic benefits, financial attractiveness, commercial viability, technical relevance, risk and uncertainty involves and readiness for implementation.

(4) Preparation of a high priority or high value Health Project shall consist of a feasibility study, socio environmental impact assessment, risk analysis, analysis of the need for Government support, determination of the public private partnership modality and preparation of bid documents including a draft public private partnership agreement.

(5) The Health Agency shall submit a viable Health Project proposal through Technical Committee for approval by the Board.

4. Project prioritization.---(1) The Advisory Committee in consultation with Technical Wing of the Foundation shall review the proposal in light of the completeness of the documentation, demand and supply analysis, economic and commercial viability, assess the need for Government support, analyse the importance of the Health Project in line with the sector strategies and its contribution to the achievement of the overall sector goals and targets.

(2) The Health Agency shall, require to provide comments regarding the fiscal implications and financial impact for the Government, over time.

(3) The Advisory Committee shall assess alternatives, review the available resources and check alignment with the health sector policy and strategy.

(4) The Advisory Committee shall submit a prioritized list of proposals to the Technical Committee, which shall be supported by the analysis and recommendations.

5. Project evaluation.---(1) The Health Project shall be evaluated by the Technical Committee while taking into account the comments from the Advisory Committee and the Health Agency.

(2) The Technical Committee, after evaluation of the Health Project, shall place it before the Board for approval, rejection or re-consideration; provided that where Government support is required for a Health Project, the Health Agency shall make appropriate arrangements for the allocation of the budget.

6. Project execution.---(1) The Board shall, by taking into account, the recommendations of the Technical Committee, consider a Health Project proposal submitted by a Health Agency and may approve the proposal with a without the modification, reject it or return it to the Health Agency for consideration.

(2) In case, a Health Project proposal is return for re-consideration, the Health Agency shall take suitable action on the decision taken by the Board and may re-submit the proposal for approval by the Board.

7. Selection of the private party.---(1) The Private party shall be identified through open competitive bidding and the information shall be public widely. The Health Agency shall not enter into direct negotiations without expression of interest.

(3) Bid evaluation process shall be carried out in two phases within forty-five days.

(a) **Phase One** – The Health Agency or Health Foundation shall assess the technical, operational, environmental and commercial 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; and

(b) **Phase Two** – Bid evaluation process to determine responsive bids from the financial viewpoint shall be carried out.

(4) The detailed system of bid evaluation shall be provided in the Regulations.

8. Project operation.---(1) Once the Board approves the Health Project, the Health Agency shall enter into negotiation with the private party and shall sign the public private partnership agreement.

(2) Before signing the public private partnership agreement, the private party may establish, without changing its shareholding, a special purpose vehicle for implementation and operation of the Health Project, which shall assume all the rights and obligations of the private party.

(3) The private party shall undertake the Health Project in accordance with the performance standards and specifications contained in the approved detailed design and plan.

(4) The Health Agency shall monitor and evaluate the Health Project during its implementation.

(5) The Foundation shall reserve the right to monitor Health Projects on as needed basis, upon approval of the public private partnership Technical Committee.

9. Project termination.---The Health Project may be terminated in accordance with the provisions set out in the public private partnership agreement and as detailed in the public private partnership agreement.

10. Negotiation of public private partnership agreement without competitive procedure.---The Health Agency with the approval of the Board is authorized to negotiate a public private partnership agreement without following the selection procedure as provided in the Khyber Pakhtunkhwa Public Private Partnership Act, 2014, in those cases which are provided in section 28 of the aforesaid Act and the procedure for negotiation shall be such as provided in section 29 of the Act *ibid*.

11. Managing unsolicited proposals.---(1) Unsolicited bids shall be applicable subject to such provisions as set forth in these rules.

(2) An unsolicited bid shall be accompanied with a technical and financial feasibility study, impact assessment; and in cases of infrastructure projects this shall also be accompanied with an environmental and social impact assessment.

(3) The Health Agency shall submit the unsolicited bid for evaluation by the Foundation and the public private partnership Technical Committee by following the

(4) Where unsolicited proposals are allowed by the public private partnership Technical Committee, the unsolicited Health Project shall be opened to competitive bidding. An opportunity shall be given to the proposer of the unsolicited proposal to compete with other parties.

(5) If the unsolicited bidder does not succeed, the winning party may reimburse a reasonable cost of Health Project preparation to the unsolicited bidder.

(6) Notwithstanding anything contained in this rule, the Health Foundation may accept unsolicited bids without competition in certain situations of public interest.

12. Risk sharing.---(1) The public private partnership agreement shall set out the division of risks between the Health Agency and the private party.

(2) The Health Agency or the Foundation shall not be liable to any claim of the private party for any set of risks not mentioned in the public private partnership agreement.

13. Cost recovery.---(1) The Health Agency shall suggest user charges for the public private partnership at the time of Health Project preparation.

(2) The user charges shall take into account the full cost recovery of the capital, maintenance and operational costs as well as a reasonable rate of return to the private party.

(3) The Technical Committee shall finalize the user charges.

(4) No change in the user charges shall be made without the approval of the Technical Committee.

14. Transfer of the project/vesting in the private party.---(1) Subject to the public private partnership agreement and except for the build-own-and-operate and rehabilitate-own-and-operate arrangements, the completed Health Project may vest in the private party for a period not exceeding thirty (30) years and on expiry of such period, the Health Project shall vest in the Health Agency.

(2) If a Health Project is transferred to the Health Agency in accordance with the provisions of the public private partnership agreement or this Act, all the rights granted under the public private partnership agreement to the private party in respect of the Health Project shall stand transferred to the Health Agency.

15. Dispute resolution.---(1) In case of a dispute between the parties, the following options shall be exercise:

(a) the parties engage to deliberate upon the matter to reach a mutually agreeable solution;

(b) if the parties cannot find a mutually agreeable solution, the matter shall be referred for mediation by an independent third party, to be appointed by the Board, in consultation with the parties; and

(c) if the matter cannot be solved through mediation, the matter shall be referred to a Court of law for arbitration.

(2) For the purposes of setting the disputes arising about the public private partnership agreements, the same shall be decided according to the laws of Pakistan, unless otherwise determined in the public private partnership agreement.

16. Application of certain Acts and rules.---The matters for public private partnership for which no specific provisions has been provided in these rules, the provisions of the Khyber Pakhtunkhwa Public Private Partnership Act, 2014 and the rules made thereunder, shall apply.

**SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT.**

Printed and published by the Manager,
Staty. Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar.