

Government of Pakistan
Public Private Partnership Authority

NOTIFICATION

In exercise of powers conferred by section 25A read with section 2(o), section 2(p), section 2(r), section 12A and section 14 of the Public Private Partnership Authority Act, 2017 (Act No. VIII of 2017), the Board of Directors of the Public Private Partnership Authority is pleased to notify the following regulations, namely:

Public Private Partnership Authority (Approvals and Process Flow) Regulations, 2021

PART I
GENERAL

1. Short title, commencement and applicability. -(1) These regulations shall be called the Public Private Partnership Authority (Approvals and Process Flow) Regulations, 2021.

(2) They shall come into force at once.

(3) They shall apply to all qualified projects.

2. Definitions. -(1) In these regulations, unless there is anything repugnant in the subject or context: -

- (a) "Act" means the Public Private Partnership Authority Act, 2017 (Act No. VIII of 2017);
- (b) "Authority" means the Public Private Partnership Authority established under section 3 of the Act;
- (c) "Board" means the Board constituted in accordance with section 6 of the Act;
- (d) "CDWP" has the meaning ascribed to it in section 2(c) of the Act;
- (e) "ECNEC" has the meaning ascribed to it in section 2(f) of the Act;
- (f) "implementing agency" has the meaning ascribed to it in section 2(g) of the Act;
- (g) "P3WP" has the meaning ascribed to it in section 2(j) of the Act;
- (h) "private party" has the meaning ascribed to it in section 2(m) of the Act;

- (i) “project” has the meaning ascribed to it in section 2(n) of the Act;
- (j) “project concept proposal” has the meaning ascribed to it in section 2(p) of the Act;
- (k) “project proposal” has the meaning ascribed to it in section 2(r) of the Act;
- (l) “project qualification proposal” has the meaning ascribed to it in section 2(o) of the Act;
- (m) “public private partnership agreement” has the meaning ascribed to it in section 2(u) of the Act;
- (n) “qualified project” has the meaning ascribed to it in section 2(v) of the Act; and
- (o) “risk management unit” has the meaning ascribed to it in section 2(x) of the Act.

(2) All other words and expressions used in these Regulations but not defined herein shall have the same meanings as assigned to them in the Act or, if not in the Act, as in common usage.

PART II PROJECT CONCEPT PROPOSALS

3. Project identification.-Implementing agencies shall evaluate and prioritize projects pertaining to their respective mandates in accordance with applicable laws and policies, keeping in view economic considerations, overall economic and financial viability, national development priorities and potential success of projects.

4. Project concept proposal submitted by an implementing agency.- (1) An implementing agency may, but is not required to, submit a project concept proposal to the Authority in connection with a qualified project in order to determine whether the preliminary concept and rationale of the project is consistent with the national development framework and is sufficiently sound, so as to justify undertaking the preparation of a project qualification proposal. For the avoidance of doubt, submission of a project concept proposal is optional and does not constitute a necessary step in the approvals process for qualified projects. Implementing agencies may opt to directly submit a project qualification proposal in accordance with provisions of regulation 7 below.

(2) A project concept proposal submitted pursuant to sub-regulation (1) of this regulation shall include the following:

- (a) a description and technical overview of the project including the sectoral background and fit with national plans, project rationale and proposed delivery model;
- (b) a statement highlighting the unmet public need the project intends to address and details of project outputs;

- (c) a preliminary analysis of the economic viability of the project including, without limitation, the estimated project cost and potential means of recovery of such costs;
- (d) a brief description and explanation of legal, regulatory, environmental and social impacts anticipated as a result of or in connection with the project; and
- (e) such related documentation or information as the Authority may, from time to time, require.

(3) The Authority may, from time to time, issue guidelines on the submission requirements under sub-regulation (2) of this regulation, including with respect to the nature and form of documents to be submitted in connection with each of the submission requirements.

(4) After receiving the project concept proposal, the Authority shall, upon determining that the implementing agency has fulfilled all the submission requirements in accordance with this regulation, forward the same to the P3WP along with its recommendations.

Provided, however, that if the implementing agency fails to submit any of the required information or documentation in accordance with this regulation, the Authority shall return the project concept proposal along with comments identifying the missing documents to the implementing agency for completion.

(5) The P3WP shall, upon receipt of the project concept proposal and recommendations of the Authority, evaluate the project concept proposal to determine whether the concept and rationale of the project is sufficiently sound, so as to justify undertaking the preparation of a project qualification proposal. The P3WP may approve or reject the project concept proposal or return it to the implementing agency with comments.

(6) An approval of a project concept proposal by the P3WP, whether with or without conditions, shall, under no circumstances, be construed as a guarantee or indication that the project qualification proposal prepared in connection with the said project will also be approved.

5. Project concept proposal forwarded by the CDWP.-(1) Pursuant to clause (o) or clause (p) of section 2 of the Act, the CDWP may forward proposals to the Authority in connection with qualified projects. Upon receipt of a proposal from the CDWP, irrespective of the name or title it bears, the Authority shall, in accordance with the respective submission requirements provided in these regulations, determine whether that proposal constitutes a project concept proposal or a project qualification proposal.

(2) Upon receipt of a project concept proposal identified as such in accordance with subregulation (1), the Authority shall, upon determining that the implementing agency has provided all the information and documentation required in terms of sub-regulation (2) of regulation 4 above, forward the same to the P3WP along with its recommendations.

Provided, however, that if any of the required information or documentation, in accordance with the sub-regulation (2) of regulation 4 above, has not been provided, the Authority shall notify the implementing

agency, in writing, to provide the missing information within the period specified in the notice sent to the implementing agency.

(3) On receipt of a project concept proposal from the CDWP, through the Authority, the P3WP shall determine whether, on the basis of the information provided, the preliminary concept and rationale of the project is sufficiently sound, so as to warrant the preparation of a project qualification proposal by the implementing agency. The P3WP may approve or reject the project concept proposal or return it to the implementing agency with comments.

(4) The decision of the P3WP pursuant to sub-regulation (3) shall be forwarded by the Authority to the CDWP and the implementing agency for information.

(5) An approval by the P3WP of a project concept proposal received from the CDWP, whether with or without conditions shall, under no circumstances, be construed as a guarantee or indication that the project qualification proposal prepared in connection with the said project will also be approved.

6. Project concept proposal submitted by a private party. - (1) A private party may submit a project concept proposal in connection with a qualified project to the Authority on an unsolicited basis for determination of whether the concept, rationale and structure of the project is sufficiently sound, so as to justify the preparation of a project qualification proposal by the relevant implementing agency.

- (2) A project concept proposal submitted pursuant to sub-regulation (1) shall include the following:
- (a) a description and technical overview of the project including the sectoral background and fit with national plans;
 - (b) details of how the project is unique and innovative or creates exceptional value for the public or is the first of its kind in the national development context or focuses on a neglected sector;
 - (c) an analysis detailing how the project intends to meet the relevant public need;
 - (d) estimates and analyses of the costs, options and viability of the project including, without limitation, capital costs, operating costs, periodic maintenance / upgradation costs, all assets and resources required for the project, the anticipated financial attractiveness of the project along with any other benefits thereof;
 - (e) the proposed business and financial model of the project including potential direct and indirect revenue sources for and involvement of the private sector along with the anticipated duration of the public private partnership agreement;
 - (f) a description and explanation of any legal, regulatory, environmental and social impacts anticipated as a result of or in connection with the project; and

(g) such related documentation or information as the Authority may, from time to time, require.

(3) The Authority may, from time to time, issue guidelines on the submission requirements under sub-regulation (2) of this regulation, including with respect to the nature and form of documents to be submitted in connection with each of the submission requirements.

(4) After receiving the project concept proposal from the private party, the Authority shall, upon determining that the said party has fulfilled all the submission requirements in terms of this regulation, forward the same to the P3WP along with its recommendations.

Provided, however, that if the private party fails to submit any of the required information or documentation, in accordance with this regulation, the Authority shall return the project concept proposal, along with comments identifying the missing documents, to the private party for completion.

(5) The Authority may, at its discretion, require that the relevant implementing agency submit its written comments on the project concept proposal submitted by the private party, within such timeframe as determined by the Authority.

(6) The P3WP shall, upon receipt of the project concept proposal and recommendations of the Authority, evaluate the project concept proposal received from the private party to determine whether the concept, rationale and structure of the project is sufficiently sound, so as to justify the preparation of a project qualification proposal by the relevant implementing agency. The P3WP may approve or reject the project concept proposal or return it to the private party with comments. In each case, the decision of the P3WP shall be notified by the Authority to the private party and the relevant implementing agency.

(7) An approval by the P3WP of a project concept proposal submitted by a private party, whether with or without conditions shall, under no circumstances, be construed as a guarantee or indication that the project qualification proposal prepared in connection with the said project will also be approved.

PART III REQUIRED PROJECT APPROVALS

CHAPTER 1 PROJECT QUALIFICATION PROPOSAL

7. Project qualification proposal submitted by an implementing agency. -(1) An implementing agency may submit a project qualification proposal in connection with a qualified project to the Authority, irrespective of whether or not a project concept proposal was submitted (on an unsolicited basis or otherwise) for the same project, for purposes of obtaining necessary approvals.

(2) A project qualification proposal submitted pursuant to sub-regulation (1) shall include, at a minimum, the following:

- (a) a feasibility study (along with all supporting documentation, supplementary studies etc.), need assessment and an outline of the transaction structure of the project;
- (b) a techno-economic analysis explaining the project rationale, fit with national development plans, bankability, economic and financial viability, and project cost and financial model;
- (c) analyses with respect to legal, regulatory, environmental, social and gender impact of the project considering applicable international best practices;
- (d) a risk review;
- (e) detailed information as to any government support which may be required in connection with the project including funding through the viability gap fund or the project development facility;
- (f) the management and operation plan for the project, including proposed delivery mode; and
- (g) such related documentation or information as the Authority may, from time to time, require.

(3) The Authority may, from time to time, issue guidelines on the submission requirements under sub-regulation (2) of this regulation, including with respect to the nature and form of documents to be submitted in connection with each of the submission requirements.

(4) After receiving the project qualification proposal, the Authority shall, upon determining that the implementing agency has fulfilled all the submission requirements in accordance with this regulation, forward the same to the P3WP along with its recommendations.

Provided, however, that if the implementing agency fails to submit any of the required information or documentation, in accordance this regulation, the Authority shall return the project qualification proposal, along with comments identifying the missing documents, to the implementing agency for completion.

(5) The P3WP shall, upon receipt of the project qualification proposal and recommendations of the Authority, evaluate the said proposal and i) determine if it fits with national and sectoral development plans and priorities, ii) determine whether it is economically viable and feasible, and iii) scrutinize and approve the proposal. The P3WP may approve or reject the project qualification proposal or return it to the implementing agency with comments.

(6) An approval of a project qualification proposal by the P3WP, whether with or without conditions, shall, under no circumstances, be construed as a guarantee or indication that the project proposal prepared in connection with the said project will also be approved.

8. Project qualification proposal submitted by the CDWP. -(1)After receiving a proposal from the CDWP, the Authority shall, determine in accordance with sub-regulation (1) of regulation 5 above whether the said

proposal constitutes a project concept proposal or a project qualification proposal. Upon determining that the proposal received constituted a project qualification proposal and meets the relevant submission requirements under regulation 7 above, the Authority shall forward the same to the P3WP along with its recommendations.

Provided, however, that if any of the required information or documentation in accordance with regulation 7 above has not been provided, the Authority shall notify the implementing agency, in writing, to provide the missing information within the period specified in the notice sent to the implementing agency.

(2) On receipt of a project qualification proposal from the CDWP, through the Authority, the P3WP shall, on the basis of the information provided, i) determine if it fits with national and sectoral development plans and priorities, ii) determine whether it is economically viable and feasible, and iii) scrutinize and approve the proposal. The P3WP may approve or reject the project qualification proposal or return it to the implementing agency with comments.

(3) The decision of the P3WP pursuant to sub-regulation (2) shall be forwarded by the Authority to the CDWP and the implementing agency for information.

(4) An approval by P3WP of a project qualification proposal received from CDWP, whether with or without conditions, shall, under no circumstances, be construed as a guarantee or indication that the project proposal prepared in connection with the said project will also be approved.

CHAPTER 2 PROJECT PROPOSAL

9. Project proposal.- (1) An implementing agency may, within a period of one (01) year from the date of approval of a project qualification proposal in connection with a qualified project, submit a project proposal for the same to the Authority for purposes of obtaining necessary approvals.

Provided that the Authority may, in its discretion, grant an extension in the period in which a project proposal may be submitted, for reasons to be recorded in writing.

(2) A project proposal submitted pursuant to sub-regulation (1) of this regulation shall include the following:

- (a) comprehensive details of the proposed transaction structure with all supporting documents including a complete techno-economic feasibility study, together with all associated and supplementary studies required to conduct an appraisal; and
- (b) a techno-economic analysis explaining the project rationale, fit with national development plans, bankability, economic and financial viability, and project cost and financial model;

- (c) analyses with respect to legal, regulatory, environmental, social and gender impact of the project considering applicable international best practices;
- (d) a risk review;
- (e) detailed information as to any government support which may be required in connection with the project including funding through the viability gap fund or the project development facility;
- (f) the management and operation plan for the project, including proposed delivery mode; and
- (g) such related documentation or information as the Authority may, from time to time, require.

(3) After receiving the project proposal, the Authority shall, upon determining that the implementing agency has provided all the information and documentation required in terms of sub-regulation (2), forward the relevant documentation to the risk management unit for the purpose of obtaining the said unit's approval with respect to the project.

Provided, however, that if the implementing agency fails to submit any of the required information or documentation, in accordance with this regulation, the Authority shall return the project proposal, along with comments identifying the missing documents, to the implementing agency for completion.

(4) Upon approval of the project by the risk management unit pursuant to clause (b) of subsection (1) of section 14 of the Act, the Authority shall forward the project proposal to the Board along with its recommendations. The Board shall evaluate the project proposal and:

- (a) approve the project proposal, thereby indicating that the proposed transaction structure of the project has been endorsed and/or amended to optimize value for the public and that the process may be initiated for the procurement of the private party for execution of the project;
- (b) return the project proposal to the implementing agency, through the Authority, with comments and suggestions so that the implementing agency may re-submit the project proposal after making the necessary revisions on the basis of the aforesaid comments; or
- (c) return the project proposal without approval thereof for reasons to be conveyed to the implementing agency in writing.

(5) In approving the project proposal, the Board may specify and set certain conditions, including with respect to whether and to what extent certain approved terms and conditions may subsequently be negotiable between the successful private party bidder and the implementing agency.

(6) Upon approval of the project proposal by the Board, the Authority shall, in the event that the total cost of the project exceeds Ten Billion Pakistani Rupees (PKR 10 Billion), forward the project proposal to ECNEC for approval.

Provided, however, that such approval from ECNEC shall not be required in the event that ECNEC has previously considered and approved the project, and terms of the project proposal approved by the Board are in accordance with the financial thresholds (including with respect to the project cost and the government's financial support) previously approved by ECNEC.

(7) The Authority shall inform the implementing agency of the final decision of the Board or ECNEC, as the case may be.

(8) The implementing agency may, upon receipt of notice of approval in terms of sub-regulation (7) of this regulation and subject to compliance with any conditions specified therein commence the bidding process for the project in accordance with applicable law.

(9) At least seven (07) business days prior to the execution of the public private partnership agreement, the implementing agency shall provide a written certification to the Authority from its independent third-party advisors that provisions of the final public private partnership agreement are consistent with the terms and conditions approved by the Board, by the risk management unit and, if applicable, by ECNEC. If, however, at any stage of the process leading to the execution of the public private partnership agreement, there is a deviation from any of the terms of the project proposal which had been approved, an amended project proposal, reflecting such deviation, shall be submitted to the Board for re-approval.

Provided, however, that if the deviation pertains to a matter within the mandate of the risk management unit, the amended documentation shall be submitted to the risk management unit for re-approval.

Provided further that, subject to sub-regulation (6) of this regulation, in the event that the total cost of the project exceeds Ten Billion Pakistani Rupees (PKR 10 Billion), the amended project proposal shall also be submitted to ECNEC for re-approval.

PART V RISK MANAGEMENT UNIT

10. Risk Management Unit.-(1) In accordance with section 12A of the Act, there shall be a risk management unit, the management, control and administration of which shall be the responsibility of the Finance Division of the Federal Government.

(2) In accordance with section 12A of the Act, the mandate of the risk management unit shall include fiscal oversight and evaluation of fiscal and contingent liability exposure for all qualified projects.

(3) The risk management unit shall evaluate the project related documentation submitted to it by the Authority, pursuant to sub-regulation (3) of regulation 9 above, and communicate its approval or otherwise

to the Authority within a period of four (04) weeks of the receipt of the documents from the Authority. In the event the risk management unit requires further information with respect to any project under consideration, it may directly coordinate with the relevant implementing agency while copying the Authority on all such communication.

(4) The Authority shall, in consultation with the Finance Division, determine the information which implementing agencies shall be required to provide to the risk management unit with respect to non-qualified projects.
