Government of Punjab

Planning & Development Department

TRANSACTION EXECUTION GUIDELINES

FOR PUBLIC-PRIVATE PARTNERSHIPS

IN INFRASTRUCTURE

October 2009

DEFINITIONS

Best evaluated bid	Bid ranked first in the financial evaluation using one of the parameters listed in para. 76.
Bid	Proposal by a private party, in response to an invitation, to undertake a PPP project.
Bidding	Formal procurement procedure under which sealed technical and financial bids are invited, received, opened, examined and evaluated for the purpose of awarding a contract.
Bidding documents	All documents provided to the interested bidders to allow them to prepare bids.
Bidder	A private party that submits a bid for a PPP project.
Consultants	Individual consultants, or a consulting firm, or a financial institution, which will provide the services required for the preparation and transaction execution of a PPP project. Given the importance of the transaction execution phase in the life cycle of PPP projects, the consultants are frequently called transaction advisors, and the project development services are referred to as transaction advisory.
Government Agency	Department, attached department, body corporate, autonomous body of the Government, local government or any organization or corporation owned or controlled by the Government.
PPP Steering Committee	High-level committee established by the Government and chaired by the Chief Secretary to promote, coordinate, approve and facilitate PPP projects.
Government	Government of Punjab.
Infrastructure	Both traditional infrastructure (transport networks, water supply, energy generation, etc.) and social infrastructure (education and health facilities, etc.).
Public-private partnership (PPP)	Partnership between the public sector represented by a Government Agency and a private party for the provision of an infrastructure facility and/or service with a clear allocation of risks between the two parties. The PPP modalities range from service contracts to management contracts to leases to concessions to build-operate-transfer contracts and their variants.
PPP agreement	Contractual arrangement between a Government Agency and a private party for financing, design, construction, operation and maintenance of a PPP project.
PPP project	Project implemented on a PPP basis in any of the eligible infrastructure sectors.
PPP Cell	Entity established in the Planning and Development Department to assist Government Agencies in preparing and executing high-quality PPP projects, and act as a PPP catalyst and advocate, knowledge manager, and policy and project advisor to the PPP Steering Committee.
Pre-qualification	Formal procurement procedure under which applications are invited and evaluated for the purpose of selecting private parties with an adequate legal, technical and financial capacity to undertake a PPP project.
Private party	Company, entity, firm, association, body of individuals, or a sole proprietor other than a Government Agency.

Project Inception Guidelines	Methodology for Government Agencies on how to identify, screen and register potential PPP projects, draft terms of reference and request for proposals for their preparation and transaction execution, and select consultants.
Project Preparation Guidelines	Methodology for Government Agencies on how to prepare a feasibility study for a PPP project and seek approval by the PPP Steering Committee.
Risk Management Unit	Entity established in the Finance Department to review requests for direct and/or contingent government support for PPP projects and ensure its fiscal sustainability.
Substantially responsive bid	Bid that contains no material differences or deviations from, or reservations to, the terms, conditions and specifications given in the bidding documents.
Transaction Execution Guidelines	Methodology for Government Agencies on how to select the private party for undertaking a PPP project and seek approval by the PPP Steering Committee.

ABBREVIATIONS

ADB	–	Asian Development Bank
IPDF	–	Infrastructure Project Development Facility
PDF	–	Project Development Facility
PPP	–	public-private partnership

CONTENTS

I. INTRODUCTION

1. The Government of Punjab (the Government) is committed to sustainable economic growth and inclusive social development. Global experience has shown that there is a close relationship between these objectives and infrastructure development. The correlation works in both ways – investments in infrastructure are a major driver for economic growth, and economic growth requires well functioning infrastructure facilities and services. If infrastructure investments are not kept at a sufficient level, economic growth becomes constrained by power shortages, traffic congestion, high transport costs, and other infrastructure bottlenecks. As to the impact on social development, it is the low-income groups who are most affected by an inadequate access to and poor quality of infrastructure services.

2. The Government has therefore decided to significantly increase infrastructure investments and has made provisions in the provincial budget to this effect. The Government is also the beneficiary of financial assistance for infrastructure projects from multilateral and bilateral development partners. In addition to projects funded by its budget and development loans, the Government is committed to engaging the private sector in the provision of infrastructure. The preferred mode is public-private partnerships (PPPs) where the private and public sectors enter into mutually beneficial contractual agreements for the provision of public infrastructure services.

3. To provide an enabling framework for private sector participation in infrastructure development, the Government has adopted a PPP law,[1] issued a PPP policy,[2] and prepared detailed guidelines for the main phases in the life cycle of PPP projects.[3] The Guidelines presented herein are related to the third phase, namely, transaction execution during which the private party for the PPP project is selected.

4. As the line departments and local governments in Punjab lack experience with PPPs, there is a need for support and capacity building, as well as for a relatively simple methodology and procedures they could follow. To provide the necessary support, the Government has established a PPP Cell in the Planning and Development Department, which has been staffed by technical, financial, and legal experts. All line departments and local governments, which want to implement PPP projects in their sector and/or geographical area of responsibility, can seek support from the PPP Cell in project identification, screening, preparation and transaction execution. While the first phase of project identification and screening can be undertaken by the line departments and local governments with in-house human resources and support from the PPP Cell, assistance by consultants is needed for the subsequent phases of project preparation and transaction execution.

5. The Guidelines first provide an overview of the life cycle of PPP projects. Thereafter, they outline the main principles for transaction execution. This is followed by a detailed description of the various steps and processes involved in this task.

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[1] *Punjab Public-Private Partnership for Infrastructure Ordinanc 2009.*

[2] *Policy for Public-Private Partnerships in Infrastructure*, approved by the Provincial Cabinet of Punjab on 19 August 2009, through Notification SO (CAB-II)1-6/2009, Services and General Administration Department (Cabinet Wing), Government of the Punjab.

[3] *Project Inception Guidelines for Public-Private Partnerships in Infrastructure*; *Project Preparation Guidelines for Public-Private Partnerships in Infrastructure*; and *Transaction Execution Guidelines for Public-Private Partnerships in Infrastructure*; all approved by … on …

6. The Guidelines apply to all types of infrastructure projects, which a Government Agency in the public sector may plan for development and implementation, and which are potentially viable under the PPP mode. Projects, which the private sector can do on its own without any need for government support and involvement, or those which can be privatized, are not covered by these Guidelines. The Guidelines will not apply retrospectively to PPP projects already implemented or under development.

7. The following reference materials have proved to be helpful when preparing these Guidelines:

(i) *Procurement Guidelines for PPP Projects*, Infrastructure Project Development Facility (IPDF), Ministry of Finance, Islamabad, September 2007;

(ii) *Public-Private Partnership Handbook*, Asian Development Bank (ADB), 2008;

(iii) *Procurement Guidelines*, ADB, February 2007;

(iv) *Pre-Qualification User's Guide*, ADB, October 2006; and

(v) *User's Guide for Procurement of Works*, ADB, October 2006.

II. PROJECT LIFE CYCLE

8. The following four main phases can be distinguished in the overall life cycle of PPP projects:

(i) Project inception (identification and screening);

(ii) Project preparation (feasibility study);

(iii) Transaction execution (selection of the private party); and

(iv) Construction, operation and transfer (development, delivery and exit).

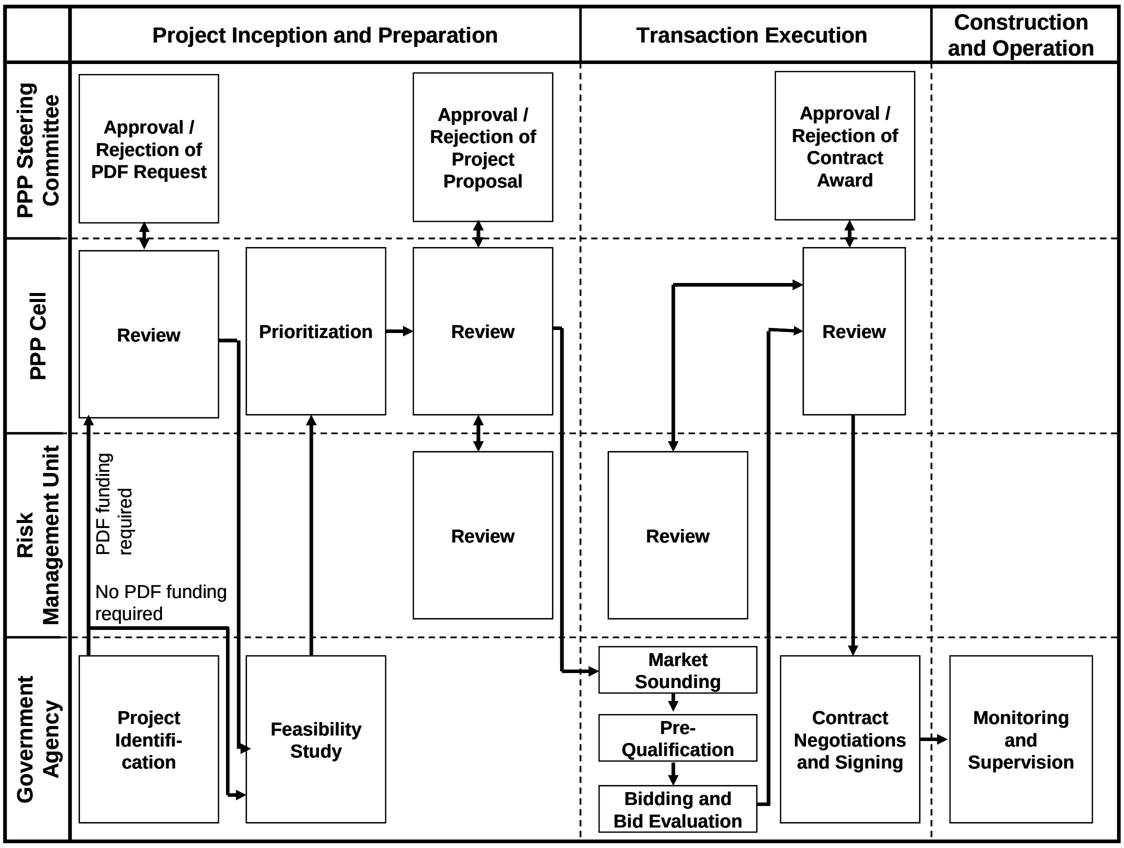
A flow chart of the main activities during these phases is shown in Figure 1. The principal steps are listed in Appendix 1.

9. During the inception phase, the Government Agency will identify and conceptualize a potential PPP project from its master plan and other planning documents. This phase will include an initial needs and options analysis to determine the best solution for developing the given infrastructure facility and/or providing the necessary infrastructure service, as well as an initial viability analysis. To help prepare the PPP project and select the private party, the Government Agency will recruit consultants. Prior to doing so, it will decide whether to fund their cost from its own budget or the Project Development Facility (PDF).[4] In the latter case, the Government Agency will submit a request for PDF funding through the PPP Cell to the PPP

[4] As the costs of consultants are significant and cannot always be funded by the annual budgetary allocations, the Government has established the PDF as a part of the overall enabling PPP framework. The PDF, which will be administered by the PPP Cell, will ultimately be a revolving fund, with the project preparation and transaction execution costs reclaimed from winning bidders. For further details, see the *Guidelines for the Project Development Facility for Public-Private Partnerships in Infrastructure,* approved by the Provincial Cabinet of Punjab on 19 August 2009, through Notification SO (CAB-II)1-6/2009, Services and General Administration Department (Cabinet Wing), Government of the Punjab.

Steering Committee. The project inception phase will end with the recruitment of the consultants who will provide support to the Government Agency during the next two phases.

Figure 1: Flow Chart of Project-Related Activities



PDF = Project Development Facility; PPP = public-private partnership.

10. In the second phase, the Government Agency will manage preparation of the PPP project by the consultants. The preparation will consist of a feasibility study, including an initial environmental examination, environmental impact assessment (if required), risk assessment, assessment of the need for government support, stakeholder consultations, determination of the PPP modality,[5] and drafting of tender documents including the PPP agreement. An important part of the feasibility study will be financial modeling to determine project "bankability" and affordability.

11. Provided the outcome of the feasibility study is positive and the project proposal is approved by the PPP Steering Committee for implementation, the third phase – the transaction execution – will start. The consultants will assist the Government Agency in undertaking market sounding aimed at packaging the project in a way that attracts interest of private investors. The market sounding will be followed by a two-stage tendering process consisting of pre-qualification and bidding. Based on a technical and financial evaluation of the bids received, the preferred bidder will be determined and invited to contract negotiations. After the PPP agreement has been signed, the selected private party will endeavor to arrange the necessary

[5] These activities are sometimes referred to as technical, legal, environmental and financial due diligence.

financing and thereby achieve financial closure for the PPP project. This will mark the end of the transaction execution phase and the beginning of project construction.

12. During the last phase that covers construction, operation and transfer (if applicable), the Government Agency will be responsible for monitoring and evaluating the PPP project to ensure its conformity with the plans, specifications, performance standards and tariffs in the PPP agreement. The Government Agency will submit annual reports on the PPP project to the PPP Cell. At the end of the period covered by the PPP agreement and if so provided therein, the PPP project will be transferred by the private party to the Government Agency.

III. MAIN PRINCIPLES OF TRANSACTION EXECUTION

13. The Government Agency should move the PPP project to the transaction execution phase only after it has been approved by the PPP Steering Committee on the basis of a detailed feasibility study. The purpose of this phase – the third in the project life cycle – is to select the private party for the project and execute the PPP agreement. As this selection determines whether or not Punjab will get the best value for money through the project, its importance cannot be overemphasized.

14. For the following reasons, the selection process should be competitive, open, fair and transparent:

(i) A competitive process will ensure economy and efficiency;

(ii) A process open to all prospective investors and perceived as fair by them in terms of being given the same information and provided equal opportunity to win the contract will maximize the competition; and

(iii) A transparent process will ensure fairness and minimize the potential for corruption.

15. The proven best practice for the selection process, prescribed by the PPP law and PPP policy (footnotes 1 and 2), is a two-stage tendering process consisting of pre-qualification and bidding. Direct negotiations with private investors are not allowed under any circumstances, even for unsolicited project proposals.

16. Prequalification should be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their experience and past performance on similar projects; capabilities with respect to construction, operation and maintenance; and financial position.

17. Best practice for bid evaluation, also prescribed by the PPP law and PPP policy, is to carry it out in two steps. The first one is a technical evaluation consisting of a pass/fail test of the responsiveness of bids to the minimum requirements, performance standards and specifications stated in the bidding documents. The second step is a financial evaluation based on a suitable single parameter. This approach helps minimize subjectivity, which may be a problem in other bid evaluation methods such as scoring.

18. The private party selected in this manner should then be free to procure the goods and works required for the project, using suitable procedures of its own.

19. During the selection process, the highest ethical standards should be observed by the Government Agency and its consultants. Specifically, the following practices should be rigorously fought against, and appropriate sanctions applied against those who adopt such practices[6]:

(i) Corrupt practices involving the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any party in the selection process or the execution of the PPP agreement;

(ii) Fraudulent practices involving a misrepresentation or omission of facts in order to influence the selection process or the execution of the PPP agreement;

(iii) Collusive practices involving a scheme or arrangement between two or more bidders, with or without the knowledge of the Government Agency, designed to influence the action of any party in the selection process or the execution of the PPP agreement (e.g., to set prices at artificial, noncompetitive levels); and

(iv) Coercive practices involving harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process, or affect the execution of the PPP agreement.

20. In addition, any conflicts of interest should be avoided, i.e., situations in which a party has interests that could improperly influence its performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

IV. MARKET SOUNDING

21. At the start of transaction execution, the Government Agency, with the assistance of its consultants, should undertake preliminary marketing and consultation with potential investors to discuss the structure of the PPP project and get early feedback from the market. Preliminary discussions should be held also with potential international and domestic lenders to discuss the project from the “bankability” perspective.

22. For larger projects, these preliminary consultations and discussions should be well structured. First, an information memorandum should be prepared covering the following topics:

(i) Purpose of the information memorandum;

(ii) Country overview;

(iii) Background of the PPP development

(iv) Sector overview;

(v) Legal and regulatory framework;

(vi) Project description (demand-supply analysis, scope, location, cost, economic and financial viability, social and environmental impact, PPP modality, risk allocation, government support; etc.);

[6] To give an example, a party, which has engaged in corrupt, fraudulent, collusive, or coercive practices, should be declared ineligible either indefinitely or for a stated period of time to participate in other PPP projects.

(vii) Project schedule; and

(viii) Contacts in the Government Agency.

23. Subsequently, an investment forum should be organized to disseminate the available information, assess initial market response to the project, and obtain feedback to improve the tender documentation before starting pre-qualification and bidding.

V. PRE-QUALIFICATION

A. Objectives

24. Pre-qualification is a must for PPP projects, given their technical complexity and financial requirements. It ensures that invitations to bid are extended only to firms with appropriate experience, a proven track record, and necessary annual turnover, which are free of any major pending litigation. The objectives of pre-qualification are to:

(i) Disseminate the available information about the project;

(ii) Set out the rules of participation in the selection process;

(iii) Gather information from prospective bidders that is verifiable and can be evaluated; and

(iv) Select a limited number of prospective bidders that are legally, technically and financially qualified and have the experience and capability to undertake the project.

25. The prequalification process has the following benefits for the Government Agency and bidders:

(i) The process enables prospective bidders, who may be insufficiently qualified on their own, to avoid the expense of bidding, or to form a consortium that may have a better chance of success;

(ii) With prequalification, well qualified firms will price their bids with the knowledge that they are competing against other qualified bidders meeting realistic minimum competence criteria, and with the assurance that inadequately qualified competitors will be excluded from submitting unrealistically low bids, leading contractors are encouraged to bid;

(iii) Prequalification enables the Government Agency to assess the interest from qualified firms generated by the project and, in the event that only a limited number of applications are received, to make any necessary adjustments in the project structuring;

(iv) It helps to expose potential conflicts of interest of an applicant with other parties involved in the prequalification process;

(v) It reduces the amount of work and time involved by the Government Agency in evaluating bids from unqualified firms or consortia;

(vi) It encourages domestic firms to form joint ventures with other local or international firms, thereby benefiting from their resources and experience; and

(vii) It reduces significantly, if not eliminates, problems of rejection associated with low-priced bids submitted by bidders of doubtful capability.

B. Pre-Qualification Document

26. When drafting the pre-qualification document, the objective of this stage of the tendering process should be borne in mind, namely, to identify credible prospective bidders who have the requisite legal, technical and financial capacity for undertaking the PPP project. In order to encourage greater participation from domestic and international investors, the pre-qualification document should not require respondents to incur significant expense in preparing an application. The information sought for the purposes of pre-qualification should generally be restricted to technical and financial capabilities that are relevant to the project. Such information should be precise and quantified so that the pre-qualification process is fair and transparent, and does not expose the Government Agency to disputes or controversy.

27. A model pre-qualification document based on the principles outlined above will be developed as a part of the preparation and execution of several pilot PPP projects in Punjab. The model document will be generic in nature and will aim at lending transparency and predictability to the entire process, allowing decisions to be made expeditiously. It will also provide the requisite sector-specific and project-specific flexibility by placing a number of provisions within square brackets, thus enabling the Government Agencies to make necessary substitutions. The tentative format of the pre-qualification document is as follows:

(i) Invitation for Pre-qualification;

(ii) Instructions to Applicants;

(iii) Application Data Sheet;

(iv) Qualification Criteria; and

(v) Application Forms.

28. The Invitation for Pre-qualification should contain the following information:

(i) Scope of the project including the proposed PPP modality;

(ii) Brief description of the two-stage tendering process (pre-qualification and bidding);

(iii) Schedule of the tendering process; and

(iv) Addresses and deadlines for the purchase of the pre-qualification document and submission of pre-qualification applications.

29. The Instructions to Applicants should specify the procedures that regulate the general pre-qualification process. They should contain standard provisions designed to remain unchanged and to be used for all PPP projects without modifying their text. They should clearly identify the provisions that may need to be introduced for a particular pre-qualification process through the Application Data Sheet. The Instructions to Applicants should comprise the following sections:

(i) General (scope of application, eligible participants,[7] changes in the composition of a consortium, number of applications, site visit and verification of information, and acknowledgement by applicants);

(ii) Pre-qualification document (contents, clarifications, and amendment);

(iii) Preparation of applications (cost, language, format, and signing);

(iv) Submission of applications (sealing and marking, deadline for submission, late applications, and modification and withdrawal of applications);

(v) Evaluation process (opening of applications, confidentiality, clarifications, and test for responsiveness); and

(vi) Pre-qualification of applicants (evaluation of applications, the Government Agency's right to accept or reject applications, notification, and invitation to bid).

30. The Application Data Sheet should contain information and provisions that are specific to a particular prequalification process. The Government Agency should specify in the Application Data Sheet only that information, which is identified in the Instructions to Applicants for this purpose.

31. The Qualification Criteria should describe all the criteria and methods that the Government Agency will use to evaluate pre-qualification applications. The information to be provided in relation to each criterion and the definitions of the corresponding terms should be described in the respective Application Forms. The criteria should be chosen so that only private firms that are well qualified to carry out the project are permitted to bid. In other words, the criteria adopted should relate to characteristics that are essential to ensure satisfactory execution of the given project, and should be stated in unambiguous terms. While depending on the sector and project type, the criteria should fall into the broad categories of eligibility, technical capability and experience, and financial capability.

32. The design of qualification criteria should strike a balance between two considerations. On the one hand, the criteria should not inhibit competition by being unnecessarily stringent. On the other hand, too lenient criteria, apart from jeopardizing project success, could have a negative impact on participation by serious bidders, thus diluting the quality of competition. This is so because credible investors are normally less inclined to spend the time and money necessary for preparing a bid if there are too many competitors. Unlike a bid for procurement of goods and services, bids for PPP projects involve greater risks, significantly larger investments and long-term participation. Participation of serious bidders is therefore essential.

33. The Application Forms should include the following letter format and sheets:

(i) Letter comprising the application for pre-qualification;

(ii) Details of the applicant;

(iii) Technical capacity of the applicant;

(iv) Financial capacity of the applicant; and

[7] The eligibility criteria should require that the applicants be private companies, have no conflict of interest or pending litigation, and not be suspended or blacklisted by the Government because of previous infractions.

(v) Details of similar projects.

C. Notification and Advertising of Pre-Qualification

34. Timely notification of pre-qualification opportunities is essential in competitive tendering. The Government Agency and its consultants should prepare a public notice inviting participation in pre-qualification for undertaking the PPP project. The pre-qualification notice should contain the following information:

(i) Brief description of the project;

(ii) Scope of private sector participation (the PPP modality);

(iii) Name, telephone number, email address (or fax number) and address of the Government Agency; and

(iv) Scheduled date for availability of prequalification documents.

35. The Government Agency should publish the pre-qualification notice as follows:

(i) In at least two national daily newspapers twice within a period of 10 days (at least one of them being an English language newspaper);

(ii) In at least one other means of mass communication such as an internationally known and freely accessible website in English; and

(iii) For projects with a total cost equal to or exceeding 400 million rupees, the pre-qualification notice should also be published in at least one international newspaper.

36. The pre-qualification document should not be released to the public earlier than the date of publication of the pre-qualification notice.

D. Preparation of Pre-Qualification Applications

37. The Government Agency should allow prospective bidders sufficient time of up to 45 days to study the prequalification document, prepare complete and responsive applications, and submit these. Prospective bidders should be solely responsible for the preparation and submission of their applications, providing the requisite information with regard to their legal, technical and financial capacity to undertake the project in such form as be specified in the pre-qualification document. During this stage, the Government Agency should promptly respond to requests for clarifications from prospective bidders and amend, if necessary, the prequalification document.

E. Participation by Consortia

38. In many instances, the private party is not a single firm. Instead, consortia of firms, which combine several firms contributing a range of expertise and resources including funding, are formed in response to an invitation to pre-qualification. This practice should be welcomed by the Government Agency as it strengthens technical and financial capabilities of prospective bidders. In all such cases, the members of the consortium and their roles and proposed shareholding should be clearly indicated in the pre-qualification application, and the members should bind themselves that if awarded the contract, they will be jointly and severally liable for the obligations of the private party.

39. The following rules should be followed for any subsequent changes in a consortium:

(i) The proposed change should not be rejected outright by the Government Agency as it is preferable to a complete withdrawal of a consortium, provided that the consortium maintains its strength at least to the same level as before the change;

(ii) In no circumstances should a consortium change be allowed without a written consent from the Government Agency;

(iii) The lead consortium member should be allowed to be replaced not earlier than 6 years after project commissioning;

(iv) Any other member should be allowed to withdraw prior to award of the contract or during the term of the PPP agreement, provided that the remaining members are still legally, technically and financially capable of successfully carrying out the implementation, operation and maintenance of the project, or that an acceptable substitute with equal or better qualifications is replacing such withdrawing member; and

(v) Any change in the shareholding of the consortium should also be subject to approval by the Government Agency.

40. The procedure for changes in consortia should be as follows:

(i) The consortium should advise the Government Agency of the proposed change in writing, with full details of the reasons for the change, the parties involved and the impact on the consortium;

(ii) The Government Agency should apply the same evaluation criteria as used in the original pre-qualification evaluation to re-assess the consortium's strength;

(iii) If the changed consortium meets the minimum pre-qualification criteria or scores at least the same number of points as during the pre-qualification, the Government Agency should advise the consortium in writing of its acceptance of the proposed change; and

(iv) If the consortium does not meet the minimum pre-qualification criteria or scores a lower number of points than during the pre-qualification, the Government Agency should advise the consortium in writing of its rejection of the proposed change and give it certain amount of time to propose an alternative. Failing this, the consortium should be disqualified.

F. Pre-Qualification Evaluation

41. The Government Agency is responsible for the opening and evaluation of applications, which is a critical event in the pre-qualification process. The Government Agency should appoint experienced staff to conduct the evaluation as any mistakes may prompt complaints from applicants, requiring re-evaluation of the applications, with consequent delays and waste of resources. In observance of best practices, the Government Agency, with assistance of its consultants, should complete the pre-qualification evaluation within 30 days, as follows:

(i) Maintain the evaluation process strictly confidential;

(ii) Reject any attempts or pressures to distort the outcome of the evaluation, including fraud and corruption;

(iii) Examine the information provided in applications;

(iv) Apply strictly those qualification criteria that are specified in the pre-qualification document;

(v) Decide which prospective bidders fulfill the qualification criteria; and

(vi) Notify all applicants in writing of the names of those applicants who have been pre-qualified.

42. There are two possible methods for pre-qualification evaluation:

(i) Pass/fail method: Only those applicants are pre-qualified who meet the predefined minimum requirements in terms of eligibility, and technical and financial capacity. If any of the pass-fail criteria is not met, the applicant is disqualified. There is no predetermined number of applicants to be pre-qualified – all who meet the minimum requirements must be invited to bid.

(ii) Scoring method: As with the pass/fail method, minimum requirements in terms of eligibility and technical and financial capacity are specified. Any differences in the technical and financial capacity of prospective bidders who meet these thresholds are taken into account by assigning predefined scores (e.g., for the number of similar projects undertaken, net worth of the applicant, etc.). Applicants are then ranked according to their aggregate scores and based on a predetermined number of applicants to be pre-qualified (e.g., five), the top ones are invited to bid.

43. The pass/fail method has been adopted in the model tendering documents prepared by multilateral development banks and other public international financial institutions. It is based on the presumption that there should be no limits on the number of bidders to be pre-qualified, and that all found capable of performing the work satisfactorily in accordance with the criteria described in the pre-qualification document should be invited to submit bids. The Government Agency should use the pass/fail method unless there is a strong justification in a particular case to follow the scoring method.

G. Minimum Number of Pre-Qualified Bidders

44. If the evaluation of applications results in only two prospective bidders, or even one, being pre-qualified, the project is placed at a great disadvantage. This is so because competitive bidding is essential for ensuring the best value for Punjab’s money. With two bidders, the competition is weak. With one bidder only, there is no competitive pressure at all and the process amounts to direct negotiations. Bearing this in mind, the Government Agency should do the following if less than three applicants are pre-qualified:

(i) Identify and analyze the likely reasons for the limited interest;

(ii) Review and, if justified, revise the terms of the pre-qualification document. The term “justified” refers to a situation where, for instance, the qualification criteria have been found too stringent. By no means should the criteria be arbitrarily lowered so that applicants without the requisite technical and financial capacity are pre-qualified;

(iii) Review and, if justified, improve project structuring. The term “justified” refers to a situation where, for instance, too many risks have been proposed to be transferred to the private sector or an insufficient government support has been offered to make the project financially attractive. Any changes in project structuring should be examined as to their effect on the overall viability of the project; and

(iv) Re-initiate the pre-qualification process for additional participants until at least two, but preferably three, applicants are pre-qualified.[8]

VI. BIDDING

A. Issuance of Bidding Documents

45. As soon as the pre-qualification has been completed and at least two applicants have been pre-qualified, the Government Agency should issue bidding documents to them with an invitation to submit bids within 90 days. It is essential that the bidding documents provide all the information necessary for bidders to prepare responsive bids. Bidding documents should be so worded as to permit and encourage open competition. They should set forth clearly and precisely the facilities to be constructed and/or services to be provided, the location of the facilities, the schedule for completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, should define the tests, standards, and methods that will be employed to judge the conformity of the facilities as delivered, or services as performed, with the specifications and performance standards.

46. The bidding documents should be drafted by the Government Agency with the help of its consultants based on the feasibility study. They need to be an effective two-way communication tool between the Government Agency and bidders. As such, they should communicate to bidders the project data and the Government Agency’s requirements, and establish the basis on which bidders will communicate their bids to the Government Agency. To fulfill this communication function, the bidding documents should provide the following:

(i) Explanation of the project as defined during the feasibility study, including its background and desired outcomes;

(ii) Environment in which the project takes place, including the regulatory, physical, administrative and social environment;

(iii) The Government Agency’s concept of the project and its structuring in terms of contracting parties;

(iv) Requirements related to third parties involved in the project;

[8] This may result in a situation where the original number of pre-qualified applicants has been two and remains so after the re-opening of pre-qualification. However, at least an attempt has been undertaken by the Government Agency to increase the number and thereby enhance competition.

(v) Environmental and social safeguard processes completed during the feasibility study and to be carried out by the private party;

(vi) Quality assurance and control systems or the project;

(vii) List of all definitions used throughout the bidding documents;

(viii) Essential minimum legal, technical and financial requirements to be met by a bid to be considered responsive;

(ix) Method and criteria adopted for bid evaluation; and

(x) Bid formalities.

B. Structure of Bidding Documents

47. While the detail and complexity of the bidding documents will vary depending on the type of the project and the size of the contract, they should normally include the following:[9]

(i) Invitation for Bids

(ii) Instructions to Bidders;

(iii) Bid Data Sheet;

(iv) Evaluation Criteria;

(v) Bidding Forms;

(vi) Minimum Design and Performance Standards and Specifications;

(vii) Draft PPP Agreement;

(viii) Bid Security Form and Performance Security Form; and

(ix) Any other available documents relevant to the project, such as the feasibility study and environmental impact assessment.

48. The Invitation for Bids should contain the following information:

(i) Scope of the project including the proposed PPP modality;

(ii) Brief description of the bidding process;

(iii) Schedule of the bidding process; and

(iv) Addresses and deadlines for the purchase of bidding documents and submission of bids.

49. The Instructions to Bidders should specify the procedures to be followed by bidders in the preparation of their bids and provide information on the submission, opening and evaluation of bids, and on the award of contract. They should contain standard provisions designed to remain unchanged and to be used for all PPP projects without modifying their text. They should clearly identify the provisions that should be introduced for a particular bidding process through the Bid Data Sheet. The Instructions to Bidders should comprise the following sections:

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[9] Model bidding documents will be developed as a part of the preparation and execution of several pilot PPP projects in Punjab to enhance transparency and predictability of the bidding process. As the model pre-qualification document (see para. 27), the model bidding documents will be generic in nature.

(vii) General (scope of application, eligible participants, changes in the composition of a consortium, site visit and verification of information, and acknowledgement by bidders);

(viii) Bidding documents (contents, clarifications, and amendment);

(ix) Preparation of bids (cost, language, bid prices, bid validity period, bid security, format and signing of bid);

(x) Submission of bids (sealing and marking, deadline for submission, late bids, and modification and withdrawal of bids);

(xi) Evaluation process (opening of technical and financial bids, confidentiality, clarifications, and determination of responsiveness, nonmaterial deviations, correction of arithmetical errors, conversion to single currency, financial evaluation, confirmation of qualification of the bidder); and

(xii) Award of contract (the Government Agency's right to accept or reject bids, award criteria, notification of award, signing of contract, and performance security).

50. The Bid Data Sheet should contain provisions that are specific to each bidding and supplement the information or requirements included in the Instructions to Bidders. The Evaluation Criteria should describe the methods and criteria that will be used to determine the best evaluated bid. The Bidding Forms should specify the information required to evaluate the bids and contain the forms, which are to be completed by the bidder and submitted as part of its technical and financial bids. Content of the draft PPP Agreement is described in para. 92.

51. The Minimum Design and Performance Standards and Specifications should establish what constitutes a responsive technical bid. These minimum requirements are very important in the bid evaluation, and any bid not meeting them should be rejected as non-responsive. However, the minimum requirements should not stifle innovation or be so onerous that otherwise solid bids do not pass the first evaluation stage.

C. Validity of Bids and Bid Security

52. Bidders should be required to submit bids valid for a period specified in the bidding documents, which should be sufficient to enable the Government Agency to complete the bid evaluation, submit the recommendation of award to the PPP Steering Committee, and obtain its approval so that the contract can be awarded within that period.

53. To reduce the risk of pre-qualified bidders dropping out of the process, the Government Agency should require a bid security in the amount and form specified in the bidding documents. The amount should be set at a level appropriate to the project (for example, the cost to the Government Agency of restarting the pre-qualification). The bid security should be in the form of a certified check, a letter of credit, or a bank guarantee from a reputable bank. The bid security should remain valid for a period of 30 days beyond the validity period for the bids, in order to provide reasonable time for the Government Agency to act if the security is to be called. Bid security should be released to unsuccessful bidders within 30 days after the contract has been signed with the winning bidder.

54. The bid security should be called by the Government Agency only if the bidder:

(i) Withdraws or modifies its bid proposal after the deadline for bid submission;

(ii) Fails to enter into contract negotiations with the Government Agency;

(iii) Fails to sign the PPP agreement, if requested by the Government Agency to do so after its bid has been accepted;

(iv) Fails to provide the required performance security for the fulfillment of the PPP agreement after its bid has been accepted; or

(v) Fails to comply with any other condition prior to signing the PPP agreement specified in the bidding documents.

D. Due Diligence by Bidders

55. All prospective bidders should be provided the same information, and should be assured of equal opportunities to obtain additional information on a timely basis. The importance of due diligence by prospective bidders and their lenders before the submission of their bids cannot be overstated. Any unverified assumptions made by the bidder at this stage will delay financial closure and may well jeopardize the whole project. Since very little, if any, of information provided to bidders is warranted by the Government Agency, the due diligence process must be thorough and must cover the entire range of legal, technical and financial aspects.

56. To facilitate due diligence by bidders and their lenders, the Government Agency should establish the so-called data room with all relevant reports and documents. The objective should be to make available as much information as possible to facilitate the bidding process, while not warranting most of the information and pointing out that it should be verified by the bidders and their lenders.[10] This no-warranty policy is a crucial element of risk transfer in PPP projects. The data room provision in the bidding documents should emphasize the no-warranty policy and set out rules of access.

57. The Government Agency should also provide access to the project site for visits by prospective bidders. A pre-bid conference should be arranged at least 60 days before the deadline for bid submission whereby potential bidders will meet with the Government Agency's representatives to seek clarifications and discuss the terms and conditions of the PPP agreement. Minutes of the conference should be provided to all prospective bidders. Any additional information, clarification, correction of errors, or modifications of bidding documents should be sent in the form of supplemental notices to each recipient of the original bidding documents in sufficient time before the deadline for bid submission to enable bidders to take appropriate actions. If necessary, the deadline should be extended.

E. Standards and Specifications

58. Technical specifications in the bidding documents should be based on the feasibility study. All outputs required from the private party to provide the infrastructure facility and/or service should be specified.

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[10] The Government Agency should warrant information only where it is the only source of it and such information cannot be independently verified by the bidders.

59. Standards and technical specifications quoted in bidding documents should promote the broadest possible competition, while assuring the critical performance or other requirements for the project. As far as possible, the Government Agency should specify internationally accepted standards such as those issued by the International Standards Organization, with which the facilities and services should comply. Where such international standards are unavailable or are inappropriate, national standards may be specified.

60. Specifications should be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications should be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" should be added after such reference. The specification should permit the acceptance of bids for facilities, which have similar characteristics and which provide performance at least substantially equivalent to that specified.

F. Currency Provisions

61. Bidding documents should state the currency or currencies in which bidders are to state their financial proposals, the procedure for conversion of proposals expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the private party will be paid.

62. For the purpose of comparing prices, bid prices should be converted to a single currency selected by the Government Agency (local currency or fully convertible foreign currency) and stated in the bidding documents. The Government Agency should make this conversion by using the selling exchange rates for those currencies quoted by an official source such as the Central Bank or by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance. The source and date should be specified in the bidding documents. The date should not be earlier than 4 weeks prior to the deadline for the bid submission, nor should it be later than the original date for the expiry of the period of bid validity.

G. Performance Security

63. Bidding documents should require security in an amount sufficient to protect the Government Agency in case of breach of the PPP agreement by the selected private party. This security should be provided in an appropriate form and amount, as specified by the Government Agency in the bidding documents. The performance security should be in the form of a bank guarantee, or cash deposit, and should be issued by a reputable bank or financial institution selected by the bidder. If the institution issuing the security is located outside Pakistan, it should have a correspondent financial institution located in Pakistan to make it enforceable. The amount of the security may vary, depending on the type and magnitude of the project.

H. Liquidated Damages and Bonus Clauses

64. Bidding documents should include provisions for liquidated damages in an appropriate amount when delays in the completion of the project and/or delivery of the service, or failure of the project to meet performance requirements, would result in extra cost, or loss of revenue or loss of other benefits to the Government Agency. Provision may also be made for a bonus to be paid to the private party for completion of the project and/or delivery of the service ahead of the

time specified in the PPP agreement when such earlier completion and delivery would be of benefit to the Government Agency.

I. Payment Mechanism

65. The bidding documents should specify the payment mechanism for the project. Depending on project type, the mechanism should include the following:

(i) Unitary charge paid by the Government Agency for full availability and performance of the service, including an appropriate indexation clause (the consumer price index unless recommended otherwise in the feasibility study); or

(ii) Tariff regime for projects with revenues coming from user fees, including a tariff adjustment mechanism.

66. In both cases, a mechanism for dealing with changes to service requirements should be specified as well.

J. Government Support

67. The Government Agency should indicate any government support offered for the project in the bidding documents. Such support may take the following forms:

(i) Administrative support to the private party in obtaining licenses and other statutory and non-statutory clearances from the Federal Government, a public sector organization or a Government Agency for the purposes of the project on such terms and conditions as may be prescribed; provision of utility connections for power, gas and water at project site; acquisition of land necessary for the project; and rehabilitation and resettlement necessitated because of the execution of the project; this type of support should be made available for all projects;

(ii) Asset-based support such as leasing land or infrastructure facilities owned by the Government or a Government Agency to the private party; the need for this type of support should be determined on case-to-case basis;

(iii) Direct financial assistance through viability gap funding; this type of support should be offered only for projects, which are economically and socially viable, but not financially attractive enough if constrained by affordable tariffs; its amount should be determined through bidding;

(iv) Government guarantees for political risks under the Government's control such as changes in the PPP policy, delay of agreed tariff adjustments, early termination of the PPP agreement with no fault of the private party, and expropriation; this type of support should be made available for all projects; and

(v) Government guarantees for other risks such as force majeure, demand risk, and default by a Government Agency on payments for works and services delivered by the private party (off-take risk); the need for this type of support should be determined on case-to-case basis as part of the risk sharing analysis undertaken during the feasibility study.

K. Quality Management System

68. In any PPP project, all stakeholders have a vital interest in the quality of the infrastructure service to be provided. Specifically, the Government Agency retains overall responsibility for the service delivered through the project. The private party relies on the quality of products and services provided by consortium members, personnel, subcontractors and suppliers in order to meet the specifications and performance standards. Lenders need assurance that the service will be sufficient to continuously earn the necessary revenues and by doing so to service debt. Finally, the users of the service must be provided a quantity and quality that meets their requirements.

69. The Government Agency should clearly state the service level requirements, specify a quality assurance and control system that includes reporting by the private party during project construction and operation, and reserve the right to audit or check the private party's compliance with the requirements.

L. Bid Opening

70. The Government Agency is responsible for the bid opening, which is a critical event in the bidding process. The Government Agency should appoint experienced staff to conduct the bid opening, as inappropriate procedures are usually irreversible and may require cancellation of the bidding process with consequent delays and waste of resources. In observance of best practices, the Government Agency should do the following:

(i) Announce the date, time and place for bid opening in the Invitation to Bid. The date and time should be the same as the deadline for bid submission or promptly thereafter to allow sufficient time to take the bids to the place announced for bid opening;

(ii) Open the bids in public and allow bidders or their representatives to be present;

(iii) Conduct the bid opening strictly following the procedures as specified in the Instructions to Bidders for all bids received not later than the date and time of the bid submission deadline. The term “bid opening” can be misleading in this context because a bid for which a withdrawal or substitution notice was received on time should not be opened, but returned unopened to the bidder. The sequence in which bids are handled, opened, and recorded is crucial;

(iv) Ensure that all bids that were received on time are accounted for, before starting the bid opening, as bids that are not opened and read out at bid opening should not be considered further;

(v) Not reject any bid at bid opening, except for late bids received after the date and time of the bid submission deadline. Technically, late bids should not reach the bid opening, but in certain cases a bidder may attempt to submit its bid at the bid opening place after the deadline; and

(vi) Examine the bids at bid opening in accordance with the provisions of the Instructions to Bidders. The Government Agency should, however, verify at bid opening the validity of the documentation such as power of attorney or other acceptable equivalent document as specified in the Instructions to Bidders confirming the validity of a bid modification, bid withdrawal, or bid substitution, because a withdrawn or substituted bid should not be opened and in consequence not read out and, therefore, not be considered by the Government Agency. Similarly, a bid modification should be opened, read out, and recorded to modify a bid that was received on time.

71. The Government Agency should adopt the two-envelope procedure, wherein bids with separate envelopes for technical and financial proposals are submitted simultaneously. The technical proposal should be opened first and reviewed to determine its responsiveness to the bidding documents. Subsequently, only the financial proposals of bidders with responsive technical proposals should be opened for evaluation. The financial proposals of bidders whose technical proposals are not responsive should be returned unopened.

M. Bid Evaluation

72. The Government Agency is responsible for bid evaluation and contract award. The Government Agency should appoint experienced staff to conduct the evaluation of the bids with assistance of its consultants. Mistakes committed at bid evaluation may later prompt complaints from bidders, requiring reevaluation of the bids, with consequent delays and waste of resources. In observance of best practices, the Government Agency should observe the following principles:

(i) Maintain the bid evaluation process strictly confidential;

(ii) Reject any attempts or pressures to distort the outcome of the evaluation, including fraud and corruption; and

(iii) Strictly apply the evaluation criteria specified in the bidding documents.

73. The Government Agency should carry out the bid evaluation within 45 days in the following two stages:

(i) Assessment of the technical, operational, environmental and commercial responsiveness of the bids received, according to the requirements, criteria, minimum standards, and basic parameters specified in the bidding documents; and

(ii) Evaluation of responsive bids from the financial viewpoint.

74. Specifically, the Government Agency should ascertain during the first stage whether the bids have been properly signed, are accompanied by the required securities, are substantially responsive to the bidding documents, adequately describe the funding structure of the project including the proposed types and levels of equity and debt, and are otherwise generally in order. If a bid is found to be not substantially responsive, i.e., it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it should not be considered further. The bidder should not be permitted to correct or withdraw material deviations or reservations once bids have been opened.

75. The pass/fail nature of the first stage of bid evaluation is based on the premise that it should be the Government Agency who sets the technical parameters, providing sufficient flexibility for bidders to design and engineer the project in a manner that conforms to pre-determined standards and specifications, including service outputs. If the technical parameters

were left open, it would be difficult to compare bids since technical proposals of different bidders could vary significantly. More importantly, instead of the Government Agency determining the assets and service to be provided by the selected private party, it would be the technical bids that would tend to guide the outcome.

76. In the second stage, depending on the type of the project, the Government Agency should use one of the following parameters to determine the best evaluated bid:[11]
:

(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 bid documents;

(b) Lowest present value of the proposed tariffs, tolls, fees and charges for the period covered by the PPP agreement if there is no such formula;

(c) Lowest present value of payments from the Government;

(d) Lowest present value of government subsidy to be provided for the period covered by the PPP agreement;

(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 period covered by the PPP agreement; or

(f) Any other appropriate financial bid parameters approved by the Committee upon recommendation of the Government Agency, PPP Cell, or Risk Management Unit.

77. For two reasons, this two-stage evaluation process is preferable to scoring methods, which are sometimes used to select private parties for PPP projects.[12] First, the use of scoring introduces a high degree of subjectivity both in the determination of evaluation criteria and their weights, and the application of these criteria and weights to assign individual scores or ratings. Such subjectivity in the evaluation provides room for corruption. Second, combining the technical and financial scores may lead to a perverse result, namely, the selection of a bid that does not represent the financially best solution for providing the desired level and quality of infrastructure service.[13]

78. The PPP procurement process allows for clarifications during bid evaluation so that the evaluation reflects a full understanding of each bid. However, the principles of fairness and transparency mean that any form of negotiations with individual bidders, during which these would be asked or permitted by the Government Agency to change the substance or

[11] Unlike in the traditional public procurement where the lowest evaluated bid is sought, the best evaluated bid for a PPP project may be either the lowest evaluated bid (e.g., if the tariff for end users is the bid parameter) or the highest evaluated bid (e.g., if the concession fee to the Government Agency is the bid parameter).

[12] For instance, the use of scoring is suggested in the *Procurement Guidelines for PPP Projects* issued by IPDF in October 2007.

[13] To give an example, let us assume a simplified evaluation of two bids, in which the technical score is given a weight of 85% and the financial score, 15%. Let us further assume that Bid A gets a technical score of 100 points and Bid B, 80 points and that the price of Bid A is 100 and of Bid B, 10. Applying the given weights and aggregating the technical and financial scores, Bid A wins with 86.5 points over Bid B with 83.0 points. The obvious question is whether the technical difference of 20 points is worth spending 10 times more money. With the recommended two-stage evaluation, the Government Agency will specify the technical standards, as required to deliver the infrastructure service, and the two bids will undergo the pass/fail test as to whether they meet these standards. If Bid B passes the test, it wins given its much lower price.

financial parameter of their bids after bid opening are prohibited. The line between the clarifications and negotiations is easily crossed if the former term is not defined and the process for clarifications is not clearly set out. Any clarification should involve a written question and answer. The question should refer to a specific part of the bid and should not solicit any amendment to the bid. The answer should be vetted before being accepted as a clarification. If the answer entails an amendment to the bid, it should be set aside and its contents ignored.

79. No information relating to the examination, clarification, and evaluation of bids and recommendations concerning contract award should be disclosed to bidders or other persons not officially concerned with this process until the publication of contract award.

80. The Government Agency should complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, should be requested in writing from all bidders before the expiration date. The extension should be for the minimum period required to complete the evaluation, obtain the approvals of the PPP Steering Committee, and award the contract. Whenever an extension of bid validity period is requested, bidders should not be requested or be permitted to change the financial parameter or other conditions of their bid. Bidders should have the right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid should be required to provide a suitable extension of bid security.

81. The bidding documents should provide that the Government Agency may reject all bids. Rejection of all bids is justified when bids are not substantially responsive or when the financial proposals are substantially different from the feasibility study estimates. If all bids are rejected, the Government Agency should review the causes justifying the rejection and make revisions to the design and specifications, scope of the contract, conditions of contract, or a combination of these, before inviting new bids.

N. Minimum Number of Bids

82. If only one bid is received on the specified date, the most important element – competition – is missing. The Government Agency should take the following steps to attract competition:

- (i) Undertake market sounding to determine reasons for the weak competition;
- (ii) Restructure the project in terms of the PPP modality, risk allocation and government support, as necessary to enhance its attractiveness for the private sector. Any changes in project structuring should be examined as to their effect on the overall viability of the project; and
- (iii) Conduct re-bidding.

83. If there is only one bid even after the re-bidding, the Government Agency should evaluate it and recommend through the PPP Cell to the Committee whether to negotiate the PPP agreement with the sole bidder or withdraw the project from the market and undertake it in the traditional way by the public sector.

VII. UNSOLICITED PROPOSALS

84. Chapters V and VI describe the pre-qualification and bidding procedures for those PPP projects, which have been identified and prepared by the Government Agencies and are part of the Government's priority programs. By contrast, unsolicited projects are proposed by the private sector. The Government Agency should observe the following basic principles for the treatment of such unsolicited proposals:

(i) Do not encourage such proposals, but do not reject them outright either if they are innovative and sound from the technical, economic, financial and environmental viewpoint;

(ii) Do not enter direct negotiations with the private sector sponsors; and

(iii) Instead, conduct open competitive bidding to determine whether the unsolicited proposal represents the best value for money.

85. The Government Agencies should treat all unsolicited proposals on a case-by-case basis, with the view to selecting projects that demonstrate genuine innovation and furthering of the PPP policy. Specifically, the following steps should be taken:

(i) Private investors should be allowed to propose at their initiative a project to the Government Agency only if such project is not included in Punjab’s priority list and is economically and financially feasible without any direct financial support from the Government;

(ii) Such unsolicited proposal should be accompanied by a feasibility study and draft PPP agreement;

(iii) The Government Agency should consider all technical, financial and other relevant aspects of the proposal and, if considered necessary, modify some of them in consultation with the project proponent;

(iv) The Government Agency should request the project proponent to submit details of its legal, technical and financial capacity;

(v) The Government Agency should evaluate the unsolicited proposal and, if its feasibility as well as the legal, technical and financial qualification of the project proponent is confirmed, submit it through the PPP Cell to the PPP Steering Committee for approval;

(vi) If the unsolicited proposal is approved, the Government Agency should invite comparative bids, following the procedures described in Chapters V and VI;

(vii) If any of the comparative bids is better than the unsolicited proposal, the project proponent should be reimbursed by the winning bidder reasonable costs incurred in project preparation, as determined by the Government Agency and specified in the bidding documents; and

(viii) If none of the comparative bids is better or if no such bids are received, the Government Agency should negotiate the PPP agreement with the project proponent.

VIII. PROJECT APPROVAL PROCEDURE

86. As soon as the two-stage tendering process has been completed, the Government Agency, with the assistance of its consultants, should do the following:

(i) Prepare an evaluation report summarizing and analyzing the results of the process, as follows:

(a) Timeline of pre-qualification;

(b) Number of pre-qualification applicants;

(c) Pre-qualification criteria;

(d) Number and names of pre-qualified applicants;

(e) Timeline of bidding;

(f) Number and names of bidders;

(g) Number of responsive bids and the main reasons for the rejection of non-responsive bids, if any;

(h) Bid parameter used for financial evaluation (see para. 76);

(i) Ranking of financial bids, together with the amounts quoted;

(j) Any other facts and issues relevant to the evaluation; and

(k) Recommendation of the Government Agency on contract award.

(ii) Submit the evaluation report through the PPP Cell to the PPP Steering Committee for approval of the contract award recommendation.

87. Rather than attempting to repeat the evaluation, the PPP Cell should exercise quality control, as follows:

(i) Review the completeness of the evaluation report submitted by the Government Agency;

(ii) Review compliance of the pre-qualification and bidding process including the evaluation with the relevant provisions in the PPP law;

(iii) Review consistency of the evaluation with the relevant provisions in the pre-qualification and bidding documents;

(iv) Assess the type and amount of government support requested for the project by the winning bidder (in close cooperation with the Risk Management Unit – see para. 88);[14]

(v) Summarize results of the review and assessment in a briefing paper for the PPP Steering Committee, indicating whether or not the contract award recommendation of the Government Agency is endorsed by the PPP Cell; and

(vi) Forward the evaluation report, together with the briefing paper, to the PPP Steering Committee.

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[14] As provided for in the *Project Preparation Guidelines for Public-Private Partnerships in Infrastructure*, a preliminary assessment of the type and amount of government support should be made in the feasibility study. Paras. 87(iii) and 88 are applicable only if the actual amount of the government support is to be determined through bidding.

88. If the winning bidder requests any government support in the form of financial contribution to close the viability gap or guarantees for undertakings of the Government Agency, the PPP Cell should share the project proposal with the Risk Management Unit, which should do the following:

(i) Examine whether the request for government support and the proposed risk allocation are consistent with the risk management guidelines;

(ii) Assess the related direct and contingent liabilities and analyze their fiscal impact;

(iii) Assess whether the requested government support is fiscally sustainable; and

(iv) Draft the corresponding section of the briefing paper for the PPP Steering Committee and send it to the PPP Cell.

89. Taking into account the views of the PPP Cell and Risk Management Unit as contained in the briefing paper, the PPP Steering Committee should consider the contract award recommendation and decide on whether to approve it or send it back to the Government Agency for reconsideration. This decision should be taken within 30 days from the submission of the bid evaluation report. The PPP cell should convey this decision, together with the principal reasons, in writing to the Government Agency. If reconsideration is suggested by the PPP Steering Committee, a revised evaluation report including contract award recommendation should be submitted through the PPP Cell to the PPP Steering Committee for approval.

90. It is important that the review by the PPP Cell and Risk Management Unit and the decision-making of the PPP Steering Committee focus on whether the procedures followed and methods used by the Government Agency have been consistent with the PPP law and the pre-qualification and bidding documents, and whether the requested government support, if any, is fiscally sustainable. As long as this is the case, the contract award recommendation and government support should be approved and no other considerations should be allowed at this stage that could affect the ranking of bidders.

91. The Government Agency should announce the results of the bidding and issue a notice of award to the selected private party within 10 days of the PPP Steering Committee's decision.

IX. NEGOTIATIONS AND CONTRACT SIGNING

92. The draft PPP agreement should form part of bidding documents. It should clearly define the legal relationship between the Government Agency and the selected private party, and their rights and responsibilities including the specific government support for the project. It should contain the following provisions, as applicable depending on the sector and type of the project:[15]

(i) Type of the project including the PPP modality;

(ii) Term of the PPP agreement;

(iii) Scope of works and services to be provided under the project;

[15] It is intended to develop model PPP agreements for the main infrastructure sectors and project types (e.g., power plants, water supply facilities and toll roads) when piloting PPP projects in Punjab. Moreover, the comprehensive *Standardized PPP Provisions* issued by IPDF in September 2007 can be used as the basis for drafting PPP agreements.

(iv) Main technical specifications and performance standards;

(v) Environmental and safety requirements;

(vi) Implementation milestones and completion date of the project;

(vii) Cost recovery scheme through tariffs and direct payments, including mechanism for their periodical adjustment;

(viii) Performance bonds for construction works and operation;

(ix) Minimum insurance coverage;

(x) Acceptance tests and procedures;

(xi) Penalties and liquidated damages for delays;

(xii) Rights and obligations of the parties to the PPP agreement, including risk sharing;

(xiii) Type and amount of government support;

(xiv) Transfer of assets at the end of the term of the PPP agreement (if any);

(xv) Warranty period and procedures after the transfer;

(xvi) Requirements and procedure for variations of the PPP agreement;

(xvii) Grounds for and effects of termination of the PPP agreement, including force majeure;

(xviii) Compensation formulas for early termination of the PPP agreement;

(xix) Procedures and venue for dispute resolution;

(xx) Financial reporting by the private party; and

(xxi) Supervision mechanism of the Government Agency.

93. Negotiations are an integral part of the transaction execution phase. It is a process, not an event. Successful negotiations culminate in contract signing, concluding the procurement phase, and starting implementation. The Government Agency and the private party have different perspectives of the negotiations phase – the former wants to reduce its costs and maximize the value of the service provided through the project while the latter wants to reduce risk and increase its rate of return.

94. The Government Agency should assign a qualified and experienced negotiating team led by a senior official who is able to communicate its position on key issues and is empowered to take decisions on most of them. The negotiating team should be assisted by the consultants. As negotiations can easily turn into a full-time assignment, the Government Agency should be prepared to make the assigned staff available.

95. The negotiating team should observe the following principles in contract negotiations with the selected private party:

(i) Based on the two-stage evaluation, the Government Agency should award the contract to the bidder whose technical proposal has been determined to be substantially responsive to the bidding documents and whose financial proposal has been found to be the best evaluated bid in terms of the parameters described in para. 76. The negotiations should focus on terms and conditions not specified in the bidding documents;

(ii) No post-bid changes should be allowed to be made during the negotiations in those terms and conditions, which have been described in the bidding documents as binding and have formed part of the bid evaluation;

(iii) Information provided in the submission of pre-qualification should be confirmed during the negotiations, and award should be denied to a bidder who is judged to no longer have the legal, technical and financial capability to perform the contract; and

(iv) The negotiations should be completed within 60 days from their commencement.

X. FINANCIAL CLOSURE

96. After the contract has been signed by the Government Agency and the selected private party, efforts to meet conditions required for financial closure should start. Financial closure is defined as a legally binding commitment of equity holders and lenders to provide funding for the entire investment. The major part of these efforts will therefore be the responsibility of the private party, which will have to satisfy requirements of its financiers. However, there will be also actions required to allow financial closure, such as the issuance of permits and approvals for the project, where the responsibility will be with the Government Agency. For obvious reasons, there should be no delays in completing any of these actions.

97. According to the PPP law, the private party should achieve financial closure for the project within 12 months of the signing of the PPP agreement. Any delay in reaching financial closure beyond such period should be reported by the Government Agency through the PPP Cell to the PPP Steering Committee. The report should contain an explanation for the delay so that the PPP Steering Committee can determine if the project is capable of being financed under the proposed PPP modality or whether other alternatives including traditional public procurement should be considered.

Appendix 1

MAIN STEPS DURING THE PROJECT LIFE CYCLE

Phase	Steps	Responsibility				
		GA	PPPC	RMU	CF	PPPSC
1. Project Inception	➢ Decide to explore the PPP mode	✓				
	➢ Identify a potential PPP project from master plan or through preliminary needs analysis	✓	✓ [a]			
	➢ Screen the project using multiple criteria	✓	✓ [a]			
	➢ Decide whether to pursue the project any further	✓	✓ [a]			
	➢ Prepare a project concept paper	✓	✓ [a]			
	➢ Register the project with the PPP Cell	✓				
	➢ Appoint a project manager	✓				
	➢ Draft terms of reference for the feasibility study and transaction execution	✓	✓ [a]			
	➢ Prepare a budget estimate for the required consulting services	✓	✓ [a]			
	➢ Apply for financing from the PDF (optional) [b]	✓				✓
	➢ Prepare and issue a request for proposals for consulting services	✓	✓ [a]			
	➢ Evaluate the technical and financial proposals	✓				
	➢ Negotiate and sign a contract with the first-ranked consultants	✓				
2. Project Preparation	➢ Carry out the feasibility study				✓	
	➢ Review its conclusions and recommendations	✓				
	➢ Decide on whether to proceed with the project any further	✓				
	➢ Prepare a report on the project proposal	✓			✓	
	➢ Submit the project proposal through the PPP Cell to the PPP Steering Committee	✓				
	➢ Review the project proposal and prepare a briefing paper for the PPP Steering Committee		✓	✓ [c]		
	➢ Decide on whether to approve, reject or send back for reconsideration the project proposal					✓
3. Transaction Execution	➢ Prepare an information memorandum for project marketing				✓	
	➢ Undertake market sounding of potential investors and lenders				✓	
	➢ Finalize project structure and tender documents				✓	
	➢ Establish a data room for due diligence by investors	✓			✓	
	➢ Issue a request for pre-qualification applications	✓				
	➢ Evaluate pre-qualification applications	✓			✓	
	➢ Issue a request for technical and financial proposals to pre-qualified bidders	✓				
	➢ Evaluate bids received	✓			✓	
	➢ Prepare a bid evaluation report including recommendation on contract award	✓			✓	
	➢ Submit the bid evaluation report through the PPP Cell to the PPP Steering Committee	✓				
	➢ Review the bid evaluation report and prepare a briefing paper for the PPP Steering Committee		✓	✓ [c]		
	➢ Decide on whether to approve or send back for reconsideration the contract award recommendation					✓
	➢ Conduct negotiations with the preferred bidder	✓			✓	
	➢ Sign the PPP agreement	✓				
	➢ Fulfill conditions precedent to financial closure	✓			✓	
4. Construction, Operation and Transfer	➢ Monitor project implementation to ensure conformity with plans and specifications	✓				
	➢ Monitor and evaluate project operation to ensure conformity with performance standards and tariffs	✓				
	➢ Prepare annual reports on project performance to the PPP Cell	✓				
	➢ Monitor and evaluate financial performance of the project			✓		
	➢ Make arrangements for project transfer to the Government at the end of the term of the PPP agreement	✓				

CF = consulting firm; GA = Government Agency; PDF = Project Development Facility; PPP = public-private partnership; PPPC = PPP Cell; PPPSC = PPP Steering Committee; RMU = Risk Management Unit.

[a] If support by the PPP Cell in this activity is requested by the Government Agency.

[b] See the *Guidelines for the Project Development Facility for Public-Private Partnerships in Infrastructure*.

[c] If government support is required for the project.