

**The Ravi Urban Development Authority (Joint Venture) Regulations, 2020**

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**Notification chm/Ruda/17/1/2020-61**, in exercise of the powers conferred under Section of The Ravi Urban Development Authority Act, 2020, The Ravi Urban Development Authority is pleased to notify the following regulations:

**1. Short title and commencement.** – (1) These Regulations may be called **The Ravi Urban Development Authority (Joint Venture) Regulations, 2020.**

(2) They shall come into force at once.

**2. Application.** - These Regulations shall apply to any scheme or part thereof to be undertaken by the Authority on Joint Venture (JV) basis under the Act.

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

(a) "**Act**" means The Ravi Urban Development Authority Act, 2020 (XVII of 2020);

(b) "**Authority**" means the Authority as defined in Section 2(c) of the Act;

(c) "**Bid**" means a technical and financial proposal submitted by a person who is eligible under the Act and Regulations to undertake a scheme;

(d) "**Consortium**" means two or more persons acting in concert for submission of bid and undertaking of scheme or part of a scheme pursuant to a JV Agreement;

(e) "**Government**" means the Federal Government, a Provincial Government or a Local Government;

(f) "**Joint Venture**" means a commercial agreement between the Authority and a private party pursuant to which the private party:

i) Undertakes a scheme or part of a scheme on behalf of the Authority by, amongst other things, planning, designing, constructing, financing, operating, insuring, marketing or maintaining such a scheme or part thereof; or

ii) Performs any function of the Authority on its behalf; or

iii) Assumes substantial financial, technical, operational or environmental risks in connection with undertaking the development or implementation of such a scheme or any part thereof; or

iv) Receives a benefit for performing the Authority's functions or from undertaking a scheme or part of a scheme on behalf of the Authority, either by way of:

(A) Prices, charges or fees to be collected by the Private Party from any person in lieu of works, goods or services provided to them;

- (g) "**JV Agreement**" means any and all agreements in writing between the Authority and a Private Party for the purposes of a Joint Venture ;
  - (h) "**Most Advantageous Bid**" means
    - i) A bid that, that, after meeting the eligibility or qualification criteria, is found substantially responsive to the terms and conditions as set out in the bidding documents; and
    - ii) Evaluated as the highest ranked bid on the basis of bid evaluation criteria;
  - (i) "**Private party**" means a person who enters into a JV Agreement with the Authority;
  - (j) "**Person**" means a company, entity, firm, association of persons, body of individuals, or a sole proprietor other than a department, attached department of a Government, or a body corporate owned or controlled by a Government except such governmental organizations which are mandated to perform commercial functions or activities;
  - (k) "**Regulations**" mean The Ravi Urban and Development Authority (Joint Venture) Regulations, 2020;
  - (l) "**Risk**" means any event or circumstance affecting the scheme which can adversely affect performance and costs of any contractual obligation related thereto including design, construction, financing, operation or maintenance;
  - (m) "**Scheme**" means a scheme as defined in Section 2(cc) of the Act;
  - (n) "**Solicited Proposal**" shall have the same meaning as ascribed thereto in Regulation 6;
  - (o) "**Special Purpose Vehicle**" means a special purpose company established by the private party for implementation and operation of the scheme to assume all the rights and obligations of the private party under the JV Agreement;
  - (p) "**User Levy**" means a levy, without limitation, including annuity, charge, fee, tariff, toll, which may be collected under a JV Agreement;
  - (q) "**Unsolicited Proposal**" shall have the same meaning as ascribed thereto in Regulation 17;
  - (r) "**Viability Gap Fund**" means the funds or other assets of the Government which are made available to the private party to support the scheme including funds for covering revenue shortfalls by means of grants, subsidies, guarantees, or any other mode approved by the Authority;
- (2) All other terms and expressions used but not defined in these Regulations shall have the same meaning as ascribed to them in the Act.

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

- 1) Identify suitable schemes or part thereof and prioritize them;
- 2) Prepare, consider and approve a concept paper for any scheme or part thereof in the form of prefeasibility study;
- 3) Prepare a feasibility for a scheme and, if its outcome is positive, submit a scheme proposal along with estimated cost of the scheme, type of JV Agreement and the details of Government support;
- 4) Conduct a competitive tendering process for a scheme approved, including a pre-qualification process and bidding by the pre-qualified bidders to elect the suitable private party;
- 5) Carry out bid evaluation;
- 6) Negotiate and sign the JV Agreement with the selected private party;
- 7) Monitor and evaluate implementation and operation of the scheme or part thereof;
- 8) Evaluate the type and amount of Government support that may be made available for a scheme;
- 9) Assess regulatory and social impediments involved in the planning, development, financing, implementation, management, supervision and delivery of a scheme and take mitigation measures;

**5. Constitution of Committees.** -The Chairman may constitute one or more committees or sub committees in accordance with Section 6 (xx.vi) of the Act for the purposes of undertaking joint ventures under the Act and these Regulations.

**6. Scheme Identification and Preparation.** -

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

7. The chairman may authorize the process of competitive public tendering using process of pre-qualification and/or bidding in accordance with Regulation 8 to 13 without the steps mentioned in 1, 2 and 3 above of this regulation if the bidding documents are ready and chairman is of the opinion that detailed scheme(s) proposal is not required in order to expedite the process.

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

(2) The Authority shall review the scheme proposal and evaluate the need and amount of Government support requested and send its recommendations to the Government concerned for provision of support to the scheme.

(3) The Authority may set up a Viability Gap Fund which may be funded through any permissible sources under the Act.

(4) The Authority shall indicate the Government support, if any, approved by the Government concerned for a scheme or part of a scheme.

(5) The Government support may take the following forms: -

- a) Administrative support to the private party in obtaining licenses and other statutory and non-statutory clearances from a Government, any public sector organization or any authority for purposes of the scheme on such terms and conditions as may be determined;
- b) Administration support in procuring utility connections for power, gas and water at scheme site; clearance of right of way or acquisition of land necessary for the scheme; and, rehabilitation and resettlement necessitated because of the execution of the scheme;
- c) Government equity, in the form of land or infrastructure facilities owned by a Government or the Authority, to be calculated with reference to the current market value of land or infrastructure or future value of discounted cash flows accruing or arising from asset to be offered, with reference to the scheme cost and its capital structure or debt equity ratio;
- d) Direct financial assistance from the Viability Gap Fund or otherwise. Subject to applicable laws such support may be offered for schemes which, in the opinion of the Authority, are economically and socially viable, but may not be financially attractive enough for investment.
- e) Government guarantees for political risks under a Government's control such as changes in the law, delay of agreed user levy adjustments, early termination of the JV Agreement owing to no fault of the private party, and expropriation provided that these will not include force majeure risks, i.e. risks occasioned by force majeure such as floods, earthquakes or other natural disasters or civil commotion, riots and unrest. For avoidance of doubt, the JV Agreement shall provide for consequences of force majeure events.
- f) Government guarantees for other risks such as demand risk, and default by the Authority on payments due under a JV Agreement.

(6) Where the Authority decides to offer the approved Government support on first come first serve basis, it shall invite proposals through wide publicity in accordance with these Regulations.

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

(2) For a scheme with a total cost equal to or exceeding Rs. 5,000,000,000 (Rupees Five Billion), the notice must be published in at least one international newspaper.

**9. Pre-Qualification.** – The Authority shall conduct prequalification where necessary, keeping in view the complexity and requirements of a scheme or part of scheme, in the following manner:

1. A person who intends to participate in the pre-qualification shall provide information with regard to his legal, technical, managerial and financial capacity to undertake the scheme in such form, along with such particulars, as may be specified by the Authority;
2. In case the person is a consortium, its members and their roles and proposed shareholding shall be disclosed at the pre-qualification stage, and the consortium shall provide a written and legally enforceable undertaking from its members to be jointly and severally liable for the performance of obligations under the contract, if awarded;
3. The Authority shall examine the information and other particulars submitted by the person and shall, within **thirty** (30) days, decide as to whether such person fulfills the criteria for prequalification as laid down by the Authority;
4. The Authority shall promptly notify each person submitting an application to pre-qualify whether or not it has been prequalified and shall make available to any person directly involved in the pre-qualification process, upon request, the names of all persons who have been pre-qualified. Only persons who have been pre-qualified shall be entitled to participate in the bidding;
5. If less than three persons are pre-qualified, the Authority may analyze the reasons for such response and either proceed for bidding after recording the reasons, or revise scheme structuring, and reinitiate the prequalification process for additional participants;
6. If a consortium is a pre-qualified person, the lead consortium member shall not be replaced during the applicable lock-in period, to be prescribed in the bidding documents, without the prior approval, in writing of the Authority. No such approval shall be given unless the consortium finds a suitable replacement which in the sole and absolute discretion of the Authority is both suitable and has equal or better qualifications than the withdrawing member;

7. Subject to prior written approval by the Authority, any other member of a consortium may, prior to execution of the JV Agreement or during the term of the JV Agreement, withdraw, provided that the remaining members are, in the sole and absolute discretion of the Authority, legally, technically and financially capable of successfully carrying out the implementation and operation of the scheme, or that suitable substitute with equal or better qualifications is available to replace the withdrawing member; and
  8. Any change in the shareholding, including any rights attached to such shareholding, of the consortium shall also be subject to the prior written approval of the Authority; and
  9. If the consortium fails to comply with the requirement of sub-clause (7), (8) or (9) of this Regulation 8, the consortium shall cease to be a prequalified person.
- 10. Bidding.** – (1) After the selection of pre-qualified persons, the Authority shall, within **thirty** (30) days from the completion of the pre-qualification process, issue bid documents to the prequalified persons and shall give adequate time not exceeding sixty (60) days to such pre-qualified persons for preparation and submission of bids.
- (2) Where prequalification is deemed not necessary by the Authority, in its sole and absolute discretion, the Authority shall within **thirty** (30) days from the approval of the scheme or part thereof, issue bid documents and shall give adequate time not exceeding sixty (60) days for preparation and submission of bids.
- (3) The bid documents shall include
- a) Instructions to bidders.
  - b) Minimum design and performance standards and specifications;
  - c) Bid form, specifying the information required to evaluate the bid and the bid evaluation criteria;
  - d) Bid security form and performance bond form; and
  - e) Any other document deemed relevant by the Authority, in its sole and absolute discretion, to the scheme, including but not limited to the feasibility study and environmental impact assessment.
- (4) To provide clarifications to bidders and to discuss the terms and conditions of the JV, the Authority may, within such period as is deemed reasonable, conduct a pre-bid meeting with the bidders and may, if necessary, issue addendum(s) to the bidding documents.
- (5) If only one valid bid is received up to the last date for submission of bids, the Authority may evaluate it, and depending on the results of such evaluation and after recording reasons-
- a) Negotiate or enter into the JV Agreement with the said single bidder; or
  - b) After a market research to ascertain the reasons for the poor response to the call for bids, restructure the scheme proposal and the proposed Government support and submit the revised proposal.
- (6) The Authority shall deal with the revised proposal in the same manner as is prescribed for a new proposal for a scheme

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

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

1. The bid shall comprise a single package containing two separate envelopes, one for the financial and the other for the technical proposal;
2. The envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" respectively;
3. First, the envelope marked as "TECHNICAL PROPOSAL" shall be opened;
4. The envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the Authority without being opened;
5. The Authority shall evaluate the technical proposal in such manners as may have been made public, in advance, without reference to the price and shall reject any proposal which does not conform to the specified requirements;
6. During the technical evaluation, the Authority shall not permit any amendment in the technical proposal;
7. After the evaluation and approval of the technical proposal, the Authority shall publicly open the financial bids, received from the bidders who are technically qualified and shall return un-opened all the financial bids received from the bidders who are not technically qualified;'
8. The Authority shall communicate the time, date and venue to the bidders, in advance, provided that the time so communicated, shall not be beyond the bid validity period; and
9. The most advantageous bidder(s) shall be awarded the JV Agreement.

**13. Single Stage Three Envelope Bidding Procedure:** - When pre-qualification is to be done together with inviting technical and financial bids or through a single stage three envelopes bidding, the Authority shall adopt the following procedure:

1. The bid shall comprise a single package containing three separate envelopes, two containing separately the financial and the technical proposals and third one shall contain pre-qualification documents as required in the bid documents;
2. The envelopes shall be marked as "FINANCIAL PROPOSAL", "TECHNICAL PROPOSAL" and "PRE-QUALIFICATION";
3. Initially, the envelope marked as "PRE-QUALIFICATION" shall be opened;
4. The envelopes marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" shall be retained in the custody of the Authority without being opened;
5. The Authority shall evaluate the pre-qualification documents in such manner as may have been made public, in advance, and shall reject any proposal which does not conform to the specified requirements;
6. After submission of the documents, the Authority shall not permit any amendment in the technical or financial proposals;
7. After pre-qualifying the bidders, the Authority shall return un-opened the envelopes containing the technical or financial proposals to the bidders who fail to pre-qualify;
8. The Authority shall next open the technical proposals of the pre-qualified bidders at

the given time and date in the presence of all the bidders who are present provided that the time so communicated shall not be beyond the bid validity period; provided further that the procedure shall not be deemed incomplete or defective if a bidder, although invited, does not participate in the proceeding for any reason what so ever; and

9. The Authority shall follow the same procedure for opening of technical and financial proposals and award of the JV Agreement as contained in Regulation 12.

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

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

**First Stage**

- a) The bid shall comprise a single package containing two separate envelopes containing the financial proposal and the technical proposal;
- b) The envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL";
- c) First, only the envelope marked as "TECHNICAL PROPOSAL" shall be opened;
- d) The envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the Authority without being opened;
- e) The technical proposal may be discussed with the bidders with reference to the Authority's technical requirements;
- f) The bidders willing to meet the requirements of the Authority maybe allowed to revise their technical proposals following discussions; and
- g) Bidders not willing to conform their technical proposal to the revised requirements of the Authority maybe allowed to withdraw their respective bids without forfeit of their bid security.

**Second Stage**

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



d) The most advantageous bid shall be accepted.

**15. Bid Evaluation.** - (1) In case of Solicited Proposals, the Authority shall, within fifteen (15) days from the receipt of the bids, evaluate the bids.

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

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

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

(4) Notwithstanding anything contained in these Regulations:

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

(5) The Authority may, for reasons to be recorded in writing, reject a speculative or unrealistic bid as non-responsive but such rejection of a bid shall not lead to the termination of the bidding process.

(6) If the result of bidding process leads to a bid conforming to the scheme estimate,

type of JV Agreement and Government support approved by the Authority, the Authority may proceed with execution of the JV Agreement.

- (7) If the most advantageous bid is higher than the scheme estimate or in case there is a need to restructure the scheme or type of JV Agreement, the same shall be reconsidered.
- (8) The Authority shall issue a notice for execution of JV Agreement to the selected private party after ten (10) days of the announcement of the bid evaluation report.

#### **16. Announcement of Bid Evaluation Report**

The Authority shall announce the results of bid evaluation in the form of a report giving justification for acceptance or rejection of bids at least ten (10) days prior to the execution of JV Agreement.

**17. Rejection of Bids-** (1) The Authority may reject all bids at any time prior to the acceptance of a bid. The Authority shall upon request communicate to any person who submitted a bid, the grounds for its rejection of all bids, but is not required to justify those grounds.

- (2) The Authority shall incur no liability, solely by virtue of its invoking sub regulation (1) towards persons who have submitted bid.
- (3) Notice of the rejection of all bids shall be given promptly to all persons that submitted bids.

#### **18. Grievance Committee & Appellate Committee:**

- (1) The Authority shall constitute a Grievance Committee comprising an odd number of persons, with proper powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the JV Agreement.
- (2) Any bidder feeling aggrieved by any act of the Authority after the submission of his bid may lodge a written complaint concerning his grievances not later than ten (10) days after the announcement of the bid evaluation report.
- (3) The committee shall investigate and decide upon the complaint within fifteen (15) days of the receipt of the complaint.

#### **19. Preparation and Negotiation of JV Agreement:**

1. The draft JV Agreement can be made part of the bid documents and/or can be negotiated after selection of successful bidder(s) shall clearly define the legal relationship between the Authority and the selected private party, their rights and responsibilities including the specific Government support for the scheme.
2. The draft JV Agreement to be negotiate with successful bidder may contain the following provisions; where applicable:
  - a) Type of the scheme;
  - b) General terms and conditions of contract;
  - c) Special conditions of contract;
  - d) Scope of works and services to be provided under the scheme;
  - e) Main technical specifications (where applicable, construction standards including seismic resistance standards) and performance standards;
  - f) Environmental and safety requirements;

- g) Implementation of milestones and completion date of the scheme;
  - h) Cost recovery scheme through appropriate means including user levies and mechanism for their periodical adjustment;
  - i) Performance bonds for construction works and operation;
  - j) Minimum insurance coverage;
  - k) Requirements and procedure for variations of the JV Agreement;
  - l) Grounds for and effects of termination of the JV Agreement including force majeure;
  - m) Procedures and venue for disputes resolution;
  - n) Financial reporting by the private party; and
  - o) Supervision mechanism of the Authority.
3. The Authority may ensure conclusion of contract negotiations with the selected private party within sixty (60) days or as soon as it may be possible thereafter.
  4. The negotiations shall focus on the terms and conditions not specified in the bid documents but no post-bid changes in the terms and conditions mentioned in the bid documents as binding and which formed part of the bid evaluation maybe allowed as a consequence of contract negotiations.
  5. Notwithstanding the foregoing, post-bid changes may be allowed which have the effect of:
    - a. Reducing the cost of the scheme to be borne by the Authority, or a Government or the public without adversely altering or affecting the scope of work or the performance standards; or
    - b. Increasing or improving the scope of work or performance standard without increasing the cost of scheme to be borne by the Authority, or a Government or the public.

**20. Unsolicited Proposal.** - (1) A proposal submitted by any person to the Authority for a scheme or part of scheme, not being a Solicited Proposal, may be considered as an Unsolicited Proposal and may be processed in accordance with these Regulations.

- (2) An Unsolicited Proposal will be accompanied by a feasibility study, social and environmental impact statement/assessment, and a draft JV Agreement, analysis of need for Government support and determination of the JV modalities.
- (3) The Authority may consider an Unsolicited Proposal from all aspects including technical, environmental and financial aspects, and in case of requirement of additional information, the Authority may request for the submission of an amended or modified proposal.
- (4) Within ten (10) days from the receipt of an Unsolicited Proposal, the Authority may require the person to submit details about legal, technical, managerial and financial capability of the person, as well as the cost of preparing the Unsolicited Proposal with relevant supporting evidence for its consideration and such information shall be submitted to the Authority within fifteen (15) days from the receipt of such requirement.
- (5) Within fifteen (15) days from the receipt of information required under sub-clause (3) or as soon as it may be possible thereafter, the Authority may evaluate the Unsolicited Proposal and, if it is found to be economically, technically and

environmentally feasible and the information submitted by the person about his own legal, technical, managerial and financial capability is satisfactory. The Authority may communicate the decision with regard to the Unsolicited Proposal in writing to the person who submitted the same within fifteen (15) days.

- (6) If the Authority approves the Unsolicited Proposal, the Authority shall invite competitive bids for the scheme identified in such proposal by following the bid procedure described in Regulation 8 to 14 and, if prequalification is conducted, the person submitting the unsolicited proposal shall not be required to be pre-qualified and may directly participate in the bidding process.
- (7) If the person who submitted the Unsolicited Proposal fails to match the most advantageous bid, the Authority shall direct the successful bidder to reimburse to the person who submitted the Unsolicited Proposal the amount specified in the bid documents as the cost of preparing the Unsolicited Proposal provided that the reasonableness of the cost of preparation of Unsolicited Proposal will be determined by the Authority, in its sole and absolute discretion.
- (8) If the other valid competitive bids, except the bid of the person who submitted the Unsolicited Proposal, are not received, the Authority may negotiate and enter into the JV Agreement with the person who submitted the Unsolicited Proposal or decide to undertake the bidding process afresh.

**21. Negotiated Procurement of Scheme.** - Notwithstanding anything contained in these Regulations, the Authority may enter into a negotiated procurement of a joint venture, where the scheme or part of a scheme is being undertaken on the basis of any Federal Governments bilateral treaty or arrangement.

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

- (2) The private party shall prepare a detailed design and implementation plan in accordance with the technical specifications contained in the JV Agreement and shall submit these to the Authority for its consent prior to the start of work. The private party shall execute the scheme in accordance with the performance standards and technical specifications contained in the JV Agreement and the design and implementation plans approved in accordance with the JV Agreement.
- (3) Private party shall, to guarantee its performance, of the construction works, submit a bond or furnish a bank guarantee, as the Authority may require for an amount specified by the Authority, which shall be valid up to the acceptance of the completed works by the Authority; and for schemes which include operation and maintenance by the private party, the private party shall also post or furnish another performance bond or bank guarantee, for an amount specified by the Authority, upon the acceptance of the completed works to guarantee compliance with the operational and maintenance parameters and standards specified in the JV Agreement.

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

- (4) Within three hundred and sixty five (365) days of the signing of the JV Agreement or such other period as may be specified in the JV Agreement, the private party shall achieve financial closure for the scheme.
- (5) The Authority may allow variations in the JV Agreement during the implementation and operation of the scheme if the following requirements are met:
  - (a) There is no increase in the agreed tariffs except the periodic formula based tariff adjustments, unless the scope of works or performance standards are increased;

- (b) There is no reduction in the scope of works or performance standards, fundamental change in the contractual agreement or extension of the term of the JV Agreement, except in cases of breach by the Authority of its obligations.
  - (c) There is no additional Government guarantee or increase in the financial exposure of a Government or the Authority;
  - (d) The variation in the JV Agreement becomes necessary due to an unforeseeable event beyond the control of the Authority or the private party.
- (6) The Authority shall monitor and evaluate the scheme during its implementation and operation to ensure its conformity with the plans, specifications, performance standards and user levies set forth in the JV Agreement, and to assess its outcomes.

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

- (2) The private party will have the right to receive or collect tariffs or payments in accordance with and at the rates set forth in the JV Agreement, either from end users or from the Authority.
- (3) Unless specified in the bid documents, the Authority will determine the user levies through bidding and the user levies shall be adjusted periodically during the term of the JV Agreement in accordance with the terms and conditions of the JV Agreement.
- (4) If the Authority keeps the user levies at lower levels to make the services provided by the scheme affordable to the end users, the Authority will compensate the private party for the difference by making appropriate payments if so agreed in the JV Agreement.

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

**25. Transparency.** -(1) The Authority shall, immediately upon entering into a JV Agreement, make the JV Agreement public by posting it on the website of the Authority.

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

**26. Integrity Pact.** -The Authority shall, for every scheme, enter into an integrity pact with the private party along with the JV agreement.

**27. Transfer of the Scheme.** - If a scheme is transferred to the Authority in accordance with the provisions of the JV agreement, all the rights and obligations (if any) granted under the JV agreement to the private party in respect of the scheme shall stand transferred to the Authority.

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

**29. Recovery of Costs, Dues and Fees.** - The Authority may recover any sum due from a

private party as arrears of land revenue in accordance with applicable laws.

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

**31. Protection of Action taken in Good Faith.** -No suit, claim or other legal proceedings shall lie against the Authority or any member, officer, servant, adviser or a representative of the Authority in respect of anything done or intended to be done in good faith under these Regulations.

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

**33. Dispute Resolution:** - (1) In case of any dispute arising between the Authority and a private party in relation to or arising out of the JV agreement, the parties shall resolve the dispute in the following manner:

- a) The parties will first deliberate to achieve a consensus;
- b) If no consensus is achieved, the parties shall settle the dispute in an amicable manner by mediation by an independent and impartial person appointed by the Chairman; and
- c) If no amicable settlement of the dispute has been reached, the parties shall resolve the dispute by arbitration.

(2) The disputes shall be decided in accordance with the laws of Pakistan and pursuant to the Arbitration Act, 1940 (X of 1940), or any amending/repealing law thereof or under any other law as may be specified in the JV agreement.