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PART II

Statutory Notifications containing Rules and Orders issued by all Ministries and Divisions of the Government of Pakistan and their Attached and Subordinate Offices and Supreme Court of Pakistan

GOVERNMENT OF PAKISTAN

MINISTRY OF PRIVATISATION

[Privatisation Commission]

NOTIFICATION

Islamabad, the 24th December, 2018

S.R.O. 2 (KE)/2019

In exercise of the powers conferred by section 41 of the Privatisation Commission Ordinance, 2000 (LII of 2000), the Privatisation Commission is pleased to make the following regulations, namely: -

PRELIMINARY

1. Short title and commencement.— (1) These regulations may be called the Privatisation Commission (Hiring of Financial Advisers) Regulations, 2018.

(2) They shall come into force at once.

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

- (a) “evaluation committee” means a committee constituted by the Chairman, comprising not less than three persons which may include a member of the Board of the Commission with the purpose of evaluating the technical and financial proposals submitted by the interested parties;
- (b) “financial adviser” or “FA” means an external adviser hired by the Commission with the approval of the Board to advise on a major privatisation;

- (c) “interested party” or “IP” means a person who has submitted an expression of interest through a formal proposal and payment of fee, if any, as the Chairman may prescribe;
- (d) “major privatisation” means a privatisation, -
 - (i) which envisages transfer of management control; and
 - (ii) where the size and complexity of such a privatisation warrants the appointment of a financial adviser; or
 - (iii) a privatisation which the Board on the recommendation of the Commission has resolved to be a major privatisation notwithstanding the fact that conditions (i) and (ii) are not satisfied;
- (f) “Ordinance” means the Privatisation Commission Ordinance, 2000 (LII of 2000);
- (g) “pre-qualified IP” shall have the meanings as assigned to it in regulation 9;
- (h) “request for proposals package” or “RFP Package”, in respect of major privatisation, means the letter of invitation, the terms of reference, draft agreement with FA, evaluation criteria for technical, financial proposals or both, profile of the entity or interest being privatised and such other document which the transaction manager deems as necessary;
- (i) “top-ranked IP” shall have the same meaning as assigned to it in regulation 11;
- (j) “total fee” means total fee as defined in regulation 4; and
- (k) “transaction manager” means the person appointed by the Secretary to be primarily responsible for liaising with the FA and ensuring to the extent possible, that the FA is complying with the terms of reference and submitting the deliverables in accordance with agreed schedules.
- (l) “working day” means an official working day, in which official business is conducted in the Commission.

(2) All other terms and expressions used but not herein defined shall have the same meanings as are assigned to them in the Ordinance.

PROCEDURES

3. ¹[**Decision for financial adviser and process.**– (1) The Board shall decide that a privatisation transaction:

- (a) may be treated as a major privatisation; and
- (b) warrants the appointment of a financial adviser.

(2) Save as provided in regulation 14, the Board shall decide to hire services of the financial adviser by publishing:

¹ Substituted vide Privatisation Commission’s Amendments Notification No. 16(17)P&C/PC/2018, dated July 6th 2022, published in the Gazette of Pakistan vide SRO No. 1439(22) Ex Gaz-II, dated August 11th, 2022. The earlier provision which stands substituted was as follows:

“**3. Decision to appoint a financial adviser.**– The Board shall base on a summary prepared by the Commission decide whether or not a privatisation, -

- (a) may be treated as a major privatisation; and
- (b) warrants the appointment of a financial adviser.”

- (a) the expression of interest; or
- (b) the request for proposals.]

4. ²[**Initiation of process.**– (1) The transaction manager shall, prior to the publication of advertisement for financial adviser, prepare and submit through proper channel for approval of the Chairman the request for proposals package.

(2) Where deemed necessary by the Secretary, input on the terms of reference that form part of the request for proposals package may be sought from:

- (a) the Ministry under whose jurisdiction the entity being privatised falls;
- (b) the entity being privatized; or
- (c) the relevant regulatory authority.

(3) The request for proposals package shall require from an interested party to submit, amongst others, information on how it will structure the transaction and why it is qualified to undertake the transaction.

(4) In addition to the technical proposal, the interested party shall submit in a separately sealed envelope a financial proposal describing the amount and structure of its fees in accordance with the requirements of the request for proposals package.

(5) The financial proposal shall specify the interested party's fees (the "Total Fee") as the sum of the following three parts:

- (a) a milestone-based fee;
- (b) out of pocket expenses; and
- (c) success fee (usually a percentage of the actual sale proceeds).]

5. ³[**Advertising for financial advisers.**– (1) As approved by the Board, the Commission shall publish the expression of interest or request for proposals in at least two dailies, one in English

² Substituted vide Privatisation Commission's Amendments Notification No. 16(17)P&C/PC/2018, dated July 6th 2022 published in the Gazette of Pakistan vide SRO No. 1439(22) Ex Gaz-II, dated August 11th, 2022. The earlier provision which stands substituted was as follows:

"4. **Initiation process.**– (1) The transaction manager prior to the placement of advertisement in the print media for an FA shall prepare and submit for approval of the Chairman the RFP Package. Where deemed necessary by the Commission, input on the terms of reference that form part of the RFP Package shall/ may be sought from, -

- (a) the Ministry under whose jurisdiction the entity being privatised falls;
- (b) the senior management of the entity being privatized; and
- (c) the relevant regulatory authority.

(2) The RFP Package shall require the parties to submit, *inter-alia*, information on how it will structure the transaction and why it is qualified to undertake the transaction. In addition to the technical proposals, the parties shall submit in a separately sealed envelope a financial proposal describing the amount and structure of its fees in accordance with the requirements of the RFP Package. The financial proposals shall specify the parties' fees (the "Total Fee") as the sum of two parts, a retainer and out of pocket expenses and success fee (usually a percentage of the actual sale proceeds)."

³ Substituted vide Privatisation Commission's Amendments Notification No. 16(17)P&C/PC/2018, dated July 6th 2022, published in the Gazette of Pakistan vide SRO No. 1439(22) Ex Gaz-II, dated August 11th, 2022. The earlier provision which stands substituted was as follows:

"5. **Advertising for the financial adviser.**– (1) For the purposes of any privatisation transaction, other than listing of shares in any offshore jurisdiction, deemed appropriate by the Board, the Commission with the prior approval of the Board, shall initiate hiring process of financial advisers for the subject privatisation transaction.

(2) Subsequently, the Commission shall publish an expression of interest ("EoI") in line with provisions of section 23 of the Ordinance, clearly stipulating the criteria of shortlisting. Subsequent to the shortlisting of interested parties ("IPs"), the Commission shall issue request for proposal package, to the shortlisted IPs, inviting technical and financial proposals. The response time for international EoI shall not be less than thirty days. Submission of technical and financial proposals by IPs shall not be less than fifteen working days, after issuance of RFP Package."

and one in Urdu, and also on the websites of the Commission and Public Procurement Regulatory Authority.

(2) The response time shall not be less than fifteen calendar days for national competitive bidding and thirty calendar days for international competitive bidding from the date of publication of advertisement.

(3) Unless the competition is restricted to domestic interested parties, there shall not be any bar on domestic or international interested parties to submit the expression of interest or proposals in response to any advertisement.

(4) In case of publication of expression of interest, the advertisement shall contain brief scope of services, shortlisting parameters, last date and time for submission of the expression of interest, and any other information which may be considered necessary.

(5) After shortlisting of interested parties, the Commission shall issue a request for proposals package to the shortlisted interested parties and fix the time for submission of technical and financial proposals which shall not be less than ten calendar days.

(6) In case of publication of request for proposals package, the advertisement shall contain a brief scope of services and skillset required for the performance of the services, availability of request for proposals package on the website and in the office of the Commission with addresses, last date and time for submission of the technical and financial proposals, and any other information which may be considered necessary.]

6. Evaluating the proposals.– On expiry of the date for submission of proposals, the evaluation process shall commence. The transaction manager shall circulate the technical proposals to the evaluation committee, while the sealed financial proposals shall remain in custody of the Secretary as per procedures under these regulations.

7. Evaluating the technical proposals.– (1) Each technical proposal shall be evaluated using the four categories specified in column (2) of the Table below along with weightage as listed in column (3) thereof, namely: -

TABLE

S. No.	Evaluation criteria	Weightage
1	2	3
(a)	Specific firm or consortium experience related to the assignment	30%
(b)	Competence of team	30%
(c)	Work plan and methodology	25%
(d)	Effectiveness of presentation	15%

(2) Each member of the evaluation committee shall assign preliminary scores for each technical proposal using prescribed evaluation sheets prepared by the transaction manager.

8. Finalizing the technical scores.– (1) A meeting of the evaluation committee to finalize the technical scores shall be convened by the Secretary.

⁴ Substituted vide Privatisation Commission's Amendments Notification No. 16(17)P&C/PC/2018, dated July 6th 2022, published in the Gazette of Pakistan vide SRO No. 1439(22)Ex Gaz-II, dated August 11th, 2022. The earlier provision which stands substituted was as follows:

“8. **Finalising the technical scores.**- A meeting of the evaluation committee to finalise the technical scores shall be convened by the transaction manager. The final individual technical scores of the evaluation committee's members shall be tabulated by the transaction manager on a top sheet which shall be signed by all the members of the evaluation committee. The final technical scores of each IP shall be the average of the individual technical scores allocated by each member of the evaluation committee. The top sheet, including the final technical scores, shall be submitted to the Chairman for approval.”

(2) The final individual technical scores of the evaluation committee's members shall be tabulated by the transaction manager on a top sheet which shall be signed by all the members of the evaluation committee.

(3) The final technical scores of each interested party shall be the average of the individual technical scores allocated by each member of the evaluation committee.

(4) The top sheet, including the final technical scores, shall be submitted to the Chairman for approval.]

9. Opening of financial proposals.– Short-listed IPs that receive a technical score (Str) of 70 points or higher (pre-qualified IPs) shall be invited to attend the opening of the sealed financial bids. All other IPs shall stand disqualified and their sealed financial proposals shall be returned to them unopened. The sealed financial proposals shall be opened by the Secretary or his nominee. Immediately before the opening of the financial proposals, the Commission shall announce a notional value of the expected sale proceeds. This figure shall have been approved by the Chairman and shall be used solely for calculating the success fee component where the fee is quoted as a percentage of the sale proceeds.

10. Scoring of technical and financial proposals.– The technical proposal shall be assigned a score (Str) which shall be scaled up to constitute a final technical score (St) in the following manner, namely:-

$$St = Str \times 100 / St_{max}$$

where St_{max} = Raw score of the highest ranked IP on technical criteria.

The financial score (Sf) shall be calculated in the following manner, namely: -

$$Sf = 100 \times (F_{min} / F_f)$$

where F_{min} = Lowest Total Fee bid

and F_f = Total Fee bid by the IP under consideration.

The combined technical and financial proposal (Sc) shall be calculated in the following manner, namely: -

$$Sc = 0.80 \times St + 0.20 \times Sf$$

11. Ranking the pre-qualified interested parties.– The transaction manager shall submit to the evaluation committee the cumulative marks (technical plus financial) of the pre-qualified IPs based on the calculations set out in regulation 10. The submission shall identify the pre-qualified IP scoring the highest cumulative scores (the "top-ranked IP"). Upon endorsement by the evaluation committee, the transaction manager shall submit the rankings of the pre-qualified IPs to the Secretary for approval, after which a summary recommending the hiring of the top-ranked IP shall be submitted to the Board. If the Board approves the summary, the top-ranked IP shall be invited for contract negotiations.

12. Contract negotiations.– The contract negotiations shall be conducted by the negotiation team comprising the Director-General or the Secretary, transaction manager, legal consultant and any other person that the Board may authorize, with the authorized representatives of the top-ranked IP. The negotiations team of the Commission shall keep the Secretary of the Commission informed about the progress of the negotiations. The negotiations shall focus on, *inter-alia*, issues related to milestones and phases, deliverables, contract duration and procedures for disbursements. In case the negotiations with the top-ranked IP are unsuccessful, negotiations with the authorized representatives of second-highest ranked IP shall be carried out. If these also prove unsuccessful, negotiations with the authorized representatives of third-highest ranked IP shall be carried out. If these also prove unsuccessful, the matter will be referred back to the Board for further directions. The Board may, in its discretion impose a time period for contract negotiations.

13. ⁵[Omitted]

14. ⁶[**Panel of interested parties.**– (1) The Cabinet Committee on Privatisation may direct the Commission to appoint a panel of interested parties by issuing the request for proposals package directly to the interested parties in the panel due to any extreme urgency brought about by events unforeseeable by the Commission.

(2) After the issuance of direction by the Cabinet Committee on Privatisation under this regulation, the Board shall approve the internationally recognized and published league table based on the skillset required for the transaction and determine the number of interested parties in the league table in order of merit as a panel to whom the Commission shall issue the request for proposals package.

(3) The Chairman shall follow the Board decision and approve the issuance of the request for proposals package to the parties in the panel.

(4) The Commission shall follow the process of evaluation and appointment of the financial adviser under these regulations.

(5) In the event no interested party qualifies or shows interest, the Board may authorize issuance of request for proposals package to the next set of parties in the order of merit of the same league table as used before as panel.

(6) The Chairman may approve changes in the request for proposal package to be issued to the new panel.]

15. ⁷[**Alternate methods of hiring financial adviser.**– Notwithstanding anything contained in these regulations, the Board may:

- (a) approve hiring of a financial adviser as directed by the Federal Government to comply with an international treaty or agreement with a state or states or any international financial institution; or
- (b) seek exemption from operation of any law requiring open competitive procurement of services of a financial adviser on the basis of national

⁵ Omitted vide Privatisation Commission's Amendments Notification No. 16(17)P&C/PC/2018, dated July 6th 2022, published in the Gazette of Pakistan vide SRO No. 1439(22) Ex Gaz-II, dated August 11th, 2022. The earlier provision which stands omitted was as follows:

“13. **Applicability of regulations.** - Notwithstanding anything provided hereinbefore and in addition to the foregoing, as regards all listing of shares in any offshore jurisdiction, deemed appropriate by the Board, the provisions of regulation 14 shall *mutatis mutandis*, apply to the appointment of FA.”

⁶ Substituted vide Privatisation Commission's Amendments Notification No. 16(17)P&C/PC/2018, dated July 6th 2022, published in the Gazette of Pakistan vide SRO No. 1439(22) Ex Gaz-II, dated August 11th, 2022. The earlier provision which stands substituted was as follows:

“14. **Listing of shares in any offshore jurisdiction.**– (1) For the purposes of listing of shares in any offshore jurisdiction, as deemed appropriate by the Board, the Commission with the prior approval of the Board, may maintain panel of financial advisers for such offerings. Such panel shall be based on the rankings of internationally recognized and published league tables solely determined by the Board. The Board may review the rankings of the financial advisers on its panel on periodic basis.

(2) Subsequent to the decision by the Board to appoint financial adviser with respect to a listing of shares in any offshore jurisdiction, the Commission shall send the RFP package approved by the Chairman together with a request in writing to the financial advisers on its panel to submit sealed technical, financial proposals or both within fifteen working days, after issuance of RFP Package.”

⁷ Substituted vide Privatisation Commission's Amendments Notification No. 16(17)P&C/PC/2018, dated July 6th 2022, published in the Gazette of Pakistan vide SRO No. 1439(22) Ex Gaz-II, dated August 11th, 2022. The earlier provision which stands substituted was as follows:

“15. **Engagement of FA on single source basis.**– (1) Notwithstanding the provisions of the regulations on the subject, the Board may determine necessity of engaging FA on single source basis under following circumstances, namely: -

- (a) if a particular privatisation transaction is deemed critical in the context of overall economic interest of the country; or
- (b) the credentials of an FA for a particular transaction is deemed beneficial having competitive edge in terms of economy and efficiency.

(2) The Board may keeping in view the aforementioned considerations firm-up a proposal seeking necessary exemption for direct contracting or single source selection of a particular FA with sound justification from the Public Procurement Regulatory Authority, on case to case basis.”

economic interest under section 21 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002) or approve alternate method of procurement of services of the financial adviser like identified single source contract, direct contract, call for quotations or negotiated tendering.]

16. Repeal.– (1) The Privatisation Commission (Hiring of Financial Advisors) Regulations, 2007, are hereby repealed.

(2) Anything done, action taken, order passed, instrument made, proceedings initiated, processes or communication issued, powers conferred or assumed under the Regulations repealed under sub-regulation (1), shall be deemed to have been validly done, made, issued, taken, initiated, conferred or assumed under the corresponding provisions of these regulations.

[File No. 16(17) P&C/PC/2018]

(Qazi Imran ud Din)
Deputy Secretary