

HIMACHAL PRADESH INFRASTRUCTURE DEVELOPMENT BOARD UNSOLICITED PROPOSAL (UNDER SWISS CHALLENGE APPROACH) REGULATIONS, 2020

In exercise of the powers conferred by Sub-section (1) and (2) of Section 20 read with Section 14 of the Himachal Pradesh Infrastructure Development Act, 2001 and all other powers enabling it in this behalf, the Board is pleased to make the following Regulations namely:-

REGULATIONS

1. Short Title and Commencement. - (1) These Regulations may be called the “Himachal Pradesh Infrastructure Development Board Unsolicited Proposal (Under Swiss Challenge Approach) Regulations, 2020”.

(2) These Regulations shall come into force with effect from.....

(3) These Regulations shall extend to the State of Himachal Pradesh.

2. Definitions. – In these Regulations, unless the context other-wise requires:-

(a) “**Act**” means the Himachal Pradesh Infrastructure Development Act, 2001;

(b) **Board** means HPIDB as defined in section 3 of the Act.

(c) “**person**” includes –

- i. an individual,
- ii. a Hindu undivided family,
- iii. a company,
- iv. a firm,
- v. an association of persons or a body of individuals, whether incorporated or not,
- vi. a Local Authority, and
- vii. every artificial juridical person, not falling within any of the preceding sub-clauses.

(d) “**proposal**” means a detailed proposal for the development, maintenance or operation of an infrastructure project received by the Board from any person in terms of sub-sections (1) to (2) of section 20 of the Act.

(e) “**proposer**” means a person who submits a representation or an Unsolicited Proposal to the Board.

(f) “**representation**” means a brief representation with respect to the intended development, operation or maintenance of any infrastructure project received by the Board without any solicitation by the Board or by

any Government Agency.

- (g) **"unsolicited proposal"** means a detailed proposal for the development, maintenance or operation of an infrastructure project received by the Board from any person without any invitation in terms of sub-sections (1) and (2) of section 20 of the Act.

The words and expressions used in these Regulations but not defined, shall have the same meaning as assigned to them in the Act.

3. Requirements of a valid representation – A representation may be classified as a valid representation only if it complies with the following requirements:

- (1) The representation should have been received by the Board without any solicitation either by the Board or by any Government Agency.
- (2) In the opinion of the Board, the project to which the representation pertains, involves a new concept or technology, whether unique or not, including but not limited to engineering practice, financing model, legal framework or the project implementation structure.
- (3) In the opinion of the Board, the representation has been prepared without the supervision, direction or direct involvement of the Board or any Government Agency, except for the role played by the Board or any Government Agency in sharing any information, data or documents which are not classified as confidential and are otherwise in the public domain.
- (4) The representation must contain feasibility study report as per the format in Annexure 'A' or as specified by the board from time to time.
- (5) The representation contain adequate information about the technical, financial, legal, managerial and other capabilities of the proposer, which would enable the Board to ascertain the ability of the proposer to implement the infrastructure project.
- (6) The representation contains a commitment that the proposer making the representation shall submit the unsolicited proposal to the Board within 3 months of acceptance of representation provided however the timeframe committed for the submission of the unsolicited proposal shall in exceptional circumstances be extended to six months from the date of acceptance of the representation.

4. Acceptance of valid representation on provisional basis – A valid representation in respect of a particular infrastructure project may be accepted by the Board on a provisional basis, provided -

- (1) Any other valid representation with respect to the same or substantially similar infrastructure project intended to be situated at the same geographical location has not been earlier received by the Board.
- (2) The person making the representation has deposited the “representation processing fee” and “representation holding security” as per Articles 8 and 9 respectively.
- (3) Irrespective of the timeframe committed in clause (6) of Article 3, the person making the representation is agreeable to submit the unsolicited proposal to the Board within such timeframe, as shall be stipulated by the Board for the submission of the unsolicited proposal; provided however, in no case shall the timeframe beyond the period of six months from the date of acceptance of the representation be stipulated or allowed by the Board.

5. Requirements of a valid unsolicited proposal – A proposal may be classified as a valid unsolicited proposal only if it complies with the following requirements -

- (1) The proposal should have been received by the Board without any solicitation either by the Board or by any Government Agency or the same should have been received by the Board in pursuance of any valid representation accepted by the Board on a provisional basis under sub-section (1) and (2) of section 20.
- (2) In the opinion of the Board, the project to which the proposal pertains, involves a new concept or technology, whether unique or not, including but not limited to engineering practice, financing model, legal framework or the project implementation structure.
- (3) In the opinion of the Board, the proposal has been prepared without the supervision, direction or direct involvement of the Board or any Government Agency, except for the role played by the Board or any Government Agency in sharing any information, data or documents which are not classified as confidential and are otherwise in the public domain.
- (4) The proposal is as per the format at Annexure ‘B’ or as specified by the board from time to time to enable board to prepare the bidding documents for following the procedure of public bidding in pursuance of sub-section (1) and (2) of section 20 of the Act. No changes shall be permitted once proposer has submitted the proposal to the board. However, board may seek clarification from proposer and such clarification shall become part of unsolicited proposal.
- (5) The proposal clearly specifies the lowest or the highest bid of the proposer, which could subsequently be made by the Board as the single bid variable for the purpose of evaluation under sub-section (1) and (2) of section 20.

- (6) In the opinion of the Board, the proposer of the unsolicited proposal possesses adequate technical, financial, legal, managerial and other capabilities, as would be essentially required for the successful implementation of the infrastructure project.

6. Acceptance of valid unsolicited proposal – A valid unsolicited proposal in respect of a particular infrastructure project may be accepted by the Board, provided -

- (1) In the opinion of the board, any other valid unsolicited proposal with respect to the same or substantially similar infrastructure project intended to be situated at the same geographical location has not been earlier received.
- (2) The proposer of the unsolicited proposal has deposited the “proposal processing fee” and “proposal security” as per Articles 10 and 11 respectively.

7. Purchase of proposal – No cost for conducting detailed studies or preparation of DPR shall be reimbursed to the proposer.

8. Representation processing fee – Each representation should be accompanied by a non-refundable representation processing fee by way of a demand draft for the amount of rupees five lakhs payable at Shimla in favour of the Board.

9. Representation holding security – (1) Each representation should be accompanied by a representation holding security for an amount equivalent to 0.25% of the tentative total cost of the infrastructure project to which the representation pertains or an amount of rupees twenty five lakhs, whichever is higher.

(2) The representation holding security should be submitted by way of a demand draft for the requisite amount payable at Shimla in favour of the Board or by way of an unconditional and irrevocable bank guarantee for the requisite amount issued in the name of the Board by any Scheduled Bank.

(3) The representation holding security shall be valid for a period of six months, subject to clause 3 of Article 4.

(4) The representation holding security shall be returned by the Board to the person making the representation if the person submits a valid unsolicited proposal within the timeframe stipulated by the Board under clause (3) of Article 4.

(5) The representation holding security of the person making the representation shall be forfeited by the Board if the person fails to submit a valid unsolicited proposal within the timeframe stipulated by the Board under clause (3) of Article 4.

10. Unsolicited Proposal processing fee – (1) Each unsolicited proposal should be accompanied by a non-refundable proposal processing fee for an amount equivalent to 0.10% of the tentative total cost of the infrastructure project to which the proposal pertains, subject to a maximum of rupees one crore.

(2) The unsolicited proposal processing fee should be submitted by way of a demand draft for the requisite amount payable at Shimla in favour of the Board.

11. Unsolicited Proposal security - (1) Each unsolicited proposal should be accompanied by a proposal security equivalent to 1 % of the tentative total cost of the infrastructure project to which it pertains, subject to a maximum of rupees one hundred crore.

(2) The proposal security should be submitted by way of a demand draft for the requisite amount payable at Shimla in favour of the Board or by way of an unconditional and irrevocable bank guarantee for the requisite amount issued in the name of the Board by any Scheduled Bank.

(3) The proposal security shall initially remain valid for a period of six months from the date of submission of the unsolicited proposal and during such period the Board shall make efforts to issue the notice of award to the selected bidder pursuant to accomplishing the reverse public bidding process in respect of the infrastructure project to which the unsolicited proposal pertains; provided however, the proposer shall be obliged to extend the validity of the proposal security for a further period of six months, if the Board is not able to issue the notice of award to the selected bidder within the initial period of six months.

(4) The proposal security shall be returned by the Board to the person submitting the unsolicited proposal after the Board has issued the notice of award to the selected bidder and upon receipt of the performance security from such selected bidder as per the requirement of the concession agreement.

(5) The proposal security of the person submitting the unsolicited proposal shall be forfeited by the Board if the person either backtracks from its unsolicited proposal at any stage prior to, during or after the public bidding process or refuses to sign the concession agreement or fails to submit the performance security as per the requirement of the concession agreement.

12. Finality of Decision – (1) The decision of the Board with regard to the validity of a representation under Article 3 and the validity of an unsolicited proposal under Article 5 shall be final and binding on all persons, proposers and third parties.

(2) The decision of the Board whether or not to accept a valid representation under Article 4 and whether or not to accept a valid unsolicited proposal under Article 6 shall be final and binding on all persons, proposers and third parties.

(3) The board will examine the unsolicited proposal, invite bids and issue Letter of Award within 6 months from the receipt of proposal as per article 5 above. However, in exceptional circumstances the board may extend it by another ____months based on project and its requirements.

13. Right of the Board to determine the contents of the bidding documents – (1)
The Board shall at all times retain with itself the right to determine the contents of the bidding documents including but not limited to the qualification criteria for the persons other than the proposer who intend to participate in the reverse public bidding process.

(2) The Board shall specify the amount of the proposal security required to be submitted by the persons other than the proposer of the unsolicited proposal who intend to participate in the bidding process.

(3) The Board shall specify the amount of the performance security which shall be required to be submitted by the selected bidder, whether such selected bidder is the proposer of the unsolicited proposal or any other person. However performance security submitted by the proposer shall be adjusted against proposal security submitted earlier

14. Rights of the proposer of the unsolicited proposal during the reverse public bidding process – (1) The unsolicited proposal of the proposer shall be deemed to be the lowest and the most favorable bid in terms of sub-section (1) and (2)of section 20 of the Act in case proposal is not received from any other person.

(2) In the event one or more proposal other than the unsolicited proposal is received by the Board during the reverse public bidding process, the proposer of the unsolicited proposal shall be given an opportunity to make his proposal competitive with the proposal of the person whose proposal is found to be the lowest and the most favorable bid in terms of clause of sub-section (1) and (2) of section 20 of the Act.

(3) In the event the proposer of the unsolicited proposal declines to make his proposal competitive upon availing the opportunity under clause (2) above, the Board shall take a decision whether or not to award the contract to the person whose proposal is found to be the lowest and the most favorable bid under sub-section (1) and (2) of section 20 of the Act

Annexure 'A'

Contents of Feasibility Study

1. Introduction

- a. Executive summary of project including reasons for uniqueness and other characteristics.
- b. Objectives, aims and costs.
- c. Sector profile and issues

2. Project Concept

- a. Industry/sector outlook and assessment of demand.
- b. Justification of need, developmental, public and nature of intended use.
- c. Description of project.
- d. Components
- e. Detail of new technology if applicable.
- f. Project structure.
- g. Concession period and justification.
- h. Risk identification and mitigation.
- i. SWOT analysis

3. Legal framework

- a. Applicable law
- b. Statutory and other clearances required.

4. Environmental and Social Impact assessment.

5. Project Financial

- a. Cost estimation
- b. IRR and Revenue
- c. Viability assessment and gap assessment

6. Technical and Financial qualification including selection criteria.

7. Project Development Framework

Annexure 'B'

- 1. Executive summary**
- 2. Project description**
- 3. Proposed plan including Technical and Financial estimates**
- 4. Statutory and legal approvals required and role of proposer.**
- 5. Risk identification and mitigation**
- 6. Economic and Social benefits.**
- 7. Environmental and Social impact assessment**
- 8. Project Structure**
 - a. General
 - b. O&M
 - c. Capital
 - d. Concession agreement.

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