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PART I
Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF GILGIT-BALTISTAN

LAW AND PROSECUTION DEPARTMENT
(Gilgit-Baltistan Secretariat)

Gilgit, the 17th August, 2019

THE GILGIT-BALTISTAN
PUBLIC-PRIVATE PARTNERSHIPACT, 2019
(AcT No. IV OF 2019)

To provide for the participation of the private sector in the financing, construction, Development, operation, or maintenance of infrastructure or development projects or other related services of the government through concession contracts in public private partnership mode and the establishment of institutions to regulate, monitor and supervise the implementation of public private partnership contracts.

(709)
Price:-Rs. 4 0.00

{i 724 (2019)/Ex. Gaz.].

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Whereas it is expedient to expand to establish a favorable legislative - framework to promote and facilitate the implementation of privately financed infrastructure projects in form of public private partnership by enhancing transparency fairness and. long-term sustainability and removing undesirable restrictions on private sector participation in shape of partnership with public sector infrastructure development and operation;

AND WHEREAS it is also deemed necessary to further develop the general principles of transparency, economy and fairness in the award of contracts in Public-Private partnership through the establishment of related institutions and specific procedures to award such contracts, and to regulate, monitor and

supervise such projects and to provide for the matters ancillary thereto and connected therewith; j

It is hereby enacted as follows:

Cuapter I

PRELIMINARY

: 1 Short title, extent and commencement.—_{1) This. Act may be called the Gilgit-Baltistan Public-Private partnership Act, 2019.

2) Tt extends to all districts of Gilgit-Baltistan.

(3) It shall come into force at once.

2. Definitions.—In this Act unless there is anything repugnant in the subject-or context —

(a) "Act" means the Gilgit-Baltistan Public-Private partnership Act, 2019.

(b) "Agency" means a department, attached department, body corporate, autonomous body of the Government, Local Government, or any organization or corporation owned or controlled by the Government or local government;

see fe (c) "Bid" means a bid tendered by a person who is eligible under this . Act to submit a proposal to undertake a project;

(d) "Board" means the Public-Private partnership Policy Board established under section 4; :

(e) "Change of control" means and includes any assignment, sale, financing, grant of security interest, transfer of intérêt or other transaction of any type or description, including by or through

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voting 'securities, asset transfer, 'contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results directly or indirectly in a change in possession of the power to direct or control, or cause the direction or. control of the' management of the affected company or a significant aspect of its

- business; . . a8

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"Concession" means grant of a right of a public asset by an agency

through the approval of Government in return for stipulated services or a promise that the right will be used for a specific purpose in the form of Build Operate Transfer (BOT), Design Build Finance Operate (DBFO) and any other variant of Public-Private

Partnership. .

"Consortium" means a joint venture of persons, jointly and

- severally liable, controlled by private investors or at least majority

thereof controlled by private investors, created for the purpose of

forming a private party and entering into a Public-Private

partnership Agreement,

"Construction" includes, reconstruction, rehabilitation, renovation, improvement, expansion, addition, alteration and related activities;

"Conflict of interest" means a situation where any member of the Board receives or gives any financial or other remuneration in

connection with the assigned position other than as authorized -by the Board; (2) engages in any consulting or other activities that' conflict with the interests of the Agency or the Board; or (3) has a direct or indirect financial interest in the outcome.of any proposal

before the Board;

“Departmental Public-Private partnership Node” means the node established within an Agency which is authorized to. identify Public-Private partnership projects and carry out the initial. screening and feasibility studies;

“Director General” means the head of the Public-Private partnership Unit appointed by the Government, ‘

“Government”. means the Government of Gilgit-Baltistan;

“Infrastructure” includes facilities and services in one of the sectors listed in Schedule J; se eaes :

“Investment” includes development and pre-operative capital expenditures made or incurred on services, land, construction and

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“Lender” means 4 financial institution, bank, or

equipment, : ‘ : aa
establishment providing financial support with or without security;

“Local Government” means a local government as defined in the
Gilgit-Baltistan Local Government Act 2014. : pode =

“Person” means a company, entity, firm, association, body of
individuals, or a sole proprietor other than an Agency;

“prescribed” means prescribed by rules or regulations made under
this Act;

“Private party” means a person who enters into a Public-Private
partnership Agreement with an Agency.

“Project” means a project implemented as a Public-Private
partnership in one of the infrastructure sectors listed in Schedule I;

“Project Development Facility” means a pool of funds including
contributions from donor international agencies, which are
available to pay for consulting services required for the preparation

and execution of Public-Private partnership Projects;

“Public-Private partnership” means a partnership carried out under a Public-Private partnership Agreement between the public sector represented by an Agency and a private party for the provision of an infrastructure facility, management functions and / or service with a clear allocation of risks between the two parties;

“Public Private Partnerships Agreements” are arrangements between government and private sector entities for the purpose of providing public infrastructure, community facilities and related “services;

“Public property” means any movable or immovable assets of rights which are in the public domain pursuant to law or contract,

“Risk” means any event or circumstance affecting the project which can adversely affect performance and costs of any of the contract obligations related thereto including design, construction,

financing, operation and/or maintenance: .

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it ‘ .

Public Procurement Rules” means. Public Procurement Rules

2004 or Gilgit-Baltistan Procurement Rules, as may be framed by the Government from time to time. ye :

“Sectoral Specialist”

means a perso i lent

in relevant field/sector” ee ee :

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PARTY GAS

(aa) "Viability Gap Fund" means the funds from the Government which are made available to the private party to cover revenue shortfalls through grants, subsidies or guarantees;

(bb) "Unit" means the Public-Private partnership Unit established under section 6; see

(cc) "User fee" means a levy, unitary charge, annuity, shadow toll or fee whether paid by the Government or the public, which may be charged by a private party under a Public-Private Partnership Agreement.

: 3. Private sector participation.—(1) Notwithstanding anything to the contrary in the laws in force, the Government, its Agencies and local governments will be authorized to seek participation from the private sector in appropriate projects subject to the provisions of this Act.

(2) Subject to the provisions of this Act and the procedures outlined in Chapters III and IV hereto, the Government and its Agencies shall be fully empowered to enter into agreements and arrangements with private parties under

mutually agreed terms and conditions in one or several project planning and management functions such as designing, financing, -building, constructing, owning, operating and maintaining different infrastructure projects.

(3) The Government and its Agencies with the approval of the Government may enter into a Public-Private partnership Agreement to vest public property in private parties for development and other appropriate purposes. The Government may transfer title in- Public Properties to private

"parties on appropriate terms and conditions as the Government may deem fit.

(4) The Government shall 'be competent to pay any fees for services performed by private parties under duly authorized Public-Private partnership Agreements including but not restricted to user fees, subsidies, revenue shortfall guarantees and may appropriate funds for such purposes. ;

CHAPTER II
ORGANIZATIONAL FRAMEWORK.

4. - Policy Board._(1) There: shall be a Public-Private partnership Policy Board to formulate Public-Private partnership policy based on strategic .. goals and ensure its implementation.

(2) The Board shall consist of —

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on

(ii) | Minister Planning and Development Dept. Vice
has -| Chairperson _|-

Minister of concerned Department ' Co-opted

; ' Member
Chief Secretary Gilgit-Baltistan

(vy) |*Two Members of Gilgit-Baltistan Assembly
; nominated by the Speaker Gilgit-Baltistan Assembly ;
one Member each from Treasury and Opposition :

: Member

benches"

(vi) | Additional Chief Secretary (Development)

(vii) | Secretary Finance : : ;
(viii) | Secretary Concerned - :
(ix) | Director General Public-Private partnership Unit Secretary to the
Board /Member

a members from the private sector to be
nominated by the Chief Minister
Sectoral Specialist to be nominated by the Chief
Minister sn,

| (xii) | DG GB Board of Investment —

(x)

Members

Member

(3) The. Board shall: frame and approve Public-Private partnership
policies and accord final approval to all the projects selected for implementation
under the Public-Private partnership modality. Public-Private partnership Policy
Board, However, shall not entertain 4 local government project without. the
consent of the concerned authority. - ; 'hs

(4) The members of the private sector shall be appointed for a period of
two years and shall be eligible for re-appointment for two terms only. Members

"+ of the Business Community and of public sector shall be selected. after careful

consideration of any actual or potential conflicts of interest. If any conflict of

interest arises during the tenure of any member from the Business Community or the public sector, the Chairperson of the Board shall order such member removed from the Board and replaced by another member.

(5); The meetings of the Board shall be presided over by the Chairperson and in his absence by the Vice-Chairperson.

(6) The decisions of the Board shall be taken by the majority of its

members present. In case of a tie, the presiding member shall cast the deciding vote.

(7) All orders, determinations, and. decisions of the Board: shall be rendered in writing and signed by the Director General or any other officer on his

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behalf subject to approval of Chairperson or Vice Chairperson, as the case may be.

Functions of the Board.—

(1) The Boards shall:— :

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Ensure that each draft concession contract is consistent with. the provisions of this Act. .

Formulate a Public-Private partnership policy, guidelines and rules for the Government; =~

Supervise and coordinate implementation of the Public Private Partnership policy by the Agencies;

Approve, reject or send back for reconsideration the project proposal submitted by an Agency within six(6) months;

Decide on any direct or contingent support for a project proposal submitted by an Agency; ;

'Approve, «reject or send back' for reconsideration' the

recommendation submitted by an Agency for the contract award to a private party;

Issue risk management - guidelines, to assess that the government support for projects is included in the annual - budget and that such support is fiscally sustainable, and establish procedures to implement such guidelines consistent with this Act; i

Assist the Agencies in solving major problems. impeding project preparation and implementation.;

Approve funding for projects receiving' support through the Project Development Facility ; ; :

Be the final deciding authority for all the projects; and.

Take all other steps necessary to give effect to the provisions of this Act. My :

a (2) The Board shall frame and publish a clear and comprehensive
_ Public-Private partnership policy outlining criteria for selection of projects and

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- giving general principles for selection of private parties. The policy-shall work as the basis for allowing private sector participation in projects.

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6.

Public-Private partnership Unit.—(1) The Government shall, by

notification, establish the Unit in the Planning & Development Department to promote and facilitate the development of Public-Private partnerships in GB, assist an Agency in preparing and executing mega projects which could afford the cost of project structuring and due-diligence, and act as a catalyst for Public-Private partnerships.

- (2) To achieve the objectives in subsection (1), the Unit shall:

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(3)

Assist the Board in formulating, implementing the Public Private Partnership Policy and provide technical support to the Board and act as its secretariat;

Develop operating guidelines, procedures and model documents for projects for approval by the Board;

Develop technical and human resources to support Public-Private partnership initiatives at the Agencies;

Provide technical support and advice to the Agencies throughout the Public-Private partnership process;

Evaluate . and prioritize project proposals 'submitted by -the Agencies;

Evaluate the type and amount of government support sought for a project, review the bid evaluation report submitted by an Agency.

Prepare and regularly update a pipeline of projects,

Oversee project implementation and issue semi-annual review and annual consolidated. reports on the Public-Private partnership projects and :

Perform any other functions and duties which may be assigned to it by the Board.

The Unit may procure for consideration or for free, technical and professional assistance and advice which it deems necessary from other governmental authorities, multilateral agencies, professional bodies and private firms. The Unit may also provide technical assistance and advisory services to the persons and entities in Gilgit-Baltistan and elsewhere for consideration or for free, as it deems appropriate.

(4)

Public-Private Partnership Unit, however, may take up project structure activities mentioned at-section 7 (2), either on the request of an agency or if the Public-Private Partnership policy Board assi i ic-Private, Dartaaeniin at y Board assign this task to Public-Private

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eaalimantal Public-Private Partnership Nodes.—(1) The

administrative head of each Agency which Seeks to. implement a 'project on a Public-Private partnership basis, shall form a Public-Private partnership Node with the approval of concerned Minister consisting of officers from within the Agency or other Agencies as the case may be, which may include representative from the Industries, Labour & Commerce, Gilgit-Baltistan Board of Investment, Chief Minister Inspection Team, Works, Finance, Environmental Protection Agency and Water & Power Department GB, 'and independent: technical and legal experts if deemed appropriate to develop the project.

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The Public-Private partnership Node shall:

Identify suitable projects and prioritize these within its sector or geographical area of responsibility;

Recruit advisors for project preparation and tendering;

Supervise the preparation of the feasibility study and if its outcome is positive, submit the project proposal. through the Unit to the Board; ; ;

Conduct a competitive tendering process — consisting — of pre-qualification and bidding to select the private party; .

Carry out bid evaluation and submit recommendation on contract award to the Board;

Negotiate and sign the Public-Private partnership Agreement;
Monitor and evaluate implementation and operation of the project;

If needed, seek support and advice from the Unit for the performance of any of the above function, and

Prepare periodic progress reports on the Agency's projects to be - submitted to the Public-Private Partnership Policy Board through Unit.

Project Implementation Unit.—(1) For each Concession Contract

awarded to a Public Private Partnership Company, there shall be a Project | Implementation Unit, to oversee day to day implementation, particularly during the construction period of the project in terms of the Public-Private parinersiu 5

vent ABES sement and the laws in force.

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(2) The Project Implementation Unit may be established when needed, at the discretion of the administrative head of the Agency and its officers. The administrative head may appoint experts and consultants to serve on the Project Implementation Unit and

also liaise between the:

3). The Project Implementation Unit shall liaise with the

Gorath and the Public-Private partnership Company for effective Project implementation,

(4) The Departmental Public-Private partnership Node shall be responsible to the administrative head of the Agency and shall provide it and the Unit with periodic progress reports. :

(9) Risk Management Unit—The Government shall notify/ establish a risk management unit in Finance Department to act as a fiscal guardian for the projects. :

Risk Management Unit shall:

a. — Develop risk management guidelines for approval by the Board.

b. Provide support and advice to any government agency with regard to risk management in a project throughout the public private partnership process. °

c. - Examine in consultation with the Public-Private partnership Node, whether requests for government support, and the proposed risk sharing arrangements are consistent with the Act, rules and regulations, and or fiscally sustainable;

d. . Make recommendations to the Board through the Public-Private partnership node. ;

e. Recommend the inclusion of approved government support in the annual budget; Monitor direct and contingent liabilities of the government incurred through the projects; '

f. Perform such other functions as may be prescribed or as the Board may assign.

/ CHAPTER III PROJECT DELIVERY PROCESS

9. Public-Private partnership arrangements,—Subject to obtaining all required approvals and completing the necessary due diligence and appraisal of the project and the prospective private party, an Agency may: .

i. Enter into a Public-Private partnership Agreement with the private party, through its administrative secretary or officer with equivalent.

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rank and status, for the performance of any of the various tasks related to design, construction, operation and maintenance of infrastructure facilities;.

: ii. | Arrange or provide for a payment to the private party in accordance with the terms and conditions of the Public-Private partnership

Agreement;

iii. Enter into an agreement with any entity for funding or guaranteeing a Public-Private partnership project; :

iv: Transfer, through the Administrative Secretary, an interest in a Public-Private partnership project to a private party or subject to the approval of the Government, to a nominee of the private party by transfer, assignment, conveyance, lease, license or otherwise;

y. Enter into an arrangement with any other Agency, the Government Department or a body, board, or entity owned or controlled by the Government for a Public-Private partnership project; and ,

vi. Subject to the Public-Private partnership Agreement, assume or transfer an interest in a private party or a nominee of the private party by transfer, assignment, conveyance, sale, grant or surrender. *"

10. Project identification and preparation—(1) An: Agency shall identify and prepare a project, and. shall-complete this phase before tendering.

(2) The Agency shall identify and conceptualize potential projects from - its master plans and other planning documents.

(3) The preparation of the projects shall consist of a feasibility study,

initial environmental examination, environmental impact assessment in line with —

Industry international best practices if required, risk analysis, analysis of the need for Government support, stakeholder consultations, determination of the appropriate Public-Private partnership modality, and preparation of bidding documents including a draft Public-Private partnership Agreement.

(4) The Agency shall prioritize the projects within its sector and, or | geographical area using criteria such as supply and demand gaps, social and economic benefits, financial attractiveness, risks and uncertainties involved, and readiness for implementation.

(5) The Agency shall submit each viable project proposal through the Unit to the Board. : ae

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quality control by reviewing the viability of the project Proposals and
completeness in terms of documentation.

(2) The Unit shall prioritize the projects: that pass the review actos.
sectors by taking into account provincial development objectives, and submit
them to the Board for approval.

(3) The Unit shall include approved projects in a priority fist and
widely publicize them. ;

12. Approval of government support—(1) Requests for government
support-described in Section 15 shall be an integral part of the project Proposals
' submitted by the Agencies.

(2) The Unit shall review and analyze all requests for government
Support with budgetary implications and shall evaluate the justification and
eligibility for such support and the fiscal impact of the related direct and
contingent liabilities. ;

(3) Based on this. review. and analysis, the Unit shall make a
_ recommendation to the Board for approval, rejection or reconsideration of the
_Trequested support.

(4) After approval of the Board, the Unit shall. make necessary
arrangements for including such support in the budget.

13. Selection of the private party.—_(1) After the: approval of the
Project proposal by the Board, the Agency shall select: the private party for the
project through open competitive bidding. -.<«

(2) The Agency shall not enter into direct negotiations with any person
without open competitive bidding. Clarifications may take place during the bid
evaluation process, subject to Principles of integrity, transparency and equal
'Opportunity. Boone

14. Change of control and transfer restrictions—(1) If a
Consortium is the pre-qualified person, it shall notify the Agency of all changes
in the shareholding of the Consortium prior to. contract award. Such changes may
be approved by the Agency, provided they are carried out in conformity with the
terms and conditions of the bidding and do not jeopardize the Consortium's °
pre-qualification; ;

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(2) If the consortium fails to comply with requirement of sub-section 14(1), the consortium shall-be disqualified;

(3) After. the contract award, the members of.the Consortium may, with the prior approval of the Government and subject to conditions set forth in the Public-Private partnership Agreement, voluntarily or involuntarily cause, permit or undergo any change of control; or transfer their-interests in the private party to third parties, provided they are able to be replaced by.an entity or entities at least as legally, technically and financially qualified to meet their project obligations.

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Government support.—(1) Government support approved by the

Board for a project may include any of the following:

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Administrative support to the private party consistent with the private party's responsibilities under the Public-Private partnership Agreement in obtaining licenses and clearances from' the

Government, a public sector organization or an 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 or rights of way necessary for the project; rehabilitation and resettlement of displaced persons directly required to execute the project; and any other administrative responsibility;

Asset-based support such as leasing land and / or infrastructure facilities owned by the Government or an Agency to the 'private party. The need for this type of support shall be determined on a case-by-case basis;,

Direct financial assistance through the Viability Gap Fund. This type of support shall be offered only. for projects which are economically and socially viable but not financially attractive if constrained by affordable user fees; its amount shall be determined through bidding.

Government guarantees for political risks under the Government's

control such as changes in the Public-Private partnership policy, delay of agreed user fee adjustments, early termination of the Public-Private partnership Agreement with no fault of the private party, and expropriation; this type of support shall be made available for all projects; and

Government guarantees for other risks such as force majeure, demand risk, and default by an Agency on payments for works and

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services delivered by the private party (off-take risk); the need fo,
this type of support shall be determined on a case-by-case basis as

: part of the risk sharing analysis undertaken during Project

preparation.

(2) All of the government support for the project shall be Clearly
indicated in the bidding documents and included in the Public-Private Partnership

Agreement.

16. Preparation and negotiation of Public-Private partnership

Agreement—(1) The draft Public-Private partnership Agreement shall form a |
part of bidding documents. |

(2). The draft Public-Private partnership Agreement shall clearly define
the legal relationship between the Agency and the selected private party, as well |
'as their respective rights and responsibilities, including the specific government
support for the project. ;

(3). The draft Public-Private partnership 'Agreement shall include but |
not limited to the following provisions, as applicable: :

i: . Type of project;

ii. Term of the Public-Private partnership Agreement;

iii. Scope-of work and services to be provided under the project;

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 user fees, including a mechanism for
periodical adjustment; ;

viii. Performance bonds for construction works and operation;

ix. Minimum insurance coverage;

x. Acceptance tests and procedures:;

xi. Rights and obligations of the parties to the Public-Private
partnership Agreement, including risk sharing;

- xii. Penalties and liquidated damages provisions for delays;
- xiii. Type and amount of Government support;
- xiv. Hand back requirements. at the end of the term of the Public-Private
_ Partnership Agreement, if any;
- xv. Warranty period and procedures after the hand back;
- xvi. Requirements and procedure for variations of the Public-Private
partnership Agreement;
- xvii. Grounds: for and effects of termination of the Public-Private
: partnership Agreement including force majeure
- xviii. Compensation formula for early termination scenarios
- | xix. Precediares and venue for dispute resolution
- xx. Financial reporting by the private party; and
- xxi. Supervision mechanism of the Agency

(4) The Agency shall. not enter into a Public-Private partnership
Agreement unless the procedure specified in this Act has been followed. °

(5) Contract negotiations for' the conclusion' of a Public-Private
partnership Agreement shall be completed between the Agency and the private
party within six months after the contract award. ,

17. Project implementation and operation.—{1) Before signing the
Public-Private partnership Agreement with the Agency, the private party may
establish,, without, changing its shareholding and subject to conditions set forth'in
the bidding documents, a special purpose company for implementation of the
project , which shall assume all the rights and obligations of the private party.

(2) For major construction works, the private party shall prepare a.
detailed engineering design and implementation plan in accordance with the main
technical specifications prescribed in the Public-Private partnership Agreement
and submit it to the Agency for approval prior to the start of construction.

(3). The private party shall-carry out the construction for the project in
accordance with the performance standards and specifications prescribed in. the
- approved engineering design.

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(4) To guarantee its performance in the a aac private |
; hall post a.bond or furnish a bank guarantee, which s alid up to the
party s. rranty period under the construction contract and acceptance by the
end of ui ; i rojects, which include operation by the private party, the private
i oe al cod 3 furnish another performance bond or bank guarantee upon the
Le sees of the completed works to guarantee compliance with the operating
parameters and standards specified in the Public-Private partnership Agreement.

(5) Within twelve. months of the signing of the ; Public-Private
partnership Agreement, the private. party shall achieve financial close for the
project or as the case may be in the Concession Agreement, defined as a legally
binding commitment of equity holders and lenders to provide funding for the
entire investment. Any delay in reaching financial close beyond such period shal] :
be reported by the Agency to the Board, with an explanation for the delay so that"
the Board can determine if the project is capable of being financed under the
proposed Public-Private partnership modality or whether other alternatives
including traditional procurement should be considered.

CHAPTER IV : ; | PROCUREMENT

18. Public procurement laws to apply.—{1) The procurement process
shall be governed under Gilgit-Baltistan Public Procurement Rules framed from
time to time/ Public Procurement Rules 2004.

_ (2) The Agency shall' ensure that the Gilgit-Baltistan Public |
Procurement Rules/ Public Procurement Rules 2004 have been followed in letter
and spirit from the pre-qualification stage through bidding and contract signing.
In all instances, the procedures shall be transparent with full disclosure of the
procedures and results of the pre-qualification and bidding.

- 3. In view of the special characteristics of procurement for Public- |
_ Private partnership projects, the Board shall periodically review, with assistance
- of the Unit, the Procurement Rules which apply to Public-Private partnerships,

and seek any changes which are needed for successful operation of the Public-
Private partnership program. ;

= 4. On completion of the private
shall certify that in its opinion, the selection
compliance with the Gilgit-Bal
Procurement Rules 2004.

party's selection process, the Board —
of the private party has been made in
tistan Public Procurement Rules 2019/ Public

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19. Award through open bidding.—Public competitive bidding shall

be applied for the award of all Public-Private partnership projects strictly in
- accordance with the provisions of the Act.

= 20. Unsolicited proposals:- A person may propose a project to an
Agency on its own initiative, and will be subject to the procurement procedures
'as may be prescribed. :

CHAPTER V FINANCE

21. Financing.— (1) Financing of a Public-Private partnership project
may be in such amounts and upon such terms and conditions as may be
determined by the parties to the Public-Private partnership Agreement. Without
limiting the generality of the foregoing, the private party and the responsible

* Agency may propose to utilize any or all revenues which. may be available to

them by law to:—

- i. Issue debt, equity, or other securities or obligations;
- ii. Enter into leases, concessions, and grant and loan agreements;
- iii. Access any designated funds; ©
- iv. Borrow or accept grants from any source; and

- v. Secure any financing with a pledge of, security interest in, or lien
on, any or all of its property, including all of its property interests in
the facility.

(2) The Government may enter into an agreement with senior secured
lenders of the private party pursuant to which, in the event of default of the
private party, they or their duly appointed representative will have the right, but
not the obligation, to step in and replace the private party or any of its contractors
to cure the default and avoid termination of the Public-Private partnership
Agreement. Such agreement will be negotiated and signed at or before financial
close.

_ 22. Viability Gap Fund.—The Government may establish a Viability
Gap Fund to support Public-Private partnership projects and finance the gap
between project revenues constrained by affordability considerations and
revenues needed to generate a fair return on investment for the Public-Private =.
partnership projects.

: 23. User fee—(1) The Government may impose and revise, through a notification in the official gazette, single or multiple user fees for different uses of the Public-Private partnership projects by different classes of the users.

(2) The Government may exempt, through notification in the official gazette, certain classes of users from payment of the user fees.' :

(3) The Government may entrust the private party with collection of user fees.

(4) The Government shall set the user fees at levels that ensure the financial viability of the project and fully cover the operations and maintenance expenses, plus a fair return to the private party. Notwithstanding the foregoing, if the Government elects to maintain the user fees at levels below levels that would ensure financial viability as described herein, then it shall compensate the private party for the difference through the Viability Gap Fund. :

(5) Unless specified otherwise in the bidding documents, the Agency shall determine, through bidding, the user fees which shall be adjusted periodically during the term of the Public-Private partnership Agreement based on a formula using official price indices set forth in the Public-Private partnership Agreement.

24. Reports and audits—The Agency shall include appropriate reporting and audit requirements in the Public-Private partnership Agreement, taking into consideration the nature of the project, its business structure, the source of financing and the financial commitments of the Government to the private party. To the extent required, the Agency may retain outside consultants and auditors to perform periodic reviews of the private party's accounts which may include the same reports submitted by the private party to its lenders.

CHAPTER VI

Other Issues

25. Power to prescribe standards.—The Government may —

I Prescribe and enforce performance standards for a Public-Private partnership project, including standards of performance for a private party with

regard to. different aspects of the services to b
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Government; rendered ua the users and th

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Ocesses and resources used, or persons employed, during all stages

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" of the project to ensure sustainable delivery of servi - :
prescribed quality standards; ary OF services and adherence to the

ine ets Se to the Viability Gap Fund, subsidy, annuity and
; ion and bene: i : : , ,
:amay deen fit bene is with meeting sera performance standards as it

IV. Issue and enforce accountin suideli ' are
the projects; and : § guidelines for proper. accounting of

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26. Indemnity—

sa (1) The private party or its sub-contractors shall, subject to sub-section

(2), be responsible for, and shall release and indemnify the Agency, its
employees, agents and contractors on demand from and against all liability for —

(a) . death or personal injury;

(b) 'loss of or damage to property, including property belonging to the .
Government or Agency or for which it is responsible; ee

-(c) breach of statutory duty; and

'(d) Billions, claims, demands, costs, charges and expenses, including
legal expenses on an indemnity basis; which may arise out of, or in
consequence of, the design, construction, operation or maintenance

"of the assets; the performance or non-performance by the private
party or its sub-sub-contractors of its obligations under the
Public-Private partnership Agreement; or the presence on ~ the
Government's property. of the-contractor, a sub-contractors, or their

employees or agents.

(3) The private party or its sub- sub-contractors shall not be responsible
or be obliged to indemnify the Agency for —

e matter referred to in paragraphs (1) (a) to (d) above

i. Any of th
he private party or its sub- sub-

which arises as a direct result of t
contractors Billing on the instruction of the Agency;

"Any ani ense - he
ii. Any injury, loss, damage, cost and expense caused by #
ed | default of the Agency, its employees, agents

negligence or willfu , age

ea ipmeamtractors or a 'breach by the Agency of its obligations under the Public-Private partnership Agreement, or

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Any claims made under this Act in respect of the Government's
' property.

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27. Dispute resolution.—

(1) If a dispute arises out of or relates to the Public-Private partnership Agreement, or the breach thereof, and if that dispute cannot be settled through direct discussions, the parties shall first endeavor to settle the dispute in an amicable manner by mediation administered by an independent and impartial person appointed by the Board, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to the Public-Private partnership Agreement, or breach thereof, shall be settled by arbitration in the city of Gilgit or any other place in Pakistan or as agreed to by the 'parties specified in the Public- Private Partnership Agreement. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(2) Disputes shall be decided in accordance with the law in force in Pakistan.

28. Termination of the Public-Private partnership Agreement.—

The Public-Private partnership Agreement may be terminated in the following-cases: a

I. End of the term of the Public-Private partnership Agreement.

Upon completion of the term of the Public-Private partnership Agreement, the private party will hand back any public property to the Government, free and clear of all encumbrances and in satisfactorily condition as determined by the Government following an inspection. The procedures for the hand back and indemnities if any shall be set forth in the Public-Private partnership Agreement.

II. Unilateral termination of the Public-Private partnership

Agreement by the Government Billing in the public interest. Following notice and subject to the procedures set forth in the Public-Private partnership Agreement, the Government shall compensate the private party for any investments made in the project, including any debts incurred and a sum which fairly represents the lost profit on such investments;

I. Default by the Agency under the Public-Private partnership

_ Agreement of its obligations and expiration of any cure period, causing the

private party to rescind the Public-Private partnership Agreement. Following notice and subject to the procedures set forth in the Public-Private partnership Agreement, the, Agency shall compensate the private party for any investments made in the project, including any debts incurred and the fair market value of the equity, or any amount that fairly compensates the private party for its lost, —

5; 2019

revenues in accordance with the: temme: nt ae
Agreement: he: terms: of the Public-Private partnership

IV. Default by the Private Party under the Public-Private partnership Agreement. If the “private party fails to comply with the agreed milestone, or fails to achieve the prescribed technical and performance standards, or commits any substantial breach of the Public-Private partnership Agreement, the Agency shall give written notice of the breach and notice to terminate to the

private party and following expiration of any cure period may: (1) take over the project and assume all related liabilities of the, private party, including its debt obligations; (2) allow lenders of the private party to exercise their step-in rights

and _ security interests as specified in the loan. documents for the project and teplace the private party on the same terms and conditions, subject to approval of the substitute private party by the Agency; (3) take over the project and auction the remaining term of the Public Private-Partnership Agreement through an open competitive bidding to interested qualified, inyestors.and.apply the proceeds to pay the debts of the private party; or (4) invoke its other contractors remedies such as:liquidated.damages:which fairly.represent the.degree.of loss incurred by the Government. One * sopateyeiy Tetlis is

ssiif -M...-The occurrence. of :a force, majeure. event- inthe Public-Private partnership Agreement 'shall. be grounds. for early. :termination-at the request of - either party. and shall allow for.a-reasonable allocation-of.the risk. of loss between the Government and the private party....The/allocation,:of;the risk and compensation formula to be applied in such instance shall be set forth in the Public-Private partnership Agreement.

«29. Immunity to:acts done in good faith.—No suit, claim or other legal proceedings by.a.private party or by any person shall lie against the Board, the Unit, an Agency: or an:officer,of the Board, the Unit, and other government

. officers or consultants, in respect of anything done or intended to be done in good faith and in accordance with this Act A person or private party, aggrieved with the decision of Board, may file appeal in Gilgit-Baltistan Chief Court barring the jurisdiction of Civil courts / District Courts.

30. Power to make rules.—For systemic and transparent enforcement of this,,Act ;and; towards meeting jits; objectives the Government may, by - notification in the official gazette, make rules for carrying out the purposes of . this Act. we

31. Power to frame regulations and guidelines.—Subject to this Act and 'the rules made hereunder, the Board may approve regulations, procedures ~ and guidelines to make operations under this Act, efficient, transparent and effective. ;

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SCHEDULE I

[see sections 2 (m)]

INFRASTRUCTURE SECTORS

I. Industrial & Special Economic Zones;

II. Dams; Education facilities; Health facilities; Housing;

I. Information technology; Land reclamation;

.IV. Power. generation facilities; including Coal and power generation

Roads (provincial highways, district roads, prigeses. or bypasses);

Sewerage or drainage; A

V. Solid waste management; :

VI. Sports or. 'recreational infrastructure, public gardens or 'parks; Trade fairs, or cultural centers;

VIL. - Urban transport including mass. transit or bus terminals; Water supply or sanitation, treatment or distribution, and Wholesale markets, warehouses, slaughter houses or cold storages. Tourism and Resort Development

-FIDA MOHAMMAD NASHAD,

Speaker

Gilgit-Baltistan Assembly.

RAJA JALAL HUSSAIN MAQPOON,

_ Governor

Gilgit-Baltistan.

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