



# Public Private Partnership (PPP) Guide and Toolkit



**PUBLIC PRIVATE PARTNERSHIP NODE  
SCHOOL EDUCATION & LITERACY DEPARTMENT  
GOVERNMENT OF SINDH**

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# **PUBLIC PRIVATE PARTNERSHIP (PPP)**

## **GUIDE & TOOLKIT**

**PUBLIC PRIVATE PARTNERSHIP NODE  
SCHOOL EDUCATION & LITERACY DEPARTMENT  
GOVERNMENT OF SINDH**

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School Education & Literacy Department (SELD) | Government of Sindh  
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***Graphics and Design by***  
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## MESSAGE

In line with the various important reforms and innovations in the education sector led by the priorities set by the Government of Sindh, I am pleased to share this *Public Private Partnership Guide & Toolkit*. It is the first ever comprehensive document produced at a provincial level that sets out applicable laws, policies, guidelines, good practices and processes involved in identifying a PPP project, getting it approved, and finally procuring and executing it. The *PPP Guide & Toolkit* shall not serve as a reference document for PPP Node, SELD only, but for all potential private parties interested in partnering with Sindh Government's education sector.

Public Private Partnerships (**PPPs**) are expanding and becoming increasingly popular for optimum risk sharing between public and private partners and maximizing value for taxpayers' money. The basis for developing PPPs in education is to improve the quality of education and maximise the potential to expand equitable access to schooling especially for marginalised groups. In this regard, SELD has already taken bold initiatives by partnering with the private sector for improving learning outcomes of children.

This *PPP Guide & Toolkit* is one step forward in increasing the involvement of private sector in educational services. As PPP systems in education are in a nascent stage here, the private partners usually have many questions, as to the way by which the relationship between SELD and private partners will be governed. Therefore, this *PPP Guide & Toolkit* has been developed to help potential private partners understand all applicable laws, policies, guidelines processes and practices that are currently in place for partnering with SELD.

I am grateful to the Honourable Minister for Education & Literacy Sindh for his vision and commitment to improving education outcomes in Sindh.

My special commendation to the PPP Node of SELD for preparing this *PPP Guide & Toolkit*. I am grateful to all partners who have contributed in the development of this comprehensive document. Without their support and efforts, we would have been unable to achieve this important milestone.

**Dr. Iqbal Hussain Durrani**  
Secretary,  
School Education & Literacy Department,  
Government of Sindh.

October, 2017



## FOREWORD

One can find a lot of online or printed material in the form of books, magazines, journals, articles etc. to understand Public Private Partnerships (PPPs) and how these are increasingly used as a policy tool by governments in providing better public service delivery. To be able to constructively use PPPs, however, one must also be fully aware of the ecosystem around the PPP projects in any public sector. That is, without knowing and understanding the local context and various laws, rules, regulations, policies and guidelines influencing PPP value chain, it would be difficult to come up with PPPs that appropriately allocate risk between public and private parties while maximizing benefits for the users.

*PPP Guide & Toolkit* appears to address all of the above, especially for PPPs in education sector in Sindh. It not only introduces the readers to the overall concept of PPPs, but walks them through various steps from conceiving a project, getting it approved, and finally procuring and implementing the same. The *PPP Guide & Toolkit* should not only serve as a very essential reference for the PPP Node of School Education & Literacy Department in particular, but should also significantly help all potential parties seeking to embark on PPP journey in any social sector in Sindh.

*PPP Guide & Toolkit*, prepared under USAID sponsored Sindh Capacity Development Project (SCDP), under the umbrella of Sindh Basic Education Program (SBEP), is certainly a welcome addition to existing resource material on the subject. It can also be adopted as a training module by other departments to build capacity of their officers. I hope that *PPP Guide & Toolkit* will ultimately play its role in economic and social development of the province by assisting all concerned in understanding and implementing PPPs in Sindh.

**Mr. Abdul Wahab Soomro**  
Senior Director, PPP Node,  
School Education & Literacy Department,  
Government of Sindh.

September, 2017



## ACKNOWLEDGEMENT

The *Public Private Partnership (PPP) Guide & Toolkit* is the first ever document produced at a provincial level that sets out all the processes and practices involved in becoming a PPP partner with Sindh Education & Literacy Department, Government of Sindh (**SELD**). The *PPP Guide & Toolkit* compiles all the applicable laws, policies, guidelines and practices being followed by SELD for soliciting private partners for PPP projects. In addition to assisting the PPP Node, SELD, this document will help all potential private partners in working with SELD in their respective capacities. It is to acknowledge the incredible support, by way of supervision, guidance, suggestions and feedback from key individuals, who have been the driving force in the development of this document.

First and foremost, I am indebted to Mr. Jam Mehtab Hussain Dahar, Minister for Education & Literacy for his competent leadership in shaping up this document. I am short of words in expressing my gratitude to Dr. Iqbal Hussain Durrani, Secretary SELD for his continuous supervision and final approval of this document.

With immense gratitude, I acknowledge Mr. Abdul Wahab Soomro, Senior Director PPP Node for his intellectual inputs and suggestions during the Consultative Sessions held in the making of this document. Mr. Soomro really helped in administering and guiding the discussions and consultative sessions held for developing this document.

I am really thankful to Mr. Ali Sibtain, Senior Director, PPP Unit, Finance Department for his knowledgeable inputs during the development of this document. With deep gratitude, I also acknowledge the support of the officers of PPP Unit, which were part of the Consultative Sessions, for their scholarly inputs and suggestions.

My profound thanks to USAID, whose global vision led to the development of this document. I consider it an honour to work with the team of Sindh Capacity Development Project (**SCDP**) being implemented by Deloitte Yousuf Adil, Chartered Accountants, Pakistan, for conceptualising and drafting this document. Without their hard work, intellectual contribution and strong coordination with the stakeholders, the development of the *PPP Guide & Toolkit* would not have been possible.

I hope this *PPP Guide & Toolkit* will become a guiding document for all stakeholders in becoming a PPP partner with School Education & Literacy Department, Government of Sindh.

**Tauseef Lateef**  
Director (Education),  
Public Private Partnership Node,  
School Education & Literacy Department,  
Government of Sindh.

September, 2017



## PREFACE

Public-Private Partnerships (PPPs) are being widely used as a service delivery tool by governments all over the world. The objective of such partnerships is to better serve the public through partnering arrangements with the private sector. PPPs allow each partner to concentrate on activities that best suit their skills. Under the PPPs framework, the Government sees itself becoming more of a regulator and less a provider of public services, which means focusing on developing sector policies and identifying service needs; while for the private sector, the key is to deliver those services efficiently and effectively.

The main rationale for developing public private partnerships (PPPs) in education is to maximize the potential for expanding equitable access to schooling and for improving education outcomes, especially for marginalized groups. The traditional modes of education are not adequate, keeping in view the magnitude of service delivery in the province. Therefore, the Government is working on various viable alternate options, majorly PPPs, which shall be created and implemented to address these gaps.

PPPs have emerged as a powerful policy tool, through which the School Education & Literacy Department (SELD) is building strategies and networks for engaging the private sector in public education, that will support quality improvements in education and help achieve the education targets set out under the Constitution of Pakistan. The SELD has already established the *Public Private Partnership Node*, for execution and implementation of its PPP projects, as required under the Sindh Public Private Partnership Act, 2010. The PPP Node was made operational by appointment of the Director PPP Node in mid-2014.

With the operationalization of the PPP Node and the approval of its recurring yearly budget, the Node stands at an important juncture in its institutionalization process. As the PPP Node acts as a first point of contact for PPP projects of SELD, like a front office of SELD for PPP initiatives, it is imperative that the PPP Node shall have a Guide, Handbook or a Toolkit that shall set out the systems and processes for executing and implementing PPP project(s) in education sector.

In light of this, the USAID Sindh Capacity Development Project (SCDP), in order to strengthen the systems at SELD with regards to PPPs, has developed this *PPP Guide & Toolkit* for the PPP Node. This *Guide & Toolkit* sets out all the processes involved in becoming a PPP partner with SELD by compiling the applicable laws, policies and guidelines – Sindh Public Private Partnership Act, 2010, Public Private Partnership Policy 2012, Viability Gap Fund Guidelines, Project Development Facility Guidelines, Sindh Public Procurement Act, 2009, and the Sindh Public Procurement Rules, 2010 – and good practices and conventions being followed by SELD. This *Guide & Toolkit* will be focusing on the public private partnership polices / reforms / projects approved by the PPP Policy Board under the aegis of Sindh PPP Act, 2010, as amended from time to time, specifically including the 2014 amendment.

Chapter 1 to 4 of the *PPP Guide & Toolkit* serves like an overall guide of the education systems in the province. Chapter 1 talks about the basis including the constitutional and legal provisions governing education in Sindh; whereas Chapter 2 presents the factual on-ground data of the educational system and facilities, including literacy rate, enrolment ratios and the lack of basic facilities in the government school, as are currently prevalent in the province.

Chapter 5 – 11 of the *PPP Guide & Toolkit* works as a toolkit / handbook listing and defining each step involved in becoming a PPP partner with the SELD. Chapter 5 is a comprehensive one, providing details about the entire implementation and procurement process under the Sindh Public Private Partnership Act, 2010, the Sindh Public Procurement Act, 2009 and the Sindh Public Procurement Rules thereto.

Chapter 6 provides details of the different funding accounts for PPP projects in Sindh generally and specifically for PPP projects of SELD. This chapter further explains the fund flow mechanism used in

financing an education PPP project. The fund flow explains the mechanism of transfer of funds from government accounts to the project account of the PPP partners from time to time, including the necessary approvals from the Independent Auditor and Independent Expert prior to the transfer of funds.

Chapter 7 and 8 details the role of Independent Auditor and Independent Expert respectively, including the manner of their selection, the term of their appointment, the authority of their decisions, their remuneration and their indicative terms of reference.

Chapter 9 sets out the Key Performance Indicators that are generally used by the SELD for schools handed over under PPP framework. Chapter 10 sets forth the adjustment formula / working that shall be used to make adjustments / deductions from the periodic payments based on the degree of fulfilment of the KPIs by the private partner, along with examples.

Chapter 11 sets forth the template of Scope of Work of the Private Partner that is generally followed by the SELD for handing over the management of schools under PPP framework. The last and final Chapter, Chapter 12 tables a Process Checklist that sets out the steps required in the procurement and execution of a project under Public Private Partnership mode - from identifying a project to signing of the Concession Agreement, handing over the management of the school and signing of the ancillary agreements for a smooth transfer of funds.

All the practices and procedures outlined in this *PPP Guide & Toolkit* are for the assistance of SELD, specifically its PPP Node, PPP Unit Finance Department and all other stakeholders, including but not limited to, potential private partners, Independent Auditors, Independent Experts, Escrow agent banks, so that each stakeholder may be well aware of the processes and systems involved in partnering with SELD on education projects under PPP mode.

## ABBREVIATIONS / DEFINITIONS

Agency / Procuring Agency / Authority	These terms are used as a reference to School Education & Literacy Department, Government of Sindh in this document.
Bidding Documents	Request for Proposal (RFP), Draft Concession Agreement and any and/or all other documents issued to potential bidders for preparation of their bids by SELD
Concessionaire / Private Partner	Successful bidder, who has entered into a Concession Agreement with SELD. Private Partner of the project under PPP mode
Concession Agreement	Concession Agreement / Public Private Partnership Agreement signed between the Agency and the Private Partner (the Concessionaire).
Concession Period	Total term / duration of the Concession Agreement.
CRC	Complaints Redressal Committee
CSC	Consultants Selection Committee
EMO(s)	Education Management Organization(s)
GIR	Gross Intake Ratio
Government / GoS	Government of Sindh
IA	Independent Auditor
ICB	International Competitive Bidding
IE	Independent Expert
KPIs	Key Performance Indicators
NCB	National Competitive Bidding
NER	Net Enrolment Ratio
NIT	Notice Inviting Tender
Operator	The Private Partner (the Successful Bidder or the Project Company incorporated by the Successful Bidder) who has signed the Concession Agreement.
PDF Account	Project Development Facility Account, SFMH, Finance Department
PMIU	Program Management and Implementation Unit, SBEP
PPP(s)	Public Private Partnership(s)
PPP Act	Sindh Public Private Partnership Act, 2010 (as amended from time to time)
PPP Agreement	Public Private Partnership Agreement / Concession Agreement signed between the Agency and the Private Partner (the Concessionaire).
PPP Node	Public Private Partnership Node, School Education & Literacy Department
PPP Unit	Public Private Partnership Unit, Finance Department
RFP	Request for Proposal document
SAT	Standardized Achievement Test
SELD	School Education & Literacy Department, Government of Sindh

SBEP	Sindh Basic Education Program
SCDP	Sindh Capacity Development Project
SCMP	Sindh Community Mobilization Program
SDGs	Sustainable Development Goals 2015-30
SEF	Sindh Education Foundation, established under the Sindh Education Foundation Act, 1992
SESP	Sindh Education Sector Plan 2014-18
SFMH	Sindh Fund Management House, Finance Department.
SPP Act	Sindh Public Procurement Act, 2009 (amended from time to time)
SPP Rules	Sindh Public Procurement Rules, 2010 (amended from time to time)
SPPRA	Sindh Public Procurement Regulatory Authority
TFEC	Technical and Financial Evaluation Committee
USAID	United States Agency for International Development
VGF	Viability Gap Fund Account, SFMH, Finance Department

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**SECTION 1**  
**THE FOUNDATIONS OF**  
**EDUCATION**  
**IN SINDH**



## 1.1 – INTRODUCTION

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- (1) According to Universal Declaration of Human Rights, approved by UN General Assembly in 1948, the provision of free and compulsory education up to elementary level at least, is a fundamental right of every citizen.

Article 26(1) of United Nations Human Declaration of Human Rights, 1948 states:

*“Everyone has the right to education. Education shall be free at least in the elementary and fundamental stages. Elementary education shall be compulsory.”*

- (2) Education is basic right of every citizen, and it’s the fundamental responsibility of the state to provide basic free education to its citizens. Pakistan, since its existence, has tried to provide quality education.
- (3) The National Education Conference was held in 1947, whereby it was decided to universalize education in the next twenty (20) years. Since then, the provision of universal education has remained the main agenda of the Government of Pakistan, but unfortunately, literacy rate is still at a mere sixty (60%) percent.
- (4) In the All Pakistan Education Conference held in Karachi in November 1947, the Founder of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah said:

*“The importance of education and the right type of education cannot be over-emphasized;*

*If we are to make any real, speedy and substantial progress, we must earnestly tackle this question and bring our educational policy and program on the lines suited to the genius of our people, consonant with our history and culture, and having regard to the modern conditions and vast developments that have taken place all over the world;*

*There is no doubt that the future of our State will and must greatly depend upon the type of education and the way in which we bring up our children as the future servants of Pakistan.*

*[We] do not forget that we have to compete with the world, which is moving very fast in this direction.”*

## 1.2 – THE CONSTITUTION OF PAKISTAN

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- (1) The parliament of Pakistan has finally recognized free education as a constitutional right by accepting the provision of free and compulsory education to all children as a responsibility of the State. With the passage of 18<sup>th</sup> Constitutional amendment, **Article 25-A** has now been added to Chapter – 1 of the Constitution, which is titled as “Fundamental Rights”. These Fundamental Rights are guaranteed for all citizens of Pakistan by the Constitution.
- (2) Article 25-A of the Constitution guarantees the right to free and compulsory education to all children of age 5 to 16 years in Pakistan. The full text of the Article is reproduced herein below:

*“The state shall provide free and compulsory education to all children of the age of five to sixteen years in such a manner as may be determined by law”.*

- (3) Education has been part of the Constitution since the beginning. However, its achievement has remained a dream as nearly half of children are still out of school and nearly 40% of the population is illiterate.
- (4) The Constitution of Pakistan, approved in 1973, contained commitment of the State for eradication of illiteracy and provision of free education up to secondary level. Under Chapter 2 of the Constitution, **Article 37-B** provides for the removal of illiteracy and provision of free and compulsory secondary education. The full text of the Article is reproduced herein below:

*“The State shall: remove illiteracy and provide free and compulsory secondary education within minimum possible period.”*

- (5) Under the section of Principles of Policy, the implementation of the above Article has practically remained slow, which has resulted in low literacy rate and exclusion of millions of children from their fundamental right of free basic education. The conditions of rural women of Sindh are worse, where the literacy rate of rural women is merely at 24% i.e. approx. 76% of women are illiterate.

### **1.3 – THE SINDH RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2013**

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- (1) In addition, the 18<sup>th</sup> Constitutional amendment abolished the Concurrent List, which made education a provincial subject. It was realized that one of key reasons of slow progress on achievements of education outcomes may have been centralization and duplication of education at both federal and provincial levels.
- (2) Therefore, in pursuance of the passage of 18<sup>th</sup> amendment and insertion of Article 25-A in the Constitution, Sindh became the first province to pass “**Right of Children to Free and Compulsory Education Act**” in the first quarter of 2013.
- (3) The Preamble of the 2013 Act clearly states that “it is expedient to provide for the right to education to all children of the age of five to sixteen years as envisaged in Article 25-A of the Constitution of the Islamic Republic of Pakistan, 1973.”
- (4) Furthermore, section-30 of the 2013 Act provides the power to make Rules for carrying out the provisions of this Act. The Rules have already been drafted and approved by the School Education & Literacy Department; however, the same have not been notified in the official Gazette of Sindh Government.

### **1.4 – SINDH EDUCATION SECTOR PLAN 2014-18**

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- (1) As a series of steps in the background starting from the 18<sup>th</sup> amendment of the Constitution of Pakistan empowering provinces to take over the responsibility of education, followed by the passage of the Sindh Right of Children to Free and Compulsory Education Act, 2013; the Government of Sindh recognized a need to develop an all-inclusive holistic framework of education to achieve the goal of Article 25-A, which has been achieved by making of the Sindh Education Sector Plan 2014-18.

- (2) The vision statement of the Sindh Education Sector Plan 2014-18 (SESP) is reproduced herein below:

*“Education as the fundamental right of the child, the government must provide equal opportunity of quality education to all children to realize their full potential and contribute to the development of society and economy creating a sense of nationhood and inculcating values of tolerance, social justice and democracy”*

- (3) This may be translated in practical terms as a commitment under the SESP to focus on: (i) delivering educational services to the most vulnerable and marginalized children, (ii) improving student learning outcomes, and (iii) supporting greater community and parental involvement in their children’s education.

- (4) The objectives of SESP are set out as follows:

- i) Increasing equitable access to early childhood education, primary, middle/elementary and secondary education;
- ii) Improving curriculum and learning outcomes;
- iii) Improving the quality of teachers through a merit based selection and recruitment;
- iv) Strengthening governance and service delivery;
- v) Enhancing the equity of resource allocation; and
- vi) Improving the fiscal sustainability and effectiveness of educational expenditure.

## **1.5 – SUSTAINABLE DEVELOPMENT GOALS (SDGS)**

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- (1) The Sustainable Development Goals (SDGs), officially known as “Transforming our World: the 2030 Agenda for Sustainable Development” is a broader intergovernmental agreement that acts as the post 2015 development agenda – successor of the Millennium Development Goals that were set to be achieved by 2015. It is a set of seventeen (17) global goals, spearheaded by the United Nations, covering a broad range of sustainable development issues, including: ending poverty and hunger, improving health and education, making cities more sustainable, combating climate change, and protecting oceans and forests.

- (2) The fourth goal of SDGs focuses on Quality Education, and states:

*“Quality Education – Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.”*

- (3) The SDGs Goal – 4 sets seven (07) targets with three (03) means of implementation, which are reproduced herein below:

- i) By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and Goal-4 effective learning outcomes;
- ii) By 2030, ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education;

- iii) By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university;
- iv) By 2030, substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship;
- v) By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations;
- vi) By 2030, ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy;
- vii) By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development.

#### Means of Implementation

- i) Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, nonviolent, inclusive and effective learning environments for all;
- ii) By 2020, substantially expand globally the number of scholarships available to developing countries, in particular least developed countries, small island developing States and African countries, for enrolment in higher education, including vocational training and information and communications technology, technical, engineering and scientific programmes, in developed countries and other developing countries;
- iii) By 2030, substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially least developed countries and small island developing states.

Since Pakistan is a signatory to the Sustainable Development Goals – the 2030 Agenda for Sustainable Development; therefore, it is important for Pakistan to take all efforts to meet the SDG Goal – 4 targets by the year 2030.

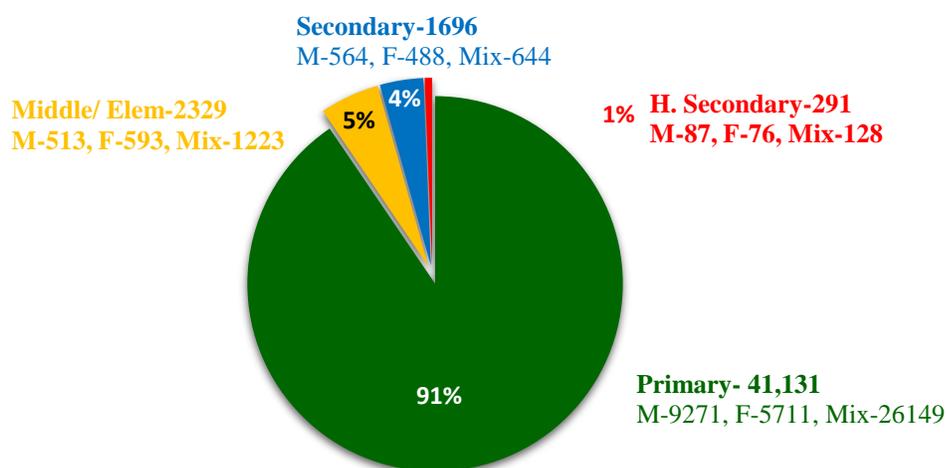
**SECTION 2**  
**THE CURRENT SCENARIO OF**  
**EDUCATION SECTOR**  
**IN SINDH**



## 2.1 – INTRODUCTION

- (1) Sindh lags behind on a number of indicators including access, quality and equity, which measure progress against the goals set by Article 25-A of the Constitution of Pakistan, the Sindh Right of Children to Free and Compulsory Education Act, 2013, and the Sustainable Development Goals (SDGs).
- (2) There are 45,447 public schools being run by the School Education & Literacy Department, Sindh; out of which 41,131 schools, making it to a massive 91%, are primary schools. Whereas, the ratio of middle, secondary and higher secondary schools is merely at 9%, illustrating the huge gap between primary and post primary education in the province, as shown in the pie chart below:

Figure-I: Level and gender wise schools in Sindh



Source: SEMIS 2015-16

## 2.2 – ACCESS TO EDUCATION

- (1) According to SEMIS Census 2015-16, the 45,447 schools being run in Sindh have a total enrolment of 4,145,219 students, who are taught by 115,598 teachers, as detailed in Table-I below:

Table-I: Number of Institutes, Enrolment and Teachers in Sindh

Sindh Province School Level	Number of Institutes				Enrolment			Teacher		
	Boys	Girls	Co-Ed	Total	Boys	Girls	Total	Male	Female	Total
Primary	9,271	5,711	26,149	41,131	1,648,607	1,039,794	2,688,401	68,428	24,514	92,942
Middle/Elementary	513	593	1,223	2,329	147,898	117,948	265,846	8,395	5,215	13,610
Secondary	564	488	644	1,696	490,291	346,103	836,394	22,207	16,604	38,811
Higher Secondary	87	76	128	291	232,384	122,194	354,578	7,089	3,764	10,853
<b>Total:</b>	10,345	6,808	28,144	45,447	2,519,180	1,626,039	4,145,219	106,119	50,097	156,216

Source: SEMIS Census 2015 - 2016

## 2.3 – THE MISSING FACILITIES

(1) The state of basic facilities in the schools is also a serious concern, which is depicted in the Graph-II below:

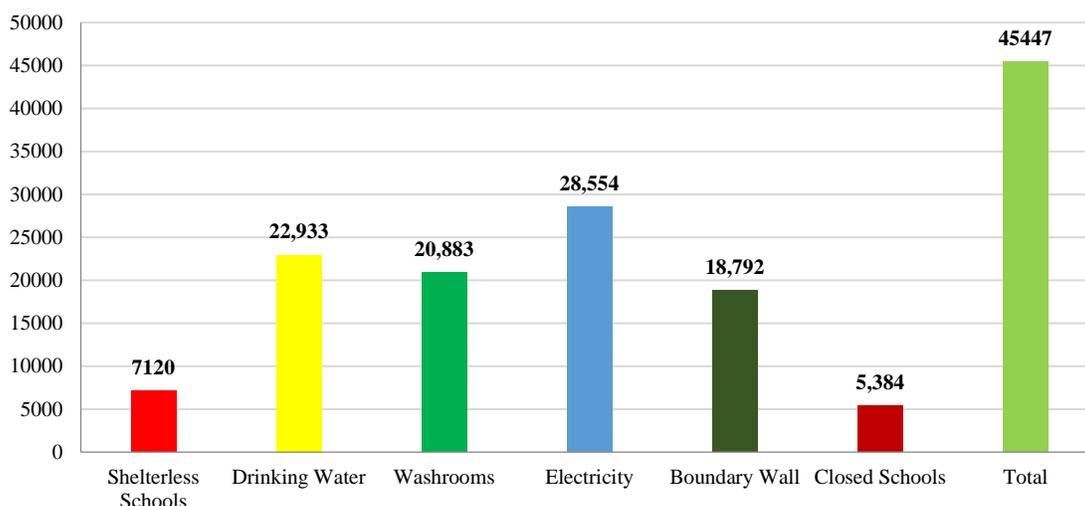
- 22,933 schools (approx. 50%) do not have drinking water facility;
- 20,883 schools (approx. 46%) do not have toilet facilities;
- 28,554 schools (approx. 63%) do not have electricity;
- 18,792 schools (approx. 41%) do not have a boundary wall.

Similarly,

- 5,384 schools (approx. 12%) are non-functional schools;
- 7,120 schools (approx. 16%) are shelter-less / without buildings;
- 11,133 schools (approx. 24%) are one-room schools; and
- 17,274 schools (approx. 38%) are two-room schools.

Thus, highlighting the fact that vast majority of schools i.e. 78% of the total schools in the province are either shelter-less or do not have more than two rooms, excluding the percentage of non-functional schools.

**Figure-II: Missing Facilities in Schools of Sindh**



Source: SEMIS 2015-16

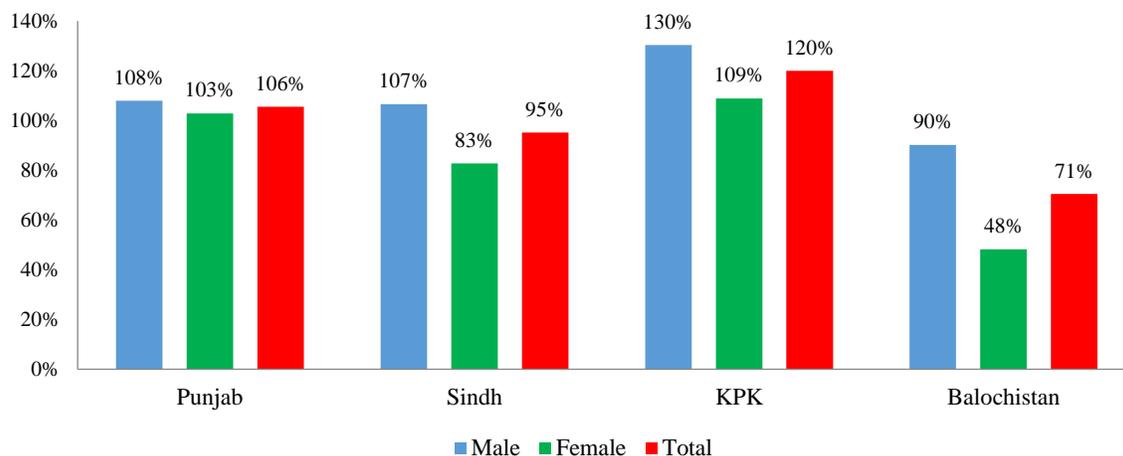
(2) The state of education facilities may be one of the major reasons for a lower enrolment in public schools and a high dropout rate at the primary level.

## 2.4 – GROSS INTAKE RATIO (GIR)

(1) The recent Pakistan Statistical Report shows a lower Gross Intake Ratio (GIR) in Sindh. The GIR is defined as “the total number of new intake in class-1, as a percentage of total population of school going age”. The GIR higher than 100% is a positive sign because it shows that the intake is more than the school specific age group, which in the case of Sindh is 5-9 years.

- (2) The GIR of Sindh is merely at 95%, which is lower in comparison to Khyber Pakhtunkhwa standing at 120%, and Punjab standing at 106%, as depicted in the Graph-III below:

**Figure-III: Gross Intake Ratio in Provinces of Pakistan**

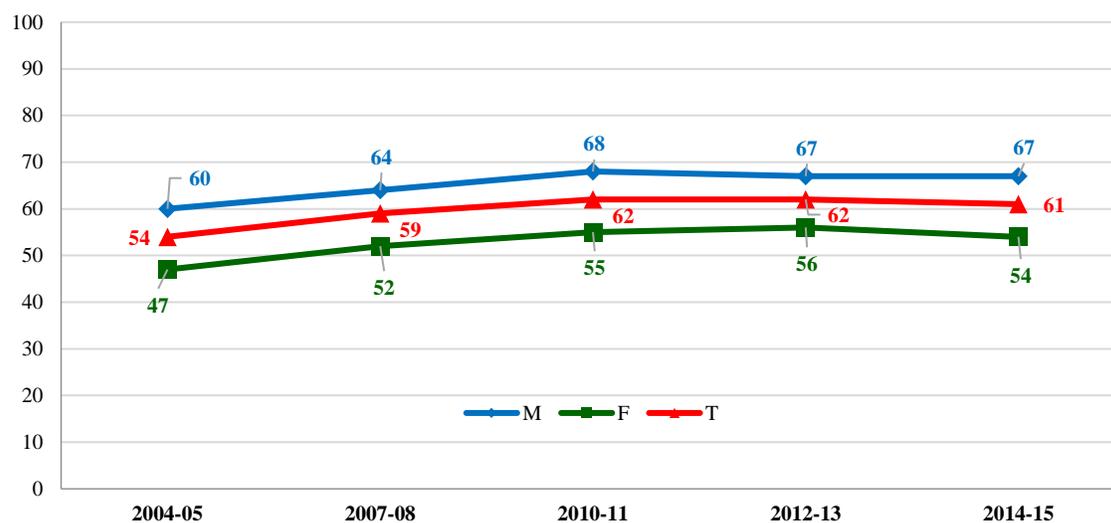


Source: Pakistan Education Statistics 2015-16

## 2.5 – NET ENROLMENT RATIO (NER)

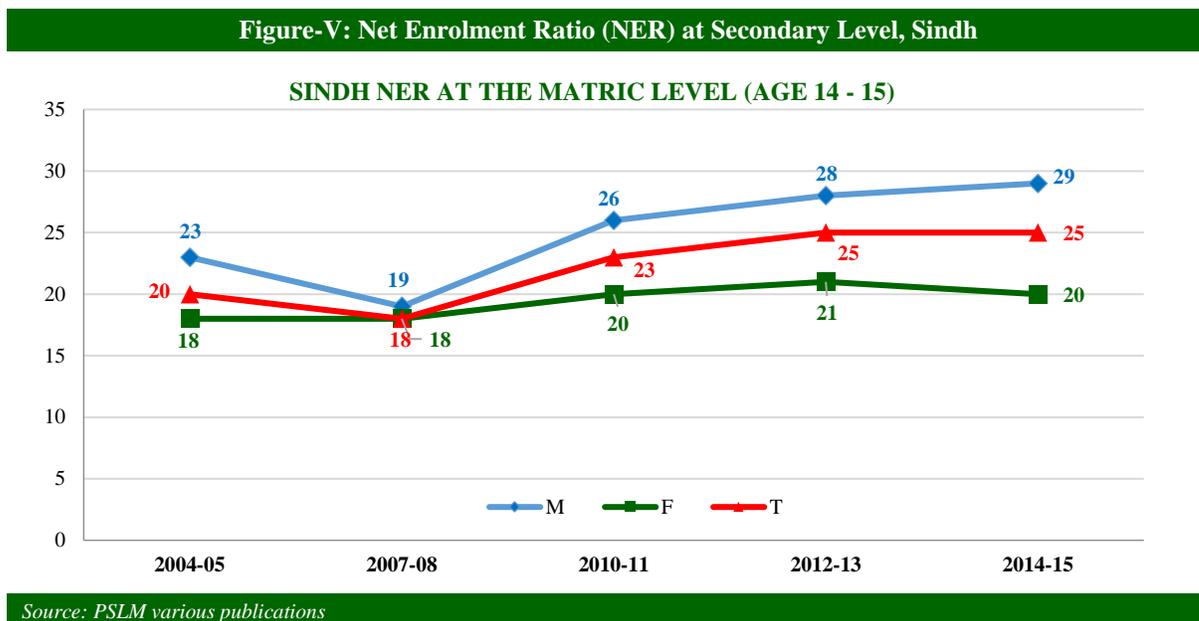
- (1) The status of Net Enrolment Ratio (NER) over the years, is nearly the same with a slight change observed in the last ten (10) years.
- (2) The NER has increased by 7% in the last ten (10) years, which is even less than half of the increase in population ratio that is approx. 2.2 percent per year. There is also a negative trend from 2012-13 to 2014-15 whereby 2% in the female NER and 1% overall, as shown in the Graph-IV below:

**Figure-IV: Net Enrolment Ratio (NER) at Primary Level, Sindh**



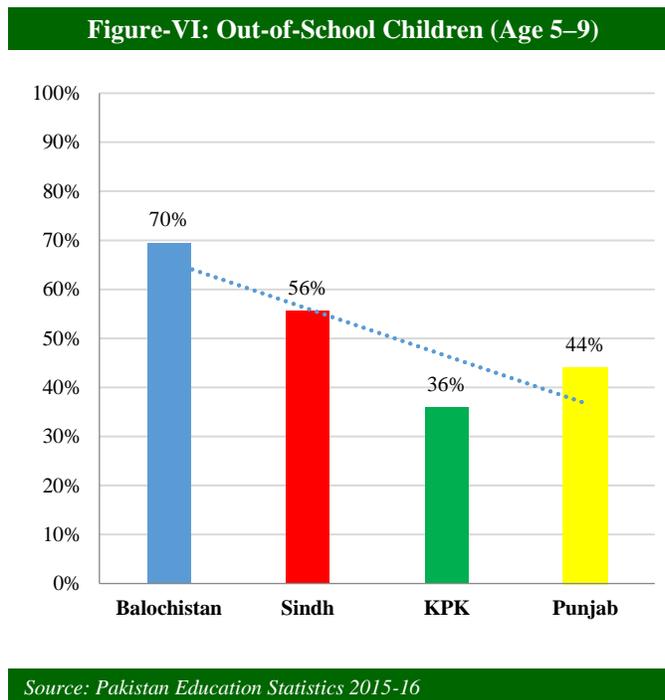
Source: PSLM various publications

- (3) At the secondary (Matric) level even, the situation of the enrolment rate is not much different than the primary level. Over the last decade, the Net Enrolment Ratio (NER) has only risen by 2% for females and only 6% for males, while the overall NER has also increased by 6% only, as shown in the Graph-V below:



## 2.6 – OUT-OF-SCHOOL CHILDREN

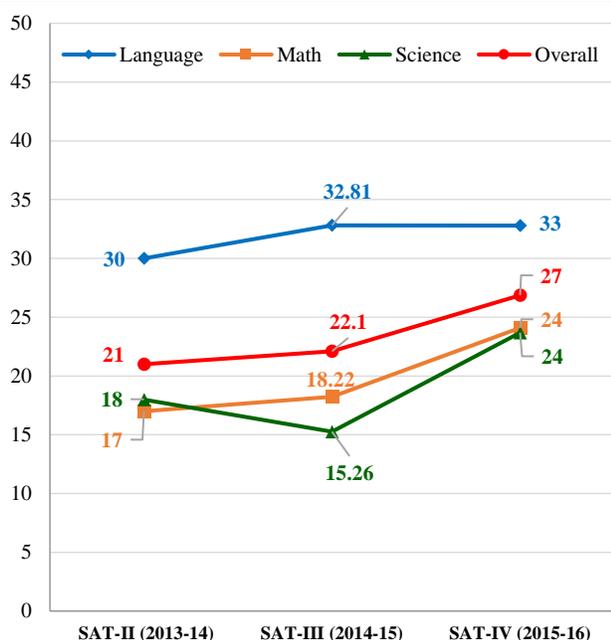
- (1) Despite many reforms and efforts, Sindh has not been able to reduce the out-of-school children ratio, including both the drop-outs and left-outs, which nearly remains the same over the last few years.
- (2) There are 12 million children of age 5-16 years in the province, out of which 6.67 million (approx. 56%) are out of school. However, recent data shows a decline in drop-outs from 23.9% in the year 2012-2013 to 20% in the year 2013-14, and further decline to 13% in the year 2014-15.
- (3) Sindh has the second highest number of out-of-school children in Pakistan, after Balochistan. Khyber Pakhtunkhwa has been able to reduce the number of out-of-school children in recent years, and currently it has the lowest percentage (approx. 36%) of out-of-school children, as shown in Graph-VI.



## 2.7 – QUALITY OF EDUCATION

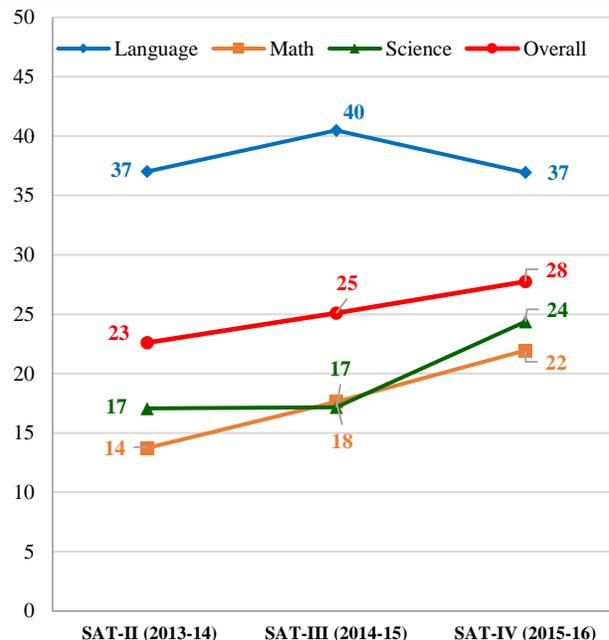
- (1) The term – quality of education – is hard to define, therefore, it is generally measured in terms of achievements of children. This is one of the reasons that led Sindh government to start Standardized Achievement Test (SAT), through third party(ies), to assess the performance level and achievements of students. The first SAT was conducted by Sukkur Institute of Business Administration (SIBA), which is now conducting SAT since the year 2012-13 for Class-V.
- (2) The results of the SAT for Class-V have hardly shown any improvements. The results of the first three tests conducted for the years 2012-13, 2013-14, and 2014-15, have only improved by 1% in language and 3% in mathematics, whereas, in science, student performance has decreased by 3%. The results of SAT-IV conducted for the year 2015-16 however shows some improvements, as the science score has increased by 8% and the overall score has increased by 5%, as shown in Graph-VII.
- (3) The Standardized Achievement Test (SAT) for Class-VIII was conducted for the first time in the year 2013-14 along with SAT-II of Class-V. The results of the tests show a similar pattern as for Class-V i.e. poor performances in mathematics and science specifically. Moreover, the overall low score reflects badly on the overall quality of education that seems to be below basic standards. The exact numbers are presented in Graph-VIII.

**Figure-VII: Average Score (SAT) II, III and IV of Class- V, Sindh**



Source: SAT Reports, various publications

**Figure-VIII: Average Score (SAT) II, III and IV of Class- VIII, Sindh**



Source: SAT Reports, various publications

## 2.8 – EQUITY IN EDUCATION

- (1) Equity in educational access and participation has two dimensions: (i) fairness which implies that one's personal and social circumstances such as gender, socio economic status, and ethnic origin should not be an obstacle to participation in education; and (ii) inclusion, which implies ensuring basic minimum standards of education for all.

- (2) Equity should also ensure that differences in educational outcomes are not the result of differences in socio economic status, income, gender, geographical disparities and parallel school systems. Equity is also important as a human rights imperative under which the Province of Sindh is the guarantor of education for all, ensuring that it is available, accessible, acceptable and adaptable.
- (3) The Sindh Education Sector Plan 2014-18 clearly spells out key steps to improve the equity of education by focusing on the transition of children from primary to middle schools and from middle to secondary schools. It further provides for greater access to early childhood education specifically focusing on children from marginalized groups and on improving the gender parity index.
- (4) A gender working group has also been setup in School Education & Literacy Department to handle the key issues and design advocacy and awareness programs for equal rights and opportunities for all. The Government of Sindh has also increased the women quota from 5% to 15% in government jobs.
- (5) Despite such efforts, gender disparities continue to increase, and females in rural areas are the most disadvantaged due to low retention rates and high dropout rates. The gender parity index at the Primary Level remained unchanged during the last decade i.e. between 2004 and 2015. In 2004-05, the GPI at the Primary Level was 0.78, which increased by 0.06 points to 0.84 in the year 2012-13. However, in 2014-15, it decreased again by 0.03 points to 0.081.

## **2.9 – ALTERNATE OPTIONS**

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- (1) The provision of educational services is still a major challenge for most of the developing countries of the world, including Pakistan. Governments alone have not been able to provide education to its rapidly growing populations, and the traditional modes of education provision may not be adequate to achieve the international objectives. So, there is a policy shift from a single provider approach towards a multi-provider approach.
- (2) The Sindh Education Sector Plan 2014-18 (SESP) recognizes that the government alone cannot provide free and quality education for all children of Pakistan, therefore, the School Education & Literacy Department will pursue a policy of Public-Private Partnerships. The SESP under the heading of Public-Private Partnerships states that, despite the concerted efforts of government to make education free and compulsory (with free textbooks, stipends and, in some cases, uniforms and food provisions), the sector is still struggling to break free from crises of access and poor quality education.
- (3) The Government understands that in a situation where mechanisms have weakened and there is a dearth of resources, forming partnerships between key stakeholders – including public private partnerships – is a vital strategy to join forces and resources for improving the state of the education system.
- (4) Public Private Partnerships have attracted the attention of international players and national governments for its potential to address the issues of access, equity and inclusion for those who are otherwise unable to obtain education. There has been a growing interest in non-government provision of education provided by private partners including NGOs, community based organizations, private for-profit schools, private non-profit schools, and philanthropic schools, as an alternative and innovative way to reach global education goals.

## **SECTION 3**

# **THE PUBLIC PRIVATE PARTNERSHIPS MODALITY**



### 3.1 – DEFINING PUBLIC PRIVATE PARTNERSHIPS

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- (1) There is no singular universally accepted definition of PPP. Instead, a wide range of definitions can be found.

The Sindh PPP Act defines PPP as:

*“a partnership carried out under a Public-Private Partnership Agreement between the public sector represented by an Agency<sup>1</sup> 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.”*

The PPP Knowledge Lab of the World Bank Group defines PPP as:

*"a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance".*

The PPP Infrastructure Resource Centre of the World Bank Group defines PPP as:

*“Public-private partnerships (PPPs) are a mechanism for government to procure and implement public infrastructure and/or services using the resources and expertise of the private sector. Where governments are facing ageing or lack of infrastructure and require more efficient services, a partnership with the private sector can help foster new solutions and bring finance.*

*PPPs combine the skills and resources of both the public and private sectors through sharing of risks and responsibilities. This enables governments to benefit from the expertise of the private sector, and allows them to focus instead on policy, planning and regulation by delegating day-to-day operations.”*

The PPP Handbook of the Asian Development Bank defines PPP as:

*“PPPs present a framework that—while engaging the private sector—acknowledge and structure the role for government in ensuring that social obligations are met and successful sector reforms and public investments achieved.*

*A strong PPP allocates the tasks, obligations, and risks among the public and private partners in an optimal way. The public partners in a PPP are government entities, including ministries, departments, municipalities, or state-owned enterprises. The private partners can be local or international and may include businesses or investors with technical or financial expertise relevant to the project. Increasingly, PPPs may also include non-government organizations (NGOs) and/or community-based organizations (CBOs) who represent stakeholders directly affected by the project.*

*Effective PPPs recognize that the public and the private sectors each have certain advantages, relative to the other, in performing specific tasks...*

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<sup>1</sup> 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.

*The structure of the partnership should be designed to allocate risks to the partners who are best able to manage those risks and thus minimize costs while improving performance.”*

- (2) It is clear, however, that PPPs have been adopted around the world as a service delivery tool. Instead of the public sector procuring a public asset and providing a public service, the private sector creates the asset through a dedicated standalone business (usually designed, financed, built, maintained and operated by the private sector) and then delivers a service to a public sector entity/consumer, in return for payment that is linked to performance. PPPs allow each partner to concentrate on activities that best suit their skills. For the public sector, that means focusing on developing sector policies and identifying service needs, while for the private sector the key is to deliver those services efficiently and effectively.
- (3) Under the PPPs framework, the Government sees itself becoming more of a regulator and less a provider of public services. It is envisioned to be a clear and fair risk sharing mechanism, in financing, operating and maintaining the project between the public and private sector based on a mutual commitment to achieve a desired public sector outcome, while obtaining appropriate rate of returns for the private sector, is a distinguishing feature of PPP projects.

### **3.2 – EMERGENCE OF PUBLIC PRIVATE PARTNERSHIPS IN SINDH**

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- (1) Public-Private Partnerships (PPPs) are being widely used as a service delivery tool by governments all over the world. The objective of such partnerships is to better serve the public through partnering arrangements with private sector. The PPP modality, though at nascent stage in the province of Sindh at present, has great potential in the future. In view of the special characteristics of PPP projects and the need to attract qualified private investors to support these projects, a special legal and regulatory framework has been created. The Government of Sindh has enacted a PPP law called The Sindh PPP Act, 2010, and included a separate chapter for PPPs in the Sindh Public Procurement (SPP) Rules, 2010.
- (2) For sustained development, PPPs will have to be mainstreamed in Sindh, rather than being used only for a few special projects. To fully utilize the PPP potential and to ensure that PPP projects are successful and mutually beneficial, a comprehensive enabling environment for private parties and private investment is being created. This is being done through the adoption of relevant policies, frameworks and introduction of clear guidelines for PPP arrangements.
- (3) The Government of Sindh is committed to overcome the lack of trust between the public and private sectors to collaborate in PPP projects, and facilitating the creation of effective partnerships through well designed and transparent procurement practices.

### **3.3 – RATIONALE FOR PUBLIC PRIVATE PARTNERSHIPS**

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- (1) The PPPs framework has been developed and proposed because of the following main reasons:
  - i) ensures technical, economic and financial viability of projects through adequate project preparation;
  - ii) supplements limited public sector capacities to meet the growing demand for infrastructure and services sector development;

- iii) introduces private sector technology and innovation in providing better public services through improved operational efficiency;
- iv) improves the efficiency of management, operation and maintenance of facilities through introduction of modern technology and management techniques;
- v) achieves a larger scope and better quality of services for end users through the additional financial and human resources mobilized from the private sector;
- vi) provides better value for money due to private sector expertise and optimal transfer of risk;
- vii) incentivizes the private sector to deliver projects on time and within budget;
- viii) ensures sustainable long-term funding for development through mobilization of private investments;
- ix) imposes budgetary certainty by setting present and future costs of projects over time;
- x) ensures financial sustainability of services through full cost recovery supplemented by viability gap funding (VGF), if necessary;
- xi) improves delivery of projects as payments are linked to delivery / performance;
- xii) incentivizes sustainability, innovation and Research & Development (R&D);
- xiii) professional operation and maintenance of the facilities for a long term by the private partner;
- xiv) promotes social development, employment generation, and inclusive economic growth through development of infrastructure;
- xv) protects the best interests of all stakeholders including end users, the Government and the private sector.

### **3.4 – TYPES OF PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS**

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- (1) The Sindh PPP Act, 2010, describes various PPP arrangements but does not restrict the contract arrangements to the defined few. Following categories may be used in Sindh depending upon the nature of the project and the risk allocation between the Government and the private sector. The Bidding Documents clearly describe the type of PPP arrangement applicable to a certain PPP project. However, these categories are indicative and do not restrict government agencies from applying other arrangements with the prior approval of the PPP Policy Board.
- (2) **Build-and-Transfer (BT):** A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project and after its completion hands it over to the Agency. The Agency will reimburse the total project investment, on the basis of an agreed schedule. This arrangement may be employed in the construction of any infrastructure project, including critical facilities, which for security or strategic reasons must be operated directly by the Agency.

- (3) **Build-Lease-and-Transfer (BLT):** A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project and upon its completion hands it over to the Agency on a lease arrangement for a fixed period, after the expiry of which ownership of the project is automatically transferred to the Agency. The lease payments are structured to reimburse the private party for its investment and repay the loan.
- (4) **Build-Operate-and-Transfer (BOT):** A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project, and the operation and maintenance thereof. The private party operates the facility over a fixed term during which it is allowed to collect from project users appropriate tariffs, tolls, fees, rentals, or charges not exceeding those proposed in agreement. This enables the private party to recover its investment and operation and maintenance expenses for the project. The private party transfers the facility to the Agency at the end of the fixed term that shall be specified in the PPP Agreement.
- (5) **Build-Own-and-Operate (BOO):** A contractual arrangement whereby the private party is authorized to finance, construct, own, operate and maintain an infrastructure project, from which the private party is allowed to recover its investment and operating and maintenance expenses by collecting user fees from project users. The private party owns the project and may choose to assign its operation and maintenance to a project operator. The transfer of the project to the Agency is not envisaged in this arrangement. However, the Agency may terminate its obligations after the specified time period.
- (6) **Build-Own-Operate-Transfer (BOOT):** A contractual arrangement similar to the BOT agreement, except that the private party owns the infrastructure project during the fixed term before its transfer to the Agency.
- (7) **Build-Transfer-and-Operate (BTO):** A contractual arrangement whereby the Agency contracts out an infrastructure project to the private party to construct it on a turn-key basis, assuming cost overruns, delays and specified performance risks. Once the project is commissioned, the private party is given the right to operate the facility and collect user fees under the PPP Agreement. The title of the project always vests in the Agency in this arrangement.
- (8) **Contract-Add-and-Operate (CAO):** A contractual arrangement whereby the private party expands an existing infrastructure facility, which it gets leased from the Agency. The private party operates the expanded project and collects user fees, to recover the investment over an agreed period. There may or may not be a transfer arrangement with regard to the added facility provided by the private party.
- (9) **Develop-Operate-and-Transfer (DOT):** A contractual arrangement whereby favourable conditions external to an infrastructure project, which is to be built by the private party, are integrated into the Public-Private Partnership Agreement by giving it the right to develop adjoining property and thus enjoy some of the benefits the investment creates such as higher property or rent values.
- (10) **Rehabilitate-Operate-and-Transfer (ROT):** A contractual arrangement whereby an existing infrastructure facility is handed over to the private party to refurbish, operate and maintain it for a specified period, during which the private party collects user fees to recover its investment and operation and maintenance expenses. At the expiry of this period, the facility is returned to the Agency. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and operating it.
- (11) **Rehabilitate-Own-and-Operate (ROO):** A contractual arrangement whereby an existing infrastructure facility is handed over to the private party to refurbish, operate and maintain with no time limitation imposed on ownership. The private party is allowed to collect user fees to recover its investment and operation and maintenance expenses in perpetuity.

- (12) **Joint Ventures (JV):** Joint ventures (JVs) are also a form of PPPs in which a company is co-owned and operated by the public and private sector partners. We have seen JV extensively useful and suitable for economic sectors such as mining, manufacturing and agriculture, JVs in the infrastructure sectors like roads etc. pose several problems. The Government's dual role as the regulator and a part owner could lead to conflicts of interest. A clear risk allocation, which is a major advantage of PPPs, is blurred by JVs. There are however, some inherent problems with JVs and that include direct negotiations and avoiding Competent Bidding Process which should always be avoided in JVs. Transparency is the underlying objective in all sorts of procurement and JVs are no exception to it.
- (13) **Management Contract (MC):** A contractual arrangement whereby the Agency entrusts the operation and management of an infrastructure project to the private party for an agreed period on payment of specified consideration. The Agency may charge the user fees and collect the same either itself or entrust the collection for consideration to any person who shall pay the same to the Agency.
- (14) **Service Contract (SC):** Any outsourcing contract by an Agency to any private party whereby the private party undertakes to provide services to the Agency for a specified period with respect to an infrastructure facility. The Agency shall pay the private party an amount according to an agreed schedule.

### **3.5 – INSTITUTIONAL ARRANGEMENTS OF PUBLIC PRIVATE PARTNERSHIPS IN SINDH**

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- (1) Establishing clear, effective and efficient institutional arrangements is another prerequisite for successful implementation of PPP projects. The Government has therefore created the following entities as an integral part of the enabling PPP framework.
- i) A high-level Public Private Partnership Policy Board, headed by the Chief Minister of Sindh, to formulate PPP Policy based on strategic goals and implementation in the Province;
  - ii) A central PPP Unit established in the Finance Department to assist the PPP Policy Board in formulating and implementing PPP policies;
  - iii) PPP Nodes as focal points for specific PPP projects in line departments, like the PPP Node established in the School Education & Literacy Department.

#### **3.5.1 – Public Private Partnership Policy Board**

- (1) To ensure a consistent approach to PPPs across sectors and an efficient use of funds by line departments, strong and effective policy framework will be provided by the PPP Policy Board, as constituted under Section 4(1) of the Sindh PPP Act 2010.
- (2) The PPP Policy Board shall be the final deciding body for all PPP projects in Sindh, and shall have the following responsibilities:
- i) formulate a PPP Policy, guidelines and rules for the Government;
  - ii) supervise and coordinate implementation of the PPP Policy by line departments and local governments;

- iii) approve, reject or send back for reconsideration PPP project proposals submitted by an agency within six (6) months;
- iv) decide on any direct or contingent support for a project proposal submitted by an Agency;
- v) approve, reject or send back for reconsideration recommendations submitted by an agency on contract awards to private party;
- vi) issue risk management guidelines, to assess that government support for projects is included in the annual budget of the Province and that such support is fiscally sustainable, and establish procedures to implement such guidelines consistent with the Sindh PPP Act;
- vii) assist the agencies in solving major problems impeding PPP project preparation and implementation;
- viii) approve funding for projects receiving support through the Project Development Facility;
- ix) be the final deciding authority for all the projects; and
- x) take all other steps necessary to give effect to the provisions of the Sindh PPP Act.

### **3.5.2 – Public Private Partnership Unit**

- (1) The PPP Unit is established in the Finance Department to promote and facilitate the development of Public-Private Partnerships in the province, 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) The PPP Unit shall have the following main functions:
  - i) assist the PPP Policy Board in formulating, implementing the Public Private Partnership Policy and provide technical support to the PPP Policy Board and act as its secretariat;
  - ii) develop operating guidelines, procedures and model documents for PPP projects for approval by the PPP Policy Board, using gender-fair language;
  - iii) develop technical and human resources to support Public-Private Partnership initiatives at the Agencies while promoting women’s access to capacity building opportunities;
  - iv) provide technical support and advice to line agencies throughout the Public Private Partnership process;
  - v) evaluate and prioritize project proposals submitted by agencies;
  - vi) evaluate the type and amount of government support sought for a project;
  - vii) review bid evaluation reports, submitted by an agency;
  - viii) prepare and regularly update a pipeline of projects;

- ix) oversee project implementation and issue semi-annual review and annual consolidated reports on the Public-Private Partnership projects in the Province; and
- x) perform any other functions as may be assigned to it by the Board.

### **3.5.3 – Public Private Partnership Node**

- (1) The administrative head (the Secretary) of each Agency (School Education & Literacy Department), which seeks to implement a project(s) on a Public-Private Partnership basis, shall form a PPP Node with the approval of concerned Minister consisting of officers from within the Agency (School Education & Literacy Department) or other Agencies (other line departments) as the case may be, which may include representative from the Finance Department, and independent technical and legal experts if deemed appropriate to develop the project.
- (2) The PPP Nodes shall have the following main functions, during the performance of which, they may seek support and advice of the PPP Unit:
  - i) identify suitable PPP projects and prioritize these within their sector or geographical area of responsibility;
  - ii) recruit transaction advisors for project preparation and tendering;
  - iii) supervise the preparation of feasibility studies that are inclusive of social, environmental, and gender analyses, and if their outcome is positive, submit the PPP project proposals to the PPP Policy Board;
  - iv) conduct a competitive tendering process consisting of pre-qualification and bidding to select the private sector partners;
  - v) carry out bid evaluation and submit recommendations on contract award to the Board;
  - vi) negotiate and sign the Public Private Partnership agreement;
  - vii) monitor and evaluate implementation and operation of the project.
  - viii) if needed, seek support and advice from the Unit for the performance of any of the above function; and
  - ix) prepare periodic progress reports on the Agency’s projects to be submitted to the PPP Policy Board through Unit.

### **3.5.4 – Demarcation of Main Responsibilities**

The table below summarizes the demarcation of the principal responsibilities within the PPP institutional framework.

Entity	Established In	Main Responsibilities
<b>PPP Policy Board</b>	Chief Minister's House / Secretariat	<ul style="list-style-type: none"> <li>▪ Inter-departmental coordination;</li> <li>▪ Approval/rejection of PPP project proposals;</li> <li>▪ Approval/rejection of contract award recommendations;</li> <li>▪ Approval/rejection of any funding requirements from VGF and PDF accounts;</li> <li>▪ Decision-making on major PPP policy and implementation issues.</li> </ul>
<b>PPP Unit</b>	Finance Department	<ul style="list-style-type: none"> <li>▪ Project preparation for those projects competent authority (PPP Policy Board) assigns;</li> <li>▪ Quality control (review of PPP project proposals for completeness and viability);</li> <li>▪ Cross-sectoral prioritization;</li> <li>▪ Technical support to the PPP Policy Board and act as its secretariat;</li> <li>▪ Review of justification and eligibility for government support</li> <li>▪ Fiscal sustainability</li> <li>▪ Risk Management</li> <li>▪ Prepare and regularly update a pipeline of projects</li> </ul>
<b>PPP Node</b>	Line Departments / Agencies	<ul style="list-style-type: none"> <li>▪ Project Identification;</li> <li>▪ Project Preparation;</li> <li>▪ Selection of private sector partners (tendering/procurement process);</li> <li>▪ Carry out bid evaluation process;</li> <li>▪ Negotiate and finalize the terms and conditions of the Concession Agreement;</li> <li>▪ Monitoring and evaluation.</li> </ul>

### 3.6 – THE PUBLIC PRIVATE PARTNERSHIPS FRAMEWORK

- (1) To achieve all the benefits listed in this section and specifically section 3.3, the Government needs to create an enabling environment by implementing a strong PPP framework for attracting private partners, which can be achieved by the following components:
- i) **Legal Certainty:** compliance with the relevant laws and regulations;
  - ii) **Institutional Arrangement:** for effective implementation of PPPs;

- iii) **Fairness:** creation of a level-playing field for all private investors, without any discrimination;
  - iv) **Transparency:** access to information to private investors and the public at all stages of the project cycle;
  - v) **Competition:** Provision of equal opportunity to all prospective bidders to participate in the tendering process without any hindrance.
  - vi) **Contract Sanctity:** securing of rights and interests of parties to the PPP agreement;
  - vii) **Mutual Support and Benefit:** fair and mutually beneficial cooperation of parties to the PPP agreement;
  - viii) **Supplementary Financing Arrangements:** for project preparation and implementation, as required.
- (2) The below table summarizes how the different components of PPP frameworks are linked to above-mentioned benefits of PPPs and the mechanism through which they are being ensured:

Components	Ensuring Mechanisms
<b>Legal Certainty</b>	<ul style="list-style-type: none"> <li>▪ Sindh Public Private Partnership Act, 2010.</li> <li>▪ Part IV – Public Private Partnerships has been specifically added for PPPs in the Sindh Public Procurement Rules, 2010.</li> </ul>
<b>Institutional Arrangement</b>	<ul style="list-style-type: none"> <li>▪ Public Private Partnership Policy Board, chaired by the Chief Minister, Sindh;</li> <li>▪ Public Private Partnership Unit, Finance Department;</li> <li>▪ Public Private Partnership Node, School Education &amp; Literacy Department.</li> </ul>
<b>Fairness</b>	All projects under PPP models are advertised publicly, whereby anybody can apply / participate without any discrimination.
<b>Transparency</b>	Ensured through public procurement process under Sindh Public Procurement Act, 2009 and the Rules, 2010 thereto (as amended from time to time).
<b>Competition</b>	
<b>Contract Sanctity</b>	Detailed Concession Agreement (PPP Agreement) has been made part of the bidding documents detailing rights and obligations of the parties including key performance indicators (KPIs) and events of default.
<b>Mutual Support and Benefit</b>	
<b>Supplementary Financing Arrangements</b>	<ul style="list-style-type: none"> <li>▪ Viability Gap Fund (VGF) Account;</li> <li>▪ Project Development Facility (PDF) Account;</li> <li>▪ ELD – PPPs Account – VGF Link Account in SELD.</li> </ul>



**SECTION 4**  
**PUBLIC PRIVATE PARTNERSHIPS**  
**IN EDUCATION**



## 4.1 – EMERGENCE OF PPPS IN EDUCATION

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- (1) The main rationale for developing public private partnerships (PPPs) in education is to maximize the potential for expanding equitable access to schooling and for improving education outcomes, especially for marginalized groups.
- (2) The traditional modes of education are not adequate, keeping in view the magnitude of service delivery in the province. The vast network of educational facilities across the country are poorly managed due to limited resources, weak management capacities, lack of ownership and non-involvement of communities and parents. The government lacks capacity including, institutional capacity in terms of skills, expertise, abilities, processes, resources, and fiscal capacity to achieve its targets on stand-alone basis. Therefore, the government is working on various viable alternate options, majorly Public Private Partnerships, which shall be created and implemented to address these gaps.
- (3) The situation can be improved, as there are willing philanthropists (both individual and corporate) and capable civil society organizations to partner with the government to address the resource constraint issues. A platform was needed where the government and the Private Partner can interact and complement each other in achieving the education targets. The philanthropists with funding capacity do not have the necessary skills and experience to take up management and operations of the schools, whereas, the not-for-profit and non-governmental organizations with management capability and dedication do not often have the financial resources to further their agenda. In view of this, the government has now realized that education systems can expand in a more efficient, flexible and effective way by partnering with the private sector.
- (4) PPPs have emerged as a powerful policy tool, through which the School Education & Literacy Department is building strategies and networks for engaging the private sector, in public education, that will support quality improvements in education and help achieve the education targets set out under the Constitution of Pakistan.

## 4.2 – FORM OF PPP IN EDUCATION

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- (1) The concept of PPP recognizes the existence of alternative options for providing education services besides public finance and public delivery. Although there are many forms of PPPs, including partnerships where private organizations support the education sector through philanthropic activities; in this *PPP Guide & Toolkit* however, we will mainly be focusing on those PPP models in which the government guides policy and provides financing while the private sector delivers education services.
- (2) In particular, government contracts out private providers to supply a specified service of a defined quality at an agreed/fixed periodic price for a specific period of time. These Agreements contain rewards in case of timely completion of assigned tasks, and penalties for non-performance. Under this mechanism, the private sector shares the financial risk in the delivery of public services.

## 4.3 – PPPS APPROVED UNDER THE SINDH PPP ACT, 2010

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- (1) This Guide & Toolkit will mainly be focusing on the public private partnership policies / reforms / projects approved by the PPP Policy Board under the aegis of Sindh PPP Act, 2010, as amended from time to time, specifically including the 2014 amendment<sup>2</sup>.

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<sup>2</sup> The Sindh Public Private Partnership (Amendment) Act, 2014

- (2) The main initiative of the School Education & Literacy Department that has been approved by the PPP Policy Board is the handing over of the management of Government Schools to Education Management Organizations (EMOs) under the PPP framework. The EMOs Reform is detailed herein below at section 4.3.1.
- (3) In addition, the phasing out of Teacher Training Institutes/Centres under PPP mode, and the newly built fifty (50) Cambridge and Comprehensive Schools that are to be contracted out under PPP framework, have been recently approved by the Honourable Chief Minister in capacity of the Chairman, PPP Policy Board. As these programs have been sanctioned very recently, it will take some time to structure, prepare, and launch them.

#### **4.3.1 – The Education Management Organizations (EMOs) Reform**

- (1) The PPP Policy Board, chaired by the Chief Minister of Sindh, granted approval for the EMOs reform in its 12th meeting dated September 12<sup>th</sup>, 2014.
- (2) The EMOs reform is an important part of the Government’s strategy towards developing Sindh’s education sector, and meet targets of access and quality and improving the literacy rate. In 2013, the Government of Sindh passed the Sindh Right of Children to Free and Compulsory Education Act in compliance with Article 25-A of the Constitution of Pakistan. The legislation has placed a renewed obligation on the Government of Sindh, including the Authority, to take steps to address the weak performance of the education sector.
- (3) Under the EMOs reform, the School Education & Literacy Department will design, contract, and administer partnerships with credible EMOs from the private sector to manage and improve the functioning of public schools by introducing innovations, modernizing the education system, addressing management gaps, maintaining and upgrading the school building and facilities, and cooperatively working along with teachers, schools’ staff, school management committees, surrounding communities and local tiers of the School Education & Literacy Department.
- (4) In order to improve the standard of education in the province of Sindh, the project envisages a PPP model, for outsourcing management of public schools in Sindh to EMOs. Accordingly, the public schools managed and run by the EMOs will function under the given constitutional provision and the aforesaid Act passed thereafter. The education in such public schools will remain free of charge for all the students. The admission process will be strictly non-discriminatory and as per the spirit mentioned in the above mentioned statute.
- (5) The key objectives for the reform to improve the education sector in Sindh include, but are not limited to the following:
  - i) Improving the functioning of public schools through innovation and modernization of the education system;
  - ii) Reducing inefficiencies and addressing the management gaps in public education through well managed partnerships;
  - iii) Delivering better quality education to the children in the province of Sindh;
  - iv) Encouraging greater private sector investment in the education sector, in particular in the rural and less developed areas of the province of Sindh; and
  - v) To meet the key performance indicators as set out in individual contracts under which public schools shall be outsourced to private sector.

- (6) Under the EMOs reform, the School Education & Literacy Department will outsource the management and administration of certain public schools in Sindh to EMOs under a public-private partnership contract (Concession Agreement). The EMOs will be selected by the School Education through a fair and transparent competitive bidding process in accordance with the Sindh public procurement laws. The Government will then enter into a Concession Agreement with each of the successful EMOs separately for each school.
- (7) Under the EMOs reform, the Concession Agreements for nine (09) schools have already been executed with the successful EMOs, thereby handing over the management of schools to private partners, through two rounds of procurement – four (04) schools in the first round and five (05) schools in the second round. The third cycle of procurement of the EMOs reform has already been initiated. Under the third procurement cycle, fourteen (14) government schools are advertised for market solicitation of private partners, which will be handed over to EMOs by way of executing Concession Agreements for each school separately.
- (8) Furthermore, under the implementation framework of EMOs, the SELD is also working to institutionalize and strengthen the PPP Node of SELD with competent personnel / human resources for technical, financial, management, administration and compliance functions to design and administer PPP projects; and to equip the office of the PPP Node of SELD with the necessary equipment and facilities in order to effectively establish, operate and expand PPPs for education in a sustainable manner.
- (9) This will significantly increase the capacity of SELD to drive focused efforts in designing innovative PPP projects, create a market interest for the projects, and manage the projects effectively while managing relationships with all involved stakeholders including the private sector/donors.

#### **4.4 – SINDH EDUCATION FOUNDATION UNDER THE SEF ACT, 1992**

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- (1) The Sindh Education Foundation (SEF), was established under *the Sindh Education Foundation Act, 1992* as a semi-autonomous organization with a mandate to support education in the province through multifarious interventions. The Act provides wide ranging powers to the Foundation to support education sector through a large number of instruments and support activities. Since its establishment in 1992, the Foundation has made serious efforts to increase access to quality education for the students across Sindh, especially those in the remote and under developed regions of the province.
- (2) Initially, SEF's modus operandi focused on providing grants and loans to educational institutes and organizations. Today, the Foundation provides communities with access to quality education in partnership with individuals and/or organizations. The Foundation ensures provision of equitable quality education across its portfolio, in an effort to enhance the students overall development capacities by extending professional development and capacity building services for the school partners and the teachers on a regular basis. The Foundation has institutionalized a student assessment system for monitoring the student achievements in addition to a school monitoring system which is in the process of being modernized further.
- (3) There are various programs that are designed and developed by the Foundation, and are being run successfully. The details of a few programs of the Foundation are as hereunder.

##### **4.4.1 – SEF Assisted Schools (SAS)**

- (1) The SEF Assisted Schools (SAS) Program is the integration of Integrated Education Learning Program (IELP) and Rural Based Community School (RBCS) program and is the Foundation's largest scheme which aims to establish public private partnerships for increasing access to and improving the quality of education (Primary, Elementary and Secondary) for children across Sindh.

- (2) The inputs largely focus on creating grass root access to quality education through capacity building in school management and administration, improving the learning environment in schools through professional development of teachers and provision of learning resources for meaningful teaching-learning activities for children.
- (3) SAS endeavours to shift the paradigm of SEF partners from a profit-orientated approach to an education-oriented one. SEF's vision of quality education emphasises access to basic schooling and improving literacy rates. It strives to develop and implement viable models of education, through public private and community partnerships, which are contextually relevant to the local needs and which directly contribute to the sustainable development of the communities being served.
- (4) **Support provided:** Providing subsidy of PKR 500/- per-child per-month for Primary school, PKR 700/- per-child per-month for Elementary school and PKR 800/- per-child per-month for Secondary school. Providing free text books and copies to school children, Capacity building of teachers/schools operators through trainings and workshops.

#### 4.4.2 – Promoting Private Schooling in Rural Sindh (PPRS)

- (1) Promoting Private Schooling in Rural Sindh (PPRS) program is an initiative of the Sindh Education Foundation under the Public-Private Partnership component of the Sindh Education Reform Program-II 2013-14. Initially launched under SERP-I in 2008-2009, the program continues as part of SERP-II. The program has been designed by the SEF in collaboration with the Reform Support Unit (Govt. of Sindh) and the World Bank. The PPRS interventions support establishment and management of private schools in the underserved localities in 18 districts of Sindh that rank poorly along three indicators: the size of the out-of-school children population (6-10 years), distance to the nearest primary school, and gender disparity in primary school participation. The focus of the program is to provide “access to quality education facilities in far flung areas of Sindh” through local entrepreneurship” with an overall goal of “establishing public private partnerships for increasing access to and improving the quality of educational services provided to the children in marginalized areas of the Sindh province with support of private sector.”
- (2) **Support provided:** Providing subsidy of PKR 500 per child per month; Providing Oxford University Press (OUP) books to school children; Capacity building of teachers/schools operators through trainings and workshops.

#### 4.4.3 – Early learning Program (ELP)

- (1) Early Childhood Education and Early Childhood Development refers to early care a child receives from parents, teachers and caregivers, where children learn through play and develop their social, emotional, physical and cognitive skills. They ask questions, solve problems and interact with peers and adults.
- (2) Under Early Learning Program (ELP) Under ELP, efforts are driven towards fostering children's overall well-being and to ensure possible conditions for growth and development in a natural, child-friendly environment where they can experience joy, freedom of action in a safe environment and where they learn through play, experiments and discovery.
- (3) ELP was initiated in 2009 with the sole aim to improve early education through qualitative reforms in targeted 150 government schools across five districts of Sindh, i.e. Tando Muhammad Khan, Badin, Khairpur, Noushehro Feroz and Ghotki.

#### 4.4.4 – Adopt-A-School-Program (AASP)

- (1) Sindh Education Foundation has been a pioneer in effectively engaging the private sector and communities in government school revival through the Adopt-A-School-Program (AASP). The program facilitates private sector and civil society to adopt public or government run schools and undertake educational improvements for children.
- (2) Adopters represent a varied mélange of individuals, organizations and groups including educationists, concerned citizens, local CBOs, NGOs, and members of the armed forces. SEF plays a facilitating role between the school and the adopter, providing technical assistance and monitoring for school improvement.
- (3) Adopters are required to develop and implement a School Development Plan and monitor progress against targets. Adopters can also participate in relevant events and activities organized by SEF. Additionally, adopters will ensure a congenial working environment in the school and take all steps necessary for raising the standards of education. The adopter is also expected to facilitate the Sindh Education Foundation in organizing school based value-adding activities.
- (4) SEF facilitates the school's adoption. It disseminates information to the adopter, District Education Offices (DEOs), community and school staff. It liaisons between all stakeholders involved in school improvement, and provides technical support to schools.

#### 4.4.5 – Existing School Support Program (ESSP)

- (1) The Existing School Support Program (ESSP) has been launched for supporting the existing schools of the private sector in the province. The ESSP proposes to reach out to the "Existing low cost private schools" already functioning in the rural, semi urban and urban areas of the province that are serving poor communities. These are either running on the philanthropic model i.e. not charging any fees from the students or are charging a very nominal fee of PKR 200 per child per month or even lower.
- (2) This program aims at bringing these low-cost private schools under the Foundation's overall regulatory and financial support regime including monitoring and technical support with a view to ensure sustainability.
- (3) This is in view of the fact that many of these nominal fee charging schools remain vulnerable and are unable to provide quality education to students. Subsequent to contractual arrangements with the Foundation; the regulatory and quality assurance regime of the Foundation will not only ensure improvement in educational environment and overall school viability leading to greater retention of the existing students but will also help the Foundation to reach out to a larger cohort of the out- of- school children. This will further contribute in achieving the overarching Sustainable Development Goal 4 and in meeting the constitutional obligations under Article 25-A.
- (4) **Support provided:** PKR 500 per child per month for Primary Schools – (Grades I – V); PKR 600 per child per month for Elementary Schools – (Grades I – VIII); PKR 700 per child per month for Secondary Schools – (Grades I – X). SEF will also provide textbooks and learning materials to the students. The Foundation would also invest in the professional development of teachers/head teachers through capacity building.



**SECTION 5**  
**PROJECT PROCUREMENT**  
**AND**  
**IMPLEMENTATION PROCESS**



This section guides about the entire procurement and implementation process under the applicable laws including: Sindh Public Private Partnership Act, 2010, Sindh Public Procurement Act, 2009, and the Sindh Public Procurement Rules, 2010 (as amended from time to time). Here, the process involved in becoming a PPP partner with the School Education & Literacy Department, is set out step-by-step. This section is further divided into sub-sections for clarity of each step.

## **5.1 – PROJECT IDENTIFICATION AND PREPARATION**

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### **5.1.1 – The Process**

- (1) The School Education & Literacy Department (**SELD**) shall identify suitable PPP project(s) and prepare a Proposal for each project before presenting it to the PPP Policy Board for the approval. The potential PPP Project may be identified from the SELD’s master plan and/or any other planning documents that SELD may have for the year, as laid down under following laws:

Section 10(1) of the PPP Act states:

*“An Agency shall identify and prepare a project, and shall complete this phase before tendering.”*

Section 10(2) of the PPP Act states:

*“The Agency shall identify and conceptualize potential projects from its master plan and other planning documents.”*

- (2) The PPP Act further lists the number of things needed in the preparation of any potential PPP Project. Project preparation requires a feasibility study, risk analysis, analysis of the need for Government support, stakeholder consultations, determination of the appropriate PPP modality, and preparation of bidding documents including a draft PPP Agreement.

Section 10(3) of the PPP Act states:

*“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.”*

- (3) The task of identifying and preparing a potential PPP Project rests with SELD. However, as quoted above, preparing a PPP Project requires many things. The need of feasibility study, risk analysis, determination of PPP model and preparation of the draft documents makes it a tough assignment, for which the procuring agency [SELD] may not have, at times, the necessary resources in terms of expertise, time and finances to satisfactorily complete the required tasks.
- (4) Therefore, there are provisions for hiring consultants or transaction advisors, so that some or all of the functions and responsibilities of project preparation may be shifted upon them. The detailed procedure for hiring consultants or transaction advisors is covered separately in section 6 of this *PPP Guide & Toolkit*.

Section 7(2)(II) of the PPP Act states:

*“The PPP Node [established within the Agency] shall recruit transaction advisors for project preparation and tendering.”*

Rule 82(1) of the SPP Rules states:

*“Some or all the functions and responsibilities of procurement planning and execution may be performed by the professional transaction advisors and consultants subject to approval by the Public Private Partnership Policy Board.”*

- (5) Subsequent to the preparation of project Proposal by the SELD, it shall submit it to PPP Unit for its onward submission to the PPP Policy Board.

Section 10(5) of the PPP Act states:

*“The Agency shall submit each viable project proposal through the Unit to the Board.”*

### **5.1.2 – Unsolicited Proposal**

- (1) Under section 5.1.1, it was stated that the any potential PPP Project shall be identified by the Agency (SELD) itself. The potential PPP project may be identified from the SELD’s master plan and/or any other planning documents that SELD may have for the year.
- (2) In addition to the identification of any potential PPP Project by the SELD itself, the law creates a provision for submission of Unsolicited Proposal, which is defined in the PPP Act as follows:

Section 20 of the PPP Act states:

*“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.”*

- (3) As per this section, any person (means a company, entity, firm, association, body of individuals, or a sole proprietor other than the procuring agency) can identify a potential PPP Project on its own initiative, prepare a project proposal, and submit it to the School Education & Literacy Department.

Rule 86(1) of the SPP Rules also provides:

*“To promote and invigorate innovation, the government may receive unsolicited proposals for public private partnership investment from any source.”*

- (4) The provision of Unsolicited Proposal already bypasses the identification process of any potential PPP Project by the SELD itself. However, the proposal still needs to be reviewed by the SELD, as to technical details required under the law, and to ascertain whether the project is appropriate for implementation under the PPP mode.
- (5) Likewise, if the SELD lacks resources and expertise to review the proposal and give a go-ahead, then the same process of hiring transaction advisors may be followed subsequent to the approval of PPP Policy Board. If the Project is found feasible to be implemented under PPP mode, the SELD will submit to the PPP Unit for onward submission to the PPP Policy Board for the approval.

Rule 86(2) of the SPP Rules states:

*“The concerned procuring agency shall get the proposal reviewed by their respective technical committee to determine whether the project for which the proposal has been submitted is an appropriate project for implementation under Public Private Partnership mode. Such proposal, if found feasible for Public Private Partnership mode, shall be submitted to the Public Private Partnership Unit, Finance Department, Government of Sindh for approval of concept. The concerned procuring agency shall carry out further process in collaboration with the Public Private Partnership Unit.”*

- (6) Undoubtedly, the person (means a company, entity, firm, association, body of individuals, or a sole proprietor other than the procuring agency) who is making an effort to identify a potential PPP project and preparing a project proposal without any monetary compensation shall have certain advantage over other bidders in the procurement process. Keeping this in mind, the law provides that:
- i) the initiator will be exempt from the pre-qualification process of the project; and
  - ii) the initiator will be given five (05) percent additional weightage on the combined secured score, both technical and financial, in the bid evaluation.

Rule 86(3) of the SPP Rules states:

*“The initiator of the unsolicited proposal shall be exempt from the prequalification process.”*

Rule 86(4) of the SPP Rules states:

*“Procuring agencies shall ensure competitiveness through advertising the proposed project for open bidding without disclosing the name of the initiator of unsolicited proposal. The initiator will be given five percent additional weightage on the combined secured score, technical and financial, in evaluation. If there is no other bid submitted in response to the competitive bidding, the procuring agency may award the contract to the initiator under these rules.”*

## **5.2 – PROJECT APPROVAL**

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### **5.2.1 – Approval from the PPP Policy Board**

- (1) Any new PPP Project, submitted by any Agency, has to be approved by the PPP Policy Board, being the apex forum for PPPs in Sindh, as required under the following laws:

Section 4(3) of the PPP Act sets out:

*“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.”*

Section 5(1)(III) of the PPP Act sets out:

*“The Board shall approve, reject or send back for reconsideration the project proposal submitted by an Agency within six (06) months.”*

Rule 81(3) of the SPP Rules sets out:

*“The competent authority to approve PPP Projects and related processes for all sectors shall rest with the Public Private Partnership Policy Board.”*

## 5.2.2 – Constitution of Technical & Financial Evaluation Committee

- (1) Subsequent to the approval of the PPP Policy Board, the Government shall appoint a Technical & Financial Evaluation Committee (known as Procurement Committee in the conventional mode) for evaluation of the project including technical and financial evaluation of bids, during the procurement process.

Rule 82(2) of the SPP Rules states:

*“The Government shall appoint a committee for each Public Private Partnership project for technical and financial evaluation for evaluating the project. The terms of reference for each such committee shall be approved by the Government.”*

- (2) The constitution of the Technical & Financial Evaluation Committee (referred to as “**Evaluation Committee**” or “**TFEC**”) and the Terms of Reference thereto, shall be approved by the Government. The Government is simply defined as Government of Sindh in the SPP Act. Therefore, the office of the Chief Secretary, Sindh, being the top-most office of the Sindh Secretariat, is generally treated as the most competent forum to accord this approval.
- (3) The Secretary, SELD initiates a Note for Chief Secretary, Sindh, listing the constitution of the TFEC and its Terms of Reference (ToRs), for the approval. It is a good practice to attach a Draft Notification of the TFEC with the Note, so that the draft may be approved and be subsequently notified by the Services General Administration & Coordination Department (SGA&CD), Government of Sindh.
- (4) There is no legal provision for the composition of TFEC particularly. However, there are legal requirements for composition of Procurement Committee, set out under Rule 7 of the SPP Rules. As TFEC is a substitute of Procurement Committee for PPP Projects, the procuring agencies follow the same principle for the composition of TFEC as well.
- (5) Rule 7 requires that the committee shall comprise of odd numbers of persons headed by a gazetted officer not below the rank of BS-18, or if not available, the officer of the highest grade. Furthermore, the Secretary, SELD shall ensure that at least one third of the members of a committee are from the agencies or departments other than SELD.
- (6) The draft Note for Chief Secretary and the draft Notification of the Technical & Financial Evaluation Committee is attached herewith for reference purposes, as **Annex – A**.
- (7) The standard Terms of Reference of the TFEC, for assistance of the stakeholders, may be as follows:
  - i) TFEC shall oversee selection process of the Private Partner for the project;

- ii) TFEC shall review and approve the draft Bidding Documents including: Expression of Interest (EoI), Pre-qualification / Short-listing Document, Request for Proposal (RFP), draft PPP Agreement, Information Memorandum and any other document, for the purpose of issuing the same to the prospective bidders, by the School Education & Literacy Department;
- iii) TFEC may extend the date in respect of any activity of the Project Timeline in accordance with the provisions of Sindh Public Procurement Rules, 2010 (as amended time to time);
- iv) TFEC shall be responsible for the technical and financial evaluation of the Proposals/Bids;
- v) TFEC shall be responsible for signing of the Bid Evaluation Report for onward submission to SPPRA;
- vi) TFEC or its authorized representatives may, if the need be, hold pre-bid conference(s) and address queries of the bidder(s) leading to finalization of the RFP, Draft PPP Agreement & any other Bidding Documents;
- vii) TFEC shall recommend the preferred bidder to the PPP Policy Board for award of the contract and signing of the PPP Agreement by the School Education & Literacy Department under the applicable laws;
- viii) TFEC shall review financing documents and financial security arrangements at the time of financial close;
- ix) TFEC shall make a selection for the Independent Auditor and Independent Engineer in accordance with the procedure set out in the Bidding Documents.
- x) TFEC shall perform any other task assigned to it by the PPP Policy Board in the context of this project.

### 5.2.3 – Constitution of Complaint Redressal Committee

- (1) In addition to the constitution of the Technical and Financial Evaluation Committee, the SELD shall also constitute a Complaint Redressal Committee (CRC) to address any complaints of the bidders occurred during the procurement process.

Rules 31(1) of the SPP Rules states:

*“The procuring agency [School Education & Literacy Department] shall constitute a committee for complaint redressal comprising odd number of persons, with appropriate powers and authorizations, to address the complaints of bidders that may occur during the procurement proceedings.”*

- (2) Any bidder that is aggrieved by any act and/or omission of the SELD has an option to lodge a written complaint after the issuance and advertisement of Notice Inviting Tender (NIT). Upon receiving a complaint, the CRC shall announce its decision within seven (07) days and intimate the same to the bidder and SPPRA within three (03) days.

- (3) The CRC shall be headed by Secretary, SELD OR an official of the SELD, who is at least one rank senior to the head of the procurement committee / technical and financial evaluation committee constituted for the project.

Rules 31(2) of the SPP Rules states:

*“The committee shall be headed by head of the procuring agency or an official of the procuring agency, at least one rank senior to the head of the procurement committee and shall include the following;*

*District Accounts Officer, or his representative, in case of the local governments or provincial line departments at district level, or a representative of the Accountant General, Sindh in case of Government departments at the provincial level;*

*an independent professional from the relevant field concerning the procurement process in question, to be nominated by the head of procuring agency.”*

- (4) In case of SELD being the procuring agency, the committee shall comprise of a representative of the Accountant General Sindh, and an independent professional from the relevant field concerning the procurement process in question that shall be nominated by the Secretary, SELD.
- (5) Draft notification of the Complaints Redressal Committee is attached herewith for reference purposes, as **Annex – B**.

## **5.3 – THE BIDDING PROCESS**

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### **5.3.1 – Open Competitive Bidding**

- (1) According to section 13 of the PPP Act, open competitive bidding shall be the principal method of procurement for PPP Projects.

Section 13(1) of the PPP Act states:

*“After the approval of the project proposal by the Board, the Agency shall select the private party for the project through open competitive bidding.”*

Rule 82(3) of the SPP Rules also provides:

*“Except otherwise provided in these rules all the Public Private Partnership contracts and concessions shall be granted through national or international competitive bidding, as the case may be.”*

- (2) There are two types of open competitive bidding set out under Rule 15 of the SPP Rules:

International Competitive Bidding (**ICB**); and  
National Competitive Bidding (**NCB**).

- (3) ICB is open to all interested parties, firms or individuals, whether national or international. ICB is the default method of procurement for all procurements with an estimated cost equivalent to US \$ 10 million or above.

However, there may be exceptions. SELD may opt for ICB below the estimated cost of US \$ 10 million, if it is convinced that technological sophistication, technical expertise or professional capability of the satisfactory level is not available within the country and the best value for money cannot be obtained, if competition is restricted to domestic companies, firms or parties.

- (4) NCB is open only to interested national firms, companies or parties, whereas international firms, companies or parties are not invited for the bidding. NCB is the default method of procurement for all procurements with an estimated cost equivalent below US \$ 10 million.

However, there may be exceptions. SELD may opt for NCB for an estimated cost equivalent to or above US \$ 10 million, if it is convinced that it is the most economical and timely way of procuring goods, works or services which, by their nature or scope are unlikely to attract foreign competition.

- (5) Generally-used Procedure in Education PPPs: The PPP Projects of the education sector mostly fall below the figure of US \$ 10 million or equivalent in local currency. In addition, the educational institutes of Sindh, are mostly located in remote areas and it is more economical and practical to select a private partner, who is already aware of the working conditions and ground realities. Therefore, NCB is followed as the default method of procurement for education projects under PPP mode.

### **5.3.2 – Notice Inviting Tender (NIT)**

- (1) For selection of a Private Partner under open competitive bidding method, Notice Inviting Tender (NIT) shall be announced, advertised and published in accordance with the Method of Advertisement and Response Time explained below.
- (2) NITs are published on public forums, in order to attract the widest possible competition, which shall assist the procuring agency in obtaining value for money; and offer all potential bidders a fair opportunity to bid for government projects.
- (3) The NIT shall contain the following information:
  - i) name, postal address, telephone number(s), fax number, e-mail address (if available) of the School Education & Literacy Department;
  - ii) purpose and scope of the project;
  - iii) schedule of availability of bidding documents, submission and opening of bids, place from where bidding documents would be issued, submitted and would be opened;
  - iv) amount and manner of payment of tender fee (if any) and bid security;
  - v) type of tender / method of procurement;
  - vi) total term / duration of the Agreement – Concession Period;
  - vii) period during which the bid shall remain valid – Bid Validity Period; and
  - viii) any other information that the School Education & Literacy Department may deem appropriate to disseminate at this stage.

- (4) The NIT shall be prepared by TFEC constituted for the PPP project. In case, the School Education & Literacy Department has hired consultants / transaction advisors for the project, then they may be asked to prepare it, and the TFEC shall approve the NIT before sending it out for advertisement. Hence, the responsibility lies with TFEC.
- (5) Draft Notice Inviting Tenders / Invitation for Bids is annexed herewith for reference purposes, as **Annex – C**.

### **5.3.3 – Method of Advertisement**

#### In case of National Competitive Bidding:

- (1) The NIT for procurements over PKR 100,000/- (One Hundred Thousand Pak Rupees) and up to the limit of PKR 1,000,000/- (One Million Rupees) shall be advertised by timely notifications on SPPRA's website and SELD's official website.
- (2) The NIT for all procurements exceeding PKR 1,000,000/- (One Million Pak Rupees) shall be advertised on the SPPRA's website, SELD's official website, and in newspapers having wide circulation. The advertisement shall appear in at least three national daily newspapers – one newspaper each in English, Urdu and Sindhi languages.

#### In case of International Competitive Bidding:

- (3) In addition to advertisement on SPPRA's website and SELD's website, the NIT shall be published in two (02) widely circulated local English language newspapers, and shall also be posted in English language on an internationally known website dedicated for the particular goods, works or services, OR any widely circulated English language international newspaper.

#### Generally-used Method in Education PPPs:

- (4) As National Competitive Bidding method, for the reasons narrative above, is mostly in practice for PPP projects in education, the NIT shall be posted on the websites of SPPRA, SELD, and PPP Unit. In addition, it shall be advertised in three national daily newspapers – one newspaper each in English, Urdu and Sindhi languages.
- (5) While utilizing electronic media, SELD – specifically the TFEC constituted for the project – shall ensure that the information posted on the website(s) is complete for the purposes for which it has been posted, and such information shall remain available on that website(s) at least until the closing date for the submission of bids.

### **5.3.4. – Response Time**

- (1) SELD – specifically the TFEC constituted for the project – shall ensure that Bidding Documents are available to the interested bidders from the first day of publication of Notice Inviting Tender in the newspapers or hoisting on the website, as the case may be.
- (2) While deciding the Response Time, the TFEC shall give due consideration to the scope, magnitude and complexity of the project; provided however that the Response Time shall not be less than fifteen (15) calendar days in case of NCB, and not less than thirty (30) days in case of ICB.

### 5.3.5 – Bid Validity Period

- (1) According to Rule 38 of the SPP Rules, the bid shall remain valid for a period of not more than:
  - ninety (90) days in case of National Competitive Bidding; and
  - one hundred and twenty days (120) days in case of International Competitive Bidding.
- (2) In exceptional circumstances, the SELD (subject to approval of the TFEC and with reasons to be recorded in writing) may solicit the Bidders' consent to an extension of the bid validity period. The request and responses thereto shall be made in writing. Such extension in the bid validity period cannot be more than the original period of bid validity. It means that the bid validity shall not be extended for more than ninety (90) days in case of National Competitive Bidding (90 original + 90 extended = 180 days maximum) and one hundred and twenty days (120) days in case of International Competitive Bidding (120 original + 120 extended = 240 days maximum).
  - maximum one hundred and eighty (180) days in case of National Competitive Bidding; and
  - maximum two hundred and forty (240) days in case of International Competitive Bidding.
- (3) The Bidder may refuse for any extension in the original bid validity period and withdraw his Bid and Bid Security after expiry of the original bid validity period. However, if a Bidder accepts to extend the bid validity period, the Bid Security shall also be extended accordingly. The Bidder accepting the request to extend its bid validity period shall not be permitted to modify its Bid in any manner.

### 5.3.6 – Procedures of Open-Competitive Bidding

There are four procedures of open-competitive bidding, which are as follows:

- (1) Single Stage One Envelope Bidding Procedure: This procedure shall be used as the standard bidding procedure for procurement of goods, works and services of simple and routine nature, where no technical complexity or innovation is involved;

Each bid shall comprise one single envelope containing the financial proposal only. Details of company profile including proof of relevant experience, annual turn-over or net-worth (as relevant) of last number of years (as required), registration with PEC and/or any other authorities wherever applicable, all information regarding litigation with any government agencies, and affidavit of not being black listed shall be provided, as required. It shall be noted that the Information regarding Company/Firm/Bidder provided with financial bid will not be treated as Technical Proposal.

When procurement is of simple and standard nature and scope/specifications are well defined, then this is the main bidding procedure under open-competitive bidding.

- (2) Single Stage Two Envelope Bidding Procedure: This procedure shall be used for goods and services where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation.

This shall be used when bids are to be evaluated on technical qualification, and financial grounds and price is taken into account only after the Bidder has technically passed or qualified. The technical qualification of the bidders is determined by verifying the documents and analysing the technical proposals received in response to technical evaluation criteria set out in the NIT and the bidding documents.

- (3) Two Stage Bidding Procedure: This procedure shall be adopted in large and complex contracts where technically unequal proposals are likely to be encountered or where the procuring agency is aware of its options in the market but, for a given set of performance requirements, there are two or more equally acceptable technical solutions available to the procuring agency.

Two-Stage bidding is used for goods, works or services which are difficult to define fully at the start of the procurement process, where it would be beneficial to the procuring agency to consider the various solutions available in the market, before refining its requirements.

- (4) Two Stage Two Envelope Bidding Procedure: This procedure shall be used for procurement where alternate technical proposals are possible.

This procedure shall be used for procurement where procuring agency lacks the capability to prepare a full technical specification because alternative technical approaches/proposals may be available, but not within the knowledge of the procuring agency and bidders are allowed to amend their technical proposals in order to ensure conformance to the same technical standards.

Procedures of Open-Competitive Bidding	
<b>Single Stage One Envelope Bidding Procedure</b>	This procedure shall be used as the standard bidding procedure for procurement of goods, works and services of simple and routine nature, where no technical complexity or innovation is involved, and scope/specifications are well defined.
<b>Single Stage Two Envelope Bidding Procedure</b>	This procedure shall be used for goods and services, where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation of the bids.
<b>Two Stage Bidding Procedure</b>	This procedure is used for goods, works or services which are difficult to define fully at the start of the procurement process. This procedure shall be adopted in large and complex contracts, where two or more equally acceptable technical solutions are available in the market, and it would be beneficial for the procuring agency to consider the various solutions available.
<b>Two Stage Two Envelope Bidding Procedure</b>	This procedure shall be used for procurement where alternate technical proposals are possible. The procuring agency lacks the capability to prepare a full technical specification because alternative technical approaches/proposals may be available.

### 5.3.7 – Generally-used Procedure for PPP Projects of Education

- (1) TFEC constituted for the PPP project shall decide the procedure of open-competitive bidding that may be most suitable for the project at hand.
- (2) The PPP projects in education generally require education partners with strong technical background. Therefore, SELD sets strict technical evaluation criteria, whereby the bidders are initially evaluated on technical basis only. If the bidder(s) qualifies or passes the technical evaluation stage, only then he becomes eligible for the opening of financial bid stage. When the Bidder has been technically tested and passed, the one with the lowest financial bid (best evaluated bid, as detailed under section 5.7.2 of this document) shall become the successful bidder and the Private Partner of SELD.

- (3) In lieu of para. 2 above, the Single Stage Two Envelope procedure of open-competitive bidding is generally followed for the PPP projects in education sector. Therefore, the process of marking and sealing of bid, and opening and evaluation of bids under section 5.5 and section 5.6 respectively is entirely based on Single Stage Two Envelope procedure.

## **5.4 – BIDDING DOCUMENTS**

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### **5.4.1 – Preparation of Bidding Documents**

- (1) The term Bidding Documents is defined in the SPP Rules as:

*“Bidding Documents mean all documents provided to the interested bidders to facilitate them in preparation of their bids in uniform manner.”*

- (2) The School Education & Literacy Department shall prepare the Bidding Document including the Request for Proposal (RFP) and the draft Concession Agreement before publishing / advertising the Notice Inviting Tender (NIT).

Section 10 of the PPP Act states:

*“An Agency shall identify and prepare a project, and shall complete this phase before tendering.”*

*“The preparation of the projects shall consist of a feasibility study, ..... , and preparation of bidding documents including a draft Public-Private Partnership Agreement.”*

- (3) The task of preparing Bidding Documents rests with the SELD. Nevertheless, Rule 8 of the SPP Rules lists preparation of Bidding Document as a specific responsibility of the Procurement Committee / Technical & Financial Evaluation Committee. Furthermore, the PPP Unit Finance Department may assist the SELD in the preparation of bidding documents.

Rule 8 of the SPP Rules states:

*“Procurement Committee shall be responsible for preparing bidding documents.”*

- (4) Even though, the TFEC constituted for the PPP Project is responsible for preparation of the Project including the Bidding Documents, the Procuring Agencies generally hire consultants / technical experts / transaction advisors and assign some or all of the tasks of project preparation to them, as explained under section 5.1.1 above. The TFEC shall then approve the Bidding Documents and specifically its technical evaluation criteria, financial evaluation criteria, Key Performance Indicators, Payment mechanism and any and/or all other important parts of it, before tendering it out.
- (5) In any case, the responsibility of the Bidding Documents including its approval and provision to the potential bidders lies with the TFEC constituted for a specific PPP project.

## 5.4.2 – Provision of Bidding Documents

- (1) As set out under section 5.3.2 above, Notice Inviting Tender (NIT) shall be announced, advertised and published in accordance with the Method of Advertisement set out under 5.3.3 and Response Time set out under 5.3.4 above.

### Rule 20 of the SPP Rules states:

*“The procuring agency shall provide the bidding documents to all interested bidders in accordance with the procedures and requirements specified in the Notice Inviting Tender.”*

- (2) The NIT shall clearly mention schedule of availability of bidding documents. The date from which the Bidding Documents shall be available including the place(s) from where it can be issued, and the website(s) from where it can be downloaded.
- (3) The SPP Rules further clarifies that the Bidding Documents shall at least be hoisted on the websites of SPPRA and School Education & Literacy Department. In case of PPP projects, Bidding Documents shall also be hoisted on the website of PPP Unit, Finance Department.

### Rule 21(4) of the SPP Rules states:

*“All procuring agencies [SELD] shall hoist the bidding documents on Authority’s [SPPRA] website as well on the website of procuring agency [SELD], in case the procuring agency has its own website.”*

- (4) The draft letter to be sent to SPPRA, PPP Unit Finance Department and Information Department for hoisting the NIT and Bidding Documents is attached herewith for reference purposes, as **Annex – D**.

## 5.4.3 – Clarification of Bidding Documents

- (1) The Bidders, who have obtained Bidding Documents, have the opportunity to request for clarifications, questions and/or propose comments to the Bidding Documents, provided that such clarifications, questions and/or comments are received at least five (05) calendar days prior to the deadline for bid submission.
- (2) Any request(s) for clarifications, questions and/or comments by the Bidder(s) shall be made in writing. The responses thereto shall also be sent in writing by the SELD within a maximum of three (03) calendar days of the receipt of such clarifications, questions and/or comments.
- (3) The SELD reserves the right not to consider such comments / suggestions by the potential bidder(s) that may substantially affect the structure of Bidding Documents and/or the Project.
- (4) It is important to note that any clarifications / answers sent by SELD, in response to the queries raised by the bidders, shall be communicated to all the potential bidders who have obtained Bidding Documents. In cases where there is no way to identify all the potential bidders that have obtained Bidding Documents (open-competitive budding, where the potential bidders just downloaded the Bidding Documents from the website), then the Department shall hoist the responses on all such websites (as at 5.4.2(3) above), from where the Bidding Documents could originally be downloaded.

#### 5.4.4 – Modification / Amendment of Bidding Documents

- (1) At any time before the deadline of Bids Submission, SELD may amend / modify the Bidding Documents, for any reason, whether at its own initiative, or in response to the Bidder's questions, comments or mark-up.
- (2) In such a case, the Notice Inviting Tender shall be re-issued and re-advertised, after seeking approval from the TFEC constituted for the project, in accordance with the Method of Advertisement set out under 5.3.3 and Response Time set out under 5.3.4 above. The revised version of the Bidding Documents shall be then issued and provided to the potential bidder(s) in accordance with section 5.4.2 above.

#### 5.4.5 – Contents of Bidding Documents

- (1) As defined under section 5.4.1 above, Bidding Documents mean all documents provided to the interested bidders to facilitate them in preparation of their bids in uniform manner. The Bidding Documents generally refer to the Notice Inviting Tender, Request for Proposal (RFP) document and the Draft Concession Agreement.
- (2) Section 21 of the SPP Rules lists the contents of Bidding Documents, which are as follows:
  - i) letter of invitation for bid;
  - ii) data sheet containing information about the assignment;
  - iii) instructions for preparing bids;
  - iv) amount and manner of payment of bid security;
  - v) manner and place, date and time for submission of bidding documents;
  - vi) manner, place, date and time of opening of bids;
  - vii) method of procurement used;
  - viii) detailed and unambiguous evaluation criteria;
  - ix) terms and conditions of the contract agreements, as far as already known by the School Education & Literacy Department;  
  
[The Draft Concession Agreement for PPP projects is a mandatory part of Bidding Documents as required under the PPP Act]
  - x) Terms of Reference and technical specifications of goods, works or services to be procured.

[Specifications is elaborated under Rule 13 of the SPP Rules: *“Specifications shall allow the widest possible competition and shall not favour any single contractor or supplier nor put others at a disadvantage. Specifications shall be generic and shall not include references to brand names, model numbers, catalogue numbers or similar classifications. However, if the procuring agency is convinced that the use of a reference to a brand name or a catalogue number is*

*essential to complete an otherwise incomplete specification, such use or reference shall be qualified with the words “or equivalent.”]*

- xi) manner in which tender price is to be assessed and computed, including information about tax liability;
- xii) currency in which tender price is to be formulated and expressed;
- xiii) bid validity period;
- xiv) a copy of integrity pact to be signed by the parties (where applicable);
- xv) any other information which is specified in regulations to be issued by the School Education & Literacy Department.

Please note that the above list is non-exhaustive, and may include any additional requirements.

- (3) Rule 82 of the SPP Rules, which falls under *Part IV – Public Private Partnership Projects* of the SPP Rules, specifically added for PPP Projects, lists additional requirements under contents of bidding documents for PPP projects.
- (4) Rule 82(5) of the SPP Rules states that the Bidding documents shall be prepared according to Rule 21 [as set out above], and shall also include the following:
  - i) minimum design and performance standards and specifications, land and economic parameters;
  - ii) draft concession or management contract;
  - iii) other documents as may be deemed necessary by the School Education & Literacy Department;
- (5) Rule 82(6) of the SPP Rules further states that the instructions to bidders shall be unambiguous, comprehensive and fair and shall, as far as necessary and practicable, include but not be limited to the following information:

[Many of the points under Rule 82(6) are only relevant to infrastructure and construction projects where government guarantees / subsidies and financing from banks / financial institutions is involved; therefore, the points and information applicable to education PPPs are listed herein below]:

- i) general description and objectives of the project;
- ii) bid submission procedures and requirements, which shall include information on the manner of bid submission, the number of copies of bid proposal to be submitted, where the bids are to be submitted, the deadline for the submission of bids and permissible mode of transmission of bid proposals;
- iii) bid security and bid validity period;
- iv) milestone bonding; [payments linked with the satisfaction of Key Performance Indicators]
- v) expected commissioning date. [expected date of handing over the management of school to the private partner]

- (6) In addition to the contents listed above, the bidding documents should set out:
- i) the estimated timelines of each step of procurement cycle;
  - ii) the duties, responsibilities and Terms of Reference of the Technical and Financial Evaluation Committee;
  - iii) listing the instances in which Bid Security may be forfeited and encashed;
  - iv) the right of the procuring agency to cancel the bidding process and reject all bids;
  - v) the right of procuring agency to waive minor informalities or minor non-conformities which do not constitute material deviations;
  - vi) the manner of lodging a complaint against the procurement process and the mechanism for redressal of grievances.
- (7) Furthermore, the PPP Act provides that the Draft Concession Agreement shall also be a part of Bidding Documents, further listing down the main contents of the Draft Concession Agreement.

Section 16(1) of the PPP Act states:

*“The draft Public-Private Partnership Agreement [Concession Agreement] shall form a part of bidding documents.”*

- (8) As per section 16(3) of the PPP Act states, the draft Public Private Partnership Agreement [draft Concession Agreement] shall include but not limited to the following provisions, as applicable:

[Many of the points under Rule 16(3) are only relevant to infrastructure and construction projects where government guarantees / subsidies and financing from banks / financial institutions is involved; therefore, the points and information applicable to education PPPs are listed herein below]:

- i) Type of project; [BT/BOT/BOOT/BOO/Management Contract/Services Contract]
- ii) Term of the Public-Private Partnership Agreement; [Number of years / months]
- iii) Scope of work and services to be provided under the project;
- iv) Performance Standards; [Key Performance Indicators]
- v) Implementation milestones and completion date of the project; [Timelines for completion of assigned tasks and their completion date]
- vi) Performance bond / Security;
- vii) Rights and obligations of the parties to the Public-Private Partnership Agreement, including risk sharing;
- viii) Penalties for delays; [penalties for not completing the tasks in time, and the adjustment formula for it]
- ix) Type and amount of Government support;

- x) Hand back requirements at the end of the term of the Public-Private Partnership Agreement, if any; [Taking Over and Handing Over requirements]
  - xi) Requirements and procedure for variations of the Public-Private Partnership Agreement;
  - xii) Grounds for and effects of termination of the Public-Private Partnership Agreement, including force majeure; [Events of default, remedies, and termination procedures]
  - xiii) Compensation formula for early termination scenarios;
  - xiv) Procedures and venue for dispute resolution; [The Arbitration clause in case of a dispute, and the place and procedure for arbitration]
  - xv) Supervision mechanism of the procuring agency. [Independent Expert and Independent Auditor]
- (9) In addition to the contents listed above, the Draft Concession Agreement should set out:
- i) any pre-conditions (conditions precedent in legal terms) before the effective of the agreement and/or the payments;
  - ii) the payment and fund flow mechanism from the Government account to the bank account of private partner;
  - iii) selection procedure, remuneration, and duties & responsibilities of the Independent Expert;
  - iv) selection procedure, remuneration, and duties & responsibilities of the Independent Auditor;
  - v) if the payments are to be made through an Escrow Agent, then the selection procedure, remuneration, and duties & responsibilities of the Escrow Agent;
  - vi) Representations and Warranties of each party;
  - vii) Remedies and the step-in by the government, in case of an emergency;
  - viii) Details of the Schools / Facilities being handed over to private partner;
  - ix) Standard templates and forms for reporting and/or any other submissions.

## **5.5 – PREPARATION AND SUBMISSION OF BID(S)**

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### **5.5.1 – Contents of Bid**

- (1) The Bidder must prepare and submit its Bid in full compliance with the requirements of the Bidding Documents, specifically the Request for Proposal, together with the submission of the documents, forms and instruments required for submission by the Request for Proposal.
- (2) The Bidder shall submit its Bid into two (02) separate parts, under any procurement method, which are as below:
  - i) Technical Bid
  - ii) Financial Bid

## 5.5.2 – Technical Bid

- (1) The contents of the Technical Bid depend on the Technical Evaluation Criteria that is devised and developed for a specific project, and thus, the technical requirements and the contents of Technical Bid differ by project to project basis. Each Bidder(s) shall submit a Technical Bid in accordance with the technical requirements set out in the Request for Proposal and must adhere to the format described therein.
- (2) As there is no standard or pre-set Technical Evaluation Criteria, the technical bid requirements and the contents thereof for each project are different. Nevertheless, there are usually certain basic questions that are requested by the School Education & Literacy Department, as a part of technical criteria, from the potential private partners for undertaking schools under a public-private partnership framework. These include, but are not limited to:
  - i) Experience of Management of Schools;
  - ii) Proposed methodology and work-plan;
  - iii) Key professional staff dedicated for the project – its qualifications and competence;
  - iv) Strategies to achieve Key Performance Indicators (KPIs);
  - v) Strategies to reduce inefficiencies and addressing management gaps in public education; and
  - vi) Exit Strategy.

The Technical Evaluation Criteria that was developed for the selection of private partners under the EMOs Reform Project is annexed herewith for reference purposes, as **Annex – E**.

- (3) In addition, there are certain standard forms and documents that School Education & Literacy Department requires from each Bidder as a part of its Technical Bid (together referred to as the **Technical Documents**), which are listed and described herein below:

### I. Bid Form

As part of the Technical Documents, each Bidder shall submit a Bid Form (also called Form of Bid), in the format provided in the Request for Proposal. The Bid Form sets out that the Bidder(s) has carefully examined, read and understood the terms of the Bidding Documents, and offers to carry out the services and obligations of the Successful Bidder set out in the Bidding Documents including Draft Concession Agreement.

The Bid form generally takes various undertakings from the Bidder(s). For example: i) the bid is compliant with the requirements indicated in the Request for Proposal; ii) the bid is firm and irrevocable for the bid validity period as required in the Bidding Documents; iii) the bid is binding upon the bidder and may be accepted by the SELD within the bid validity period; iv) SELD has an authority to accept or reject any Bid(s) and/or all bids; v) SELD is not bound the lowest financial bid; etc.

In addition, each Bidder must describe in detail the individual roles of their members (and if the bidder is a consortium, all its consortium members), as well as the nature of the planned legal relationships between them, as part of the Bid Form.

A template of Bid Form is attached herewith for reference purposes, as **Annex – F**.

## II. Power of Attorney

As part of the Technical Documents, each Bidder (or if the Bidder is a Consortium, each Consortium member) shall provide a written power of attorney, duly stamped and notarized, indicating that the person(s) signing the Bid is authorized to sign the Bid on behalf of the Bidder (or if the Bidder is a Consortium, then on behalf of each Consortium member) and, thus, the Bid is binding upon the Bidder during the full period of its validity.

A template form for the Power of Attorney is attached herewith for reference purposes, as **Annex – G**.

## III. Conflict of Interest Statement

As part of the Technical Documents, each Bidder (or if the Bidder is a Consortium, each Consortium member) shall provide a written Conflict of Interest Statement, regarding any existing, potential, possible or future conflict of interest that a Bidder (and each member of a Consortium) may have with the Bidding Process, the Project, the School Education & Literacy Department, instrumentality, consultant or advisor thereof.

A template form for the Conflict of Interest Statement is attached herewith for reference purposes, as **Annex – H**.

## IV. Integrity Pact

As part of the Technical Documents, each Bidder shall provide the Integrity, duly signed by the School Education & Literacy Department and the Bidder (in case the Bidder is a Consortium, the person(s) authorised by the Power of Attorney).

A template form for the Integrity Pact is attached herewith for reference purposes, as **Annex – I**.

## V. Equity Structure of the Bidder

If the Successful Bidder is forming a special purpose company to undertake the Project, then it shall provide the equity structure of such a special purpose company. Such equity structure should be in the form of a chart showing percentages of shares of each member if the Bidder is a Consortium.

In case of a single Bidder the special purpose company shall be wholly owned and controlled by the Bidder.

### **5.5.3 – Financial Bid**

- (1) Each Bidder shall submit a Financial Bid, in accordance with the requirements of the RFP, by completing a Financial Bid Form. The pre-set template of the Financial Bid Form is generally provided in the Request for Proposal.
- (2) The indicative cost heads and the assumptions that may be taken for quoting the Financial Bid are also provided so that the Financial Bid is complete in all respects.
- (3) The Financial Bid submitted by the Bidder cannot be amended or changed in any manner.

- (4) Likewise, the criteria and requirements of the Technical Bid, there is no standard Financial Evaluation Criteria, format or requirement of content for submission of the Financial Bid. However, there are certain directions that the Procuring Agencies usually provide.
- (5) The School Education & Literacy Department generally requires a bidder to include all applicable taxes, duties (including stamp duty), levies or charges in its Financial Bid.

If in case, any bidder does not make provision of taxes, duties, levies or charges in its Financial Bid, whether wilfully or erroneously, such Bidder would be required to provide appropriate exception certificate(s) or prove, as may be the case. Nonetheless, if the School Education & Literacy Department receives any notice/receipt for such taxes or charges relating to the concession agreement, the same shall be passed on to the Successful Bidder to be processed and cleared accordingly.

- (6) The School Education & Literacy Department generally requires that the Financial Bid shall be quoted in Pakistani Rupees.
- (7) The School Education & Literacy Department generally requires that the Bidder shall provide both, a hard copy and soft copy, of the financial model relating to its Financial Bid, which shall be complete containing a data book setting out all of the Financial Model's assumptions. The soft copy shall be provided on a 'Microsoft Excel Windows' software and in a readable DVD or USB memory stick.
- (8) The Financial Bid Form and Financial Structure including the indicative sheet of heads of account for quoting the Financial Bid, developed for the selection of private partners under the EMOs Reform Project is annexed herewith for reference purposes, as **Annex – J**.

#### **5.5.4 – Bid Security**

- (1) The Financial Bid submitted by each Bidder must be accompanied by a Bid Security in an amount equal to X percent (X% shall be between 1% and 5%) of the Project Cost (as set out by the Bidders in the Bid) in Pakistani Rupees which shall remain valid for at least twenty-eight (28) days beyond the expiry of bid validity period (original or extended, as the case may be).

Rule 37(1) of the SPP Rules states:

*“The procuring agency shall require the bidders to furnish a bid security not below one percent and not exceeding five percent of the bid price, which shall remain valid for a period of 28 days beyond the validity period for bids, in order to provide the procuring agency reasonable time to act, if the security is to be called.”*

- (2) TFEC constituted for the project shall decide the percentage amount and the expiry time of the Bid Security at the time of approving bidding documents.
- (3) Bid Security shall be in the form of a call on deposit, pay order, demand draft or Bank guarantee issued by a Scheduled Bank in Pakistan in favour of the School Education & Literacy Department. It is further clarified that Bid Security in the form of insurance guarantee shall not be entertained.
- (4) Bid Security shall remain valid for a period of at least twenty-eight (28) days beyond the validity period of bids, including any extension in the bid validity period, as provided under 5.3.5 above.

- (5) Any Bid that is not accompanied by a Bid Security, or accompanied by a bid security that is not in accordance with the requirements of Request for Proposal (in terms of amount, validity period or any other requirement) shall be rejected by the SELD as being non-responsive.
- (6) The Bid Security of a Bidder that is a Consortium shall be in the name of all of the members of the Consortium submitting the Bid.
- (7) The Bid Security of a Successful Bidder shall be returned upon the delivery of the Performance Security to the School Education & Literacy Department.
- (8) The Bid Security of the unsuccessful Bidder(s) shall be returned upon the signing of Concession Agreement OR upon expiry of the validity period of the Bid Security.
- (9) The Bid Security may be drawn in the full amount by the School Education & Literacy Department in the circumstances set out in the RFP. The most common instances that are generally used are as follows:
  - i) If the Bidder (or any member of a Consortium if the Bidder is a Consortium) withdraws its Bid during the bid validity period; or
  - ii) In the case of the Successful Bidder, if the Successful Bidder fails to:
    - (a) execute the Concession Agreement for any reason attributable to it; or
    - (b) furnish the Performance Security, as required by the Concession Agreement; or
    - (c) achieve all the pre-conditions (conditions precedent in legal terms) agreed in the executed Concession Agreement.
  - iii) If the Bidder or the Successful Bidder (i) resorts to deceit and/or fraud in its dealings with the School Education & Literacy Department (including the TFEC), its advisors, employees, consultants or agents or otherwise in relation to the award of the Concession Agreement; or (ii) is proven to have personally or through an intermediary, either directly or indirectly, offered or attempted to offer a bribe to any employee of School Education & Literacy Department involved with the Bid or the award of the Concession Agreement.
- (10) A template of Bid Security is attached herewith for reference purposes, as **Annex – K**.

### **5.5.5 – Sealing and Marking of Bid(s)**

- (1) The sealing and marking of the bids differ by the procedures adopted for the open competitive bidding, as mentioned and detailed under section 5.4. of this document. As the Single Stage Two Envelope Bidding Procedure is generally adopted for educational services under PPP mode, the sealing of marking of bids under the *Single Stage Two Envelope Bidding Procedure* is set out here in this section.
- (2) The Technical Bid shall be placed in a sealed envelope/box clearly marked "TECHNICAL PROPOSAL" (the "Technical Bid Envelope") and the Financial Bid in the sealed envelope clearly marked "FINANCIAL PROPOSAL" (the "Financial Bid Envelope"). These two envelopes and/or boxes, in turn, shall be sealed in an outer envelope/box bearing the address and information given in

the Request for Proposal. The envelope/box shall be clearly marked: "DO NOT OPEN, EXCEPT IN PRESENCE OF THE TECHNICAL & FINANCIAL EVALUATION COMMITTEE".

- (3) The outer envelope/box containing the Technical Bid Envelope and the Financial Bid Envelope, shall indicate the name and address of the Bidder so that the Bid can be returned unopened in case it is declared "late" as specified in Section 5.5.7 below
- (4) The Financial Bid Envelope, shall indicate the name and address of the Bidder so that the Financial Bid can be returned unopened in case the Bidder does not pass / qualify the technical evaluation criteria.
- (5) If the School Education & Literacy Department requires soft copies of the Technical Bid and/or the Financial Bid in a CD or USB drive, then each DVD or USB drive shall be submitted together with the relevant printed Bid in the same sealed envelopes. The DVD or USB drive containing the Bidders' Technical Bid shall be included in the Technical Bid Envelope and shall not contain any elements of the Financial Bid. The Financial Bid shall be submitted in a separate DVD or USB and shall be included in the Financial Bid Envelope.
- (6) Any Bidder who submits or participates in more than one Bid will be disqualified.

#### **5.5.6 – Submission of Bid(s)**

- (1) The Bids shall be submitted on the place, date and time and in the manner specified in the Tender Notice and the Request for Proposal.
- (2) The Bids shall be submitted by mail or by hand. For the avoidance of doubt, it is expressly specified that the Bidder shall not be allowed to submit the Bid by e-mail.

Rule 24 of the SPP Rules states:

*“Bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and any bid submitted late due to any reason whatsoever, shall not be considered by the procurement committee;”*

#### **5.5.7 – Late Bid(s)**

- (1) The Bid(s) shall be delivered to the SELD before the deadline of bid submission at the address provided in the Request for Proposal. Any Bid received after the deadline of bid submission for any reason whatsoever will be rejected and returned unopened to the Bidder.

#### **5.5.8 – Modification and Withdrawal of Bid(s)**

- (1) The Bidder may modify or withdraw its Bid after submission, provided that written notice of the modification or withdrawal is received by School Education & Literacy Department prior to the deadline for submission of bids.
- (2) Bidder's modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with sections 5.5.5 and 5.5.6 above, with the outer and inner envelopes additionally marked "MODIFICATION" or —WITHDRAWAL" as appropriate.

- (3) The Bidder shall not modify or withdraw its Bid after the expiry of deadline for submission of bids.

Rule 43(1) of the SPP Rules states:

*“No bidder shall be allowed to alter or modify his bid(s) after the expiry of deadline for the receipts of the bids.”*

- (4) Any withdrawal of a Bid in the interval between the deadline for bid submission and the expiration of the validity period of bids shall result in the Bidder’s forfeiture of its Bid Security, pursuant to Section 5.5.4(9) above.

## **5.6 – OPENING AND EVALUATION OF BID(S)**

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### **5.6.1 – Opening of Bid(s)**

- (1) Rule 41 of the SPP Rules provides for the Opening of Bids.
- (2) TFEC constituted for the Project will open the Bid, in the presence of Bidders’ designated representatives who choose to attend, at the time, date, and location stipulated in the Bidding Documents. At the opening of each bid, the TFEC will announce the Bidders’ names and any other details that it may consider appropriate. The Bidders’ representatives who are present must sign the attendance sheet evidencing their attendance at the bid opening.
- (3) TFEC will open the outer envelopes/boxes, one at a time, in the order in which the Bid were received, and take out the inner envelopes/boxes containing the Technical Bid and the Financial Bid. TFEC will then open the Technical Bid(s) only, and sign the first page of the submitted Technical Bid(s) marked as Original (As the procuring agency requires copies of bids also; therefore, it is clarified that only the original version of the Technical Bid shall be signed by TFEC). TFEC will then declare the end of the Bid opening proceedings and will dismiss the Bidders’ representatives present.
- (4) The Secretary of the TFEC will prepare minutes of the Bid opening, including the information disclosed at the meeting, and will issue the same after getting them signed from the TFEC members.
- (5) Any Bid received by the School Education & Literacy Department after the deadline of Bid Submission for any reason will be rejected and returned unopened to the Bidder. It must be noted that no Bid shall be rejected at the Bid opening except for late Bid.

### **5.6.2 – Opening and Evaluation of Technical Bid(s)**

- (1) TFEC will evaluate the Technical Bid on a "pass / fail" basis following the criteria set forth in Technical Evaluation Criteria and any other terms and conditions laid down in the RFP. The TFEC’s determination will be based on the contents of the Technical Bid itself without recourse to extrinsic evidence.
- (2) Any deficiencies or errors in a Bid will not result in its automatic rejection. In case, TFEC determines that the Technical Bid is subject to minor deficiencies or certain errors or omissions, it may request for clarifications from the Bidder in writing to correct such deficiencies in accordance with the requirements set out in the RFP.

- (3) The PPP Node, SELD shall inform the bidder(s) in writing, whose Technical Bid has received a "pass" score that its Technical Bid has been accepted by the TFEC and that the Bidder is invited to attend the opening of the Financial Bid at the time, date, and location set out in the RFP.
- (4) The PPP Node, SELD shall also inform the bidder(s) in writing, whose Technical Bid has received a "fail" score that its Technical Bid has not been qualified by the TFEC. These bidder(s) shall not be considered further for evaluation, irrespective of the circumstances, and their Financial Bid shall be returned unopened. These bidders(s) shall not be invited to attend the opening of the Financial Bids.

### **5.6.3 – Opening and Evaluation of Financial Bid(s)**

- (1) TFEC shall open the Financial Bid Envelopes of the Bidder(s), whose Technical Bid has received a "pass" score in the presence of Bidders' designated representatives who choose to attend, at the time, date, and location set out in the RFP. At the opening of each financial bid, the TFEC will announce the total amount of each bid and any other details that it may consider appropriate. The Bidders' representatives who are present must sign the attendance sheet evidencing their attendance at the financial bid opening.
- (2) The Secretary of TFEC will prepare minutes of the Financial Bid opening, including the information disclosed at the meeting, and will issue the same after getting them signed from the TFEC members.
- (3) TFEC shall evaluate each Financial Bid in accordance to the criteria set forth in Financial Evaluation Criteria and any other terms and conditions laid down in the RFP.
- (4) Any arithmetic or numerical errors in a Bid will not result in its automatic rejection. In case, TFEC determines that the Financial Bid is subject to minor errors or omissions, it may request for clarifications from the Bidder(s) in writing to correct such errors in accordance with the requirements set out in the RFP.

### **5.6.4 – Bid(s) Evaluation Report**

- (1) The final results of the evaluation of the Bids conducted by the TFEC shall be reflected in the Bid Evaluation Report. In accordance with Rule 45 of the SPP Rules, the School Education & Literacy Department shall announce the results of bid evaluation in the form of a report giving reasons for acceptance and rejection of bids.
- (2) The Bid Evaluation Report shall be published on the websites of the School Education & Literacy Department, PPP Unit (Finance Department), and SPPRA's website and communicated to the Bidder(s) on the date, which shall be at least three (3) days prior to Letter of Award.

Rule 45 of SPP Rules states:

*“Procuring agencies shall announce the results of bid evaluation in the form of a report [Bid Evaluation Report] giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority [SPPRA] and that of the procuring agency [SELD] if its website exists and intimated to all the bidders at least three (03) days prior to the award of contract.”*

- (5) The draft letter to be sent to SPPRA and PPP Unit for hoisting the Bid Evaluation Report is attached herewith for reference purposes, as **Annex - L**.

## 5.7 – AWARD AND SIGNING OF CONCESSION AGREEMENT

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### 5.7.1 – Award Criteria

- (1) The School Education & Literacy Department shall award the PPP Project to the Bidder who has the best/lowest evaluated bid, in line with the criteria set out under 5.6.3(3) above.

Section 49 of the SPP Rules states:

*“The bidder with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be awarded the procurement contract, within the original or extended period of bid validity.”*

- (2) The criteria for best/lowest evaluated bid will differ from project to project. As per Rule 84 of the SPP Rules, the best evaluated bid shall be determined on the basis of:
  - i) Lowest bid in terms of user fees if the concession period is fixed.
  - ii) Highest return or profit for the government if the concession period is fixed and the user fees is the same or lower than other bidder.
  - iii) Shortest concession period if the user fee is fixed.
  - iv) Lowest Net Present Value of return to the bidder if user fee, concession period and subsidy element is same as those of other bidders, if government equity is not involved.
  - v) Lowest amount of subsidy if the other considerations are almost same.
  - vi) Any other factor deemed relevant to the particular project by the School Education & Literacy Department.

### 5.7.2 – Letter of Award

- (1) Prior to the expiration of the Bid Validity Period, SELD shall notify, in the form of a letter (the **Letter of Award**), the Successful Bidder in writing that its Bid has been accepted by the School Education & Literacy Department.
- (2) Within seven (07) days of the issuance of Letter of Award, the Bid Evaluation Report and the Letter of Award shall be published on the websites of School Education & Literacy Department, PPP Unit Finance Department, and SPPRA.

### 5.7.3 – Incorporation of a Project Company

- (1) Prior to signing the Concession Agreement in accordance with provisions of section 5.7.6 below, the Successful Bidder may (and if the Successful Bidder is a Consortium, the Successful Bidder shall) incorporate a special purpose vehicle/company (SPV) under the Pakistani Companies Ordinance, 1984, that will become the Operator under the Concession Agreement.

- (2) The shareholding of the Project Company shall strictly reflect the equity structure submitted by the Successful Bidder as Part of its Technical Documents.

Section 17(1) of the PPP Act states:

*“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.”*

#### **5.7.4 – Performance Security / Guarantee**

- (1) The SELD may ask for the replacement or Bid Security with Performance Security in the Letter of Award prior to signing of the Concession Agreement; or otherwise it may be a condition precedent (pre-condition) to the effectiveness of the Concession Agreement.
- (2) The Successful Bidder shall replace the Bid Security (prior to the expiry of the Bid Security) with the Performance Security in the amount of equal to X% (X% shall not be more than 10%.) of the Project Cost (as quoted by the Bidder in the Bid) in Pakistani Rupees, which shall be valid from the date of its submission until the date falling at least Ninety (90) days beyond the date of project completion to cover defects liability period.

Rule 39 of the SPP Rules states:

*“Procuring Agency shall, in all procurement of goods, works and services, carried out through open competitive bidding, require security in the form of pay order or demand draft or bank guarantee, an amount sufficient to protect the procuring agency in case of breach of contract by the contractor or supplier or consultant, provided that the amount shall not be more than 10% of contract price;*

- (3) Performance Security shall be in the form of a call on deposit, pay order, demand draft or Bank guarantee issued by a Scheduled Bank in Pakistan in favour of the School Education & Literacy Department. It is further clarified that Performance Security in the form of insurance guarantee shall not be entertained.
- (4) Performance Security shall remain valid for a period of at least ninety (90) days beyond the date of completion of contract to cover defects liability period or maintenance period subject to final acceptance by the School Education & Literacy Department. TFEC shall decide the amount and the expiry time of the Performance Security at the time of approving bidding documents.
- (5) The Performance Security may be drawn in the full amount by the School Education & Literacy Department in the circumstances set out in the Concession Agreement.
- (6) A template of Performance Security is attached herewith for reference purposes, as **Annex – M**.

#### **5.7.5 – Vetting/Consent on the Agreement(s) by the Law Department**

- (1) According to the Sindh Rules of Business, 1986 (as amended from time to time), any and/or all contracts/legal agreements shall be made or executed on behalf of the Governor, Sindh, and the same shall be in accordance with the instructions issued by the Law Department, Government of Sindh.

Rule 24 of the Sindh Rules of Business states:

*“Contracts shall be made or executed on behalf of Governor in accordance with the instructions issued by the Law Department.”*

- (2) Therefore, the final version of Concession Agreement and/or any other agreement(s) that may be executed by SELD shall be sent to the Law Department, for legal vetting and consent, before its signing. The Law Department may propose changes in writing, which shall be incorporated (or if not, shall be responded with justifications), following which the agreement shall be executed between the Secretary, or officer with equal rank and status (as provided under 5.7.7 below), on behalf of the Governor, Sindh and the successful bidder (Private Partner / Concessionaire).
- (3) The draft letter to be sent to the Law Department is attached herewith for reference purposes, as **Annex – N**.

**5.7.6 – Signing of the Concession Agreement**

- (1) Within a reasonable time, but not more than six (06) months (as allowed under section 16(5) of the PPP Act), of the issuance of Letter of Award, the Successful Bidder (or the SPV/Project Company in case of a Consortium) shall sign the Concession Agreement with the School Education & Literacy Department, through its Secretary or officer of equivalent rank and status.

Section 9(I) of the PPP Act states:

*“An Agency may enter into a Public-Private Partnership Agreement with the private party, through its administrative secretary or officer with equivalent rank and status for the performance of any of the various tasks.....”*

**5.7.7 – Failure to Sign the Concession Agreement**

- (1) If the Successful Bidder fails to sign the Concession Agreement in accordance with section 5.7.6 above, this shall constitute sufficient grounds for annulment of the award and forfeiture of the Bid Security or Performance Security (as the case may be).

**SECTION 6**  
**TRANSACTION**  
**ADVISORY SERVICES**



## 6.1 – HIRING CONSULTANTS / TRANSACTION ADVISORS

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- (1) As briefly mentioned in section 5.1.1(4) of this *PPP Guide & Toolkit*, the procuring agencies may hire consultants or transaction advisors to support them in preparing, tendering and/or executing a potential PPP project.
- (2) The task of identifying, preparing, tendering and/or executing a potential PPP Project requires many things, for which the procuring agency may not have, at times, the necessary resources in terms of expertise, time and finances to satisfactorily complete the task. Therefore, there are provisions for hiring consultants or transaction advisors, so that some or all of the functions and responsibilities of project preparation and/or tendering may be shifted upon them.

### Section 7(2)(II) of the PPP Act states:

*“The PPP Node [established within the Agency] shall recruit transaction advisors for project preparation and tendering.”*

### Rule 82(1) of the SPP Rules states:

*“Some or all the functions and responsibilities of procurement planning and execution may be performed by the professional transaction advisers and consultants subject to approval by the Public Private Partnership Policy Board.”*

## 6.2 – APPROVAL FROM THE PPP POLICY BOARD

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- (1) The approval for hiring consultants / transaction advisors has to be sought from the PPP Policy Board, being the apex forum for PPPs in the province.

### Rule 82(1) of the SPP Rules states:

*“Some or all the functions and responsibilities of procurement planning and execution may be performed by the professional transaction advisers and consultants subject to approval by the Public Private Partnership Policy Board.”*

- (2) In addition to the approval for hiring consultants / transaction advisors, the approval to pay for the consultancy / transaction advisory services has to be sought from the PPP Policy Board also.

### Section 5(1)(VIII) of the PPP Act states:

*“The Board shall approve funding for projects receiving support through the Project Development Facility.”*

- (3) There is a separate account established within the PPP Unit, Finance Department – Project Development Facility (PDF) Account – to pay for the consultancy / transaction advisory services of any potential PPP project. The definition of the PDF in the PPP Act is as follows:

*“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.”*

- (4) According to the legal requirements, both the approvals i) For hiring of consultants and transaction advisors for any PPP project; and ii) to pay for consulting services from the PDF; have to be sought from the PPP Policy Board. Apart from the approvals from the PPP Policy Board, it shall be noted that hiring of consultants / transaction advisors will be subject to procurement laws of Government of Sindh, as set out under Part-III of SPP Rules, 2010.

### **6.3 – CONSTITUTION OF CONSULTANT SELECTION COMMITTEE**

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- (1) Subsequent to approval of the PPP Policy Board, the SELD shall set up a Consultant Selection Committee (CSC) for the procurement of consultants / transaction advisors.

Rule 67 of the SPP Rules states:

*“Every procuring agency, for the selection of consultants, shall set up a Consultant Selection Committee.”*

- (2) The composition and Terms of Reference of the CSC shall be approved by the Secretary SELD on a Note Sheet initiated by a relevant officer of PPP Node, SELD.
- (3) Rule 67 further provides for the composition of the CSC. Rule 67 requires that the CSC shall be headed by a gazetted officer not below the rank of BS-19 – not below the rank of Additional Secretary in SELD.

Rule 67(1) of the SPP Rules states:

*“Consultant Selection Committee shall be headed by a gazetted officer not below the rank of BS-19 and, if not available, the officer of the highest grade available in case of administrative departments, autonomous and semi-autonomous bodies.”*

- (4) In addition, the CSC shall comprise of the following:
- i) Nominee of Planning & Development Department, Govt. of Sindh (Not below BS-18);
  - ii) Nominee of Finance Department, Govt. of Sindh (Not below BS-18);
  - iii) Representative of SELD to act as Member and Secretary (Not below BS-18);
  - iv) One technical member from SELD for consultation (Not below BS-18);
  - v) Optional – Up to two (02) co-opted members, with no voting rights, having adequate knowledge and experience in the relevant field, for providing technical input.
- (5) The legal provision of Quorum for Technical & Financial Evaluation Committee / Procurement Committee for any project is missing in the law. However, Rule 68 of SPP Rules clearly sets out the Quorum of the CSC. Furthermore, the provision for decisions by simple majority has also been set out.

Rule 68 of the SPP Rules states:

*“Quorum - The chairman, representatives of the Finance Department, and the Planning and Development Department shall form the quorum for conducting the business of the Consultants Selection Committee.”*

Rule 70 of the SPP Rules states:

*“All decisions of the Consultant Selection Committee shall be made by simple majority.”*

- (6) The standard Terms of Reference of the CSC, for assistance of the stakeholders, may be as follows:
- i) The Consultant Selection Committee (CSC) shall approve Expression of Interest (EoI), Request for Proposal (RFP) and other bidding documents before issuance for the procurement of consultant(s);
  - ii) Short listing of consultants, responding to the Request of Expression of Interest, where applicable, in accordance with the criteria mentioned in Expression of Interest;
  - iii) The CSC shall evaluate technical and financial proposals, according to selection method and evaluation criteria, set out in the Request for Proposal (RFP);
  - iv) Finalization of recommendation based on evaluation as mentioned in point (3) above.
  - v) The Chairman, representatives of the Finance Department, and the Planning and Development Department shall form the quorum for conducting the business of the Consultants Selection Committee
- (7) The draft Notification of the Consultants Selection Committee is attached herewith for reference purposes, as **Annex – O**.

#### **6.4 – EXPRESSION OF INTEREST**

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- 1) For procurement of consultants / transaction advisors under open competitive bidding, Expression of Interest (EOI) shall be announced, advertised and published in accordance with the Method of Advertisement and Response Time set out under section 5.3.3 and 5.3.4 of this *PPP Guide & Toolkit* respectively.
- 2) EOIs, likewise NITs, are published in order to attract the widest possible competition, which shall assist the procuring agency in obtaining value for money; and offer all potential bidders a fair opportunity to bid for government funded consultancies.
- 3) The EOI shall contain the following information:
  - i) name and address of procuring agency [SELD];
  - ii) appropriate description of the assignment providing scope of the intellectual and professional services required;
  - iii) deadline and place of the submission of Request for Expression of Interests;
  - iv) criteria for short listing; and
  - v) any other information that the procuring agency [SELD] may deem appropriate to disseminate at this stage.
- 4) The EOI shall be prepared by the SELD, specifically CSC, as provided under Rule 66 of the SPP Rules. The CSC shall specifically approve the EOI and any shortlisting criteria and/or Request for Proposals (RFP) document in the minutes of meeting of CSC, before sending it out for advertisement.
- 5) Draft Expression of Interest is annexed herewith, for reference purposes, as **Annex – P**.

## 6.5 – SHORT-LISTING OF CONSULTANTS

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- 1) Where applicable<sup>3</sup>, the Consultant Selection Committee (CSC) shall short-list the applicants in the light of a pre-determined criteria set out in the EOI.
- 2) The short-listing criteria shall take following factors in consideration:
  - i) qualification;
  - ii) experience;
  - iii) financial capability; and
  - iv) any other factor that a procuring agency [SELD], specifically CSC, may deem relevant, which is not inconsistent with the SPP Rules.

## 6.6 – REQUEST FOR PROPOSALS

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- 1) The Procuring Agency [SELD] shall use Request for Proposal for seeking proposals from the shortlisted consultants (if shortlisting is done) or interested bidders, which shall include the following:
  - i) **Letter of Invitation** - It shall mention the name and address of the procuring agency and shall also state the intention of the procuring agency to enter into a contract for provision of consulting services and contain names of all the short listed firms;
  - ii) **Instruction to Consultants** - Instructions to consultants shall contain all necessary information that would help them prepare responsive proposals and shall bring as much transparency as possible to the selection system;
  - iii) **Terms of Reference** - It shall define the objectives, goals and scope of the assignment unambiguously and list the deliverables, services and surveys necessary to carry out the assignment and expected outputs. Terms of Reference are to be read along with the conditions mentioned in the Draft Consultancy Agreement;
  - iv) **Draft Consultancy Agreement** – Draft Consultancy Agreement shall include the roles and responsibilities of each party i.e. SELD and the Consultant.
  - v) **Evaluation Criteria** - Except as otherwise provided, the evaluation of proposals shall be carried out giving due consideration to quality and cost. In addition to the technical and financial evaluation criteria, SELD, specifically CSC, shall choose one of the following methods for selection of consultants:
    - a) Least Cost Selection Method
    - b) Quality Based Selection Method
    - c) Quality and Cost Based Selection Method
    - d) Fixed Budget

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<sup>3</sup> Where applicable because it is optional. The Procuring Agency may decide to directly issue Request for Proposal and seek proposals/bids.

- vi) **Types of Contract** – SELD may use one of the following types of contract:
    - a) *Lump Sum Contract* shall be used mainly for assignments in which the contents, duration of the services and the required output are unambiguously defined;
    - b) *Time Based Contract* shall be used when it is difficult to define the scope and the length of services;
    - c) *Hourly or Daily Rates Contract* shall be used for small projects, especially when the assignment is for less than a month; and
    - d) *Any Other Contract*, based on combination of the above types of contracts, including out of pocket expenses, where required.
  - vii) **Special Provisions** - SELD may specify any other requirement related to the assignment or contract, where required.
- 2) SELD shall invite the interested bidders to submit their technical and financial proposals/bids in separate sealed envelopes. The procurement process (from advertisement of EOI to Bid Evaluation Report and Award of the Contract), as set out in Part – I and Part – II of SPP Rules, and detailed in Chapter 5 of this *PPP Guide & Toolkit* shall apply for procurement of consultants / transaction advisors.



**SECTION 7**  
**FINANCING AND**  
**FUND FLOW MECHANISM**



## 7.1 – GENERAL PROVISIONS

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- (1) The PPP Act provides that the 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 involved in the Public-Private Partnership Agreement (Concession Agreement).
- (2) Each PPP project is different in terms of its financing and payment mechanism. The Government sets out a framework whereby setting out the terms of payment to the private partners and the mode thereof. For Example, under the Education Management Organizations (EMOs) Reform of SELD, approved by the PPP Policy Board, the Government shall bear all cost of the schools and pay it to the private partners on a periodic payment basis. The specifics and the mode of payment are then set out in the Concession Agreement of the specific PPP project.
- (3) There are two (02) main accounts that have been created under the auspices of Sindh PPP Act, 2010 for all funding needs of PPP projects of Government of Sindh:
  - i) Viability Gap Fund Account; and
  - ii) Project Development Facility Account
- (4) In addition, SELD has established a separate account for PPP projects in education, with the permission of Finance Department, functioning as a link account of the VGF Account, with called the ELD-PPPs Account.

## 7.2 – VIABILITY GAP FUND (VGF) ACCOUNT

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- (1) Viability Gap Fund is defined in the PPP Act as the funds from the Government which are made available to the private party to cover revenue shortfalls through grants, subsidies or guarantees.

### Section 22 of the PPP Act states:

*“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.”*

- (2) Further the *Viability Gap fund Guidelines*, as approved by the PPP Policy Board, states that the VGF will provide funds for those projects approved by the Government that are economically viable but financially unviable. The funds shall be disbursed to the Private Partner, which has entered into contract with the Govt. of Sindh to carry out the project under PPP modality.
- (3) The VGF Account is established in the Finance Department, for viability gap funding of all PPP projects of Government of Sindh, approved by the PPP Policy Board. The Sindh Fund Management House, in the Finance Department, is the custodian of the VGF account, which is headed by the Chief Investment Specialist.

### **7.3 – PROJECT DEVELOPMENT FACILITY (PDF) ACCOUNT**

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- (1) Project Development Facility is defined in the PPP Act as a pool of funds, including contributions from international donor agencies, which are available to pay for consulting services required for the preparation and execution of PPP projects.
- (2) Further the *Project Development Facility Guidelines*, as approved by the PPP Policy Board, states that the PDF will only support PPP projects, which are consistent with the Government’s PPP Policy. The PDF can only be used to finance (i) services rendered by Consultants for preparing PPP projects and providing advice during the transaction execution and implementation phase of the Project (ii) capacity building of the Government Agencies and the PPP Unit.
- (3) The PDF Account is established in the Finance Department, for funding the transaction advisory services / consulting services hired for preparation, procurement and execution of approved PPP Project. Like VGF Account, the Sindh Fund Management House, in the Finance Department, is the custodian of the PDF account, headed by the Chief Investment Specialist.

### **7.4 – ELD – PPPs ACCOUNT (VGF LINK ACCOUNT)**

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- (1) The ELD-PPPs account is a VGF link account of the School Education & Literacy Department, opened with the permission of the Finance Department, with the title ELD-PPPs Account. The ELD-PPPs Account is currently operational and being managed by the Sindh Bank.
- (2) Like the VGF Account in the Finance Department, ELD-PPPs Account is non-lapsable account. It is jointly operated by two (02) signatories of the SELD, which are nominated by the Secretary, SELD.
- (3) Any amount reserved for education PPPs in the Government of Sindh will be parked in this ELD-PPPs Account routing through the VGF Account of Finance Department. The payments of PPP Projects of School Education & Literacy Department, that are approved by the PPP Policy Board, shall be linked to and/or directly disbursed from this account – ELD-PPPs Account.

### **7.5 – FUND FLOW MECHANISM FOR PPPs IN EDUCATION**

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- (1) The Government of Sindh has created a separate budget head for Public Private Partnerships in education under the head of School Education & Literacy Department in its yearly financial budget.
- (2) In the financial year 2015-16, PKR 500 million were reserved for PPPs in education, out of which the payments were made to various EMOs with whom the Concession Agreements have been signed for the SBEP schools (Schools constructed under Sindh Basic Education Program). Whereas, in the current financial year 2016-17, the amount reserved for PPPs in education has doubled amounting to PKR 1 billion, and the same is reflected the current year’s budget of Government of Sindh.
- (3) As the SBEP schools are in the under-construction phase and being gradually handed over to private partners for management under the EMOs reform, the reserved budget is expected to increase every year to cater for all one hundred and six (106) SBEP schools and any other PPP projects in education including the recently approved Teacher Training Institutes/Centres under PPP mode and the newly built fifty (50) Cambridge and Comprehensive Schools to be contracted out under the PPP framework.

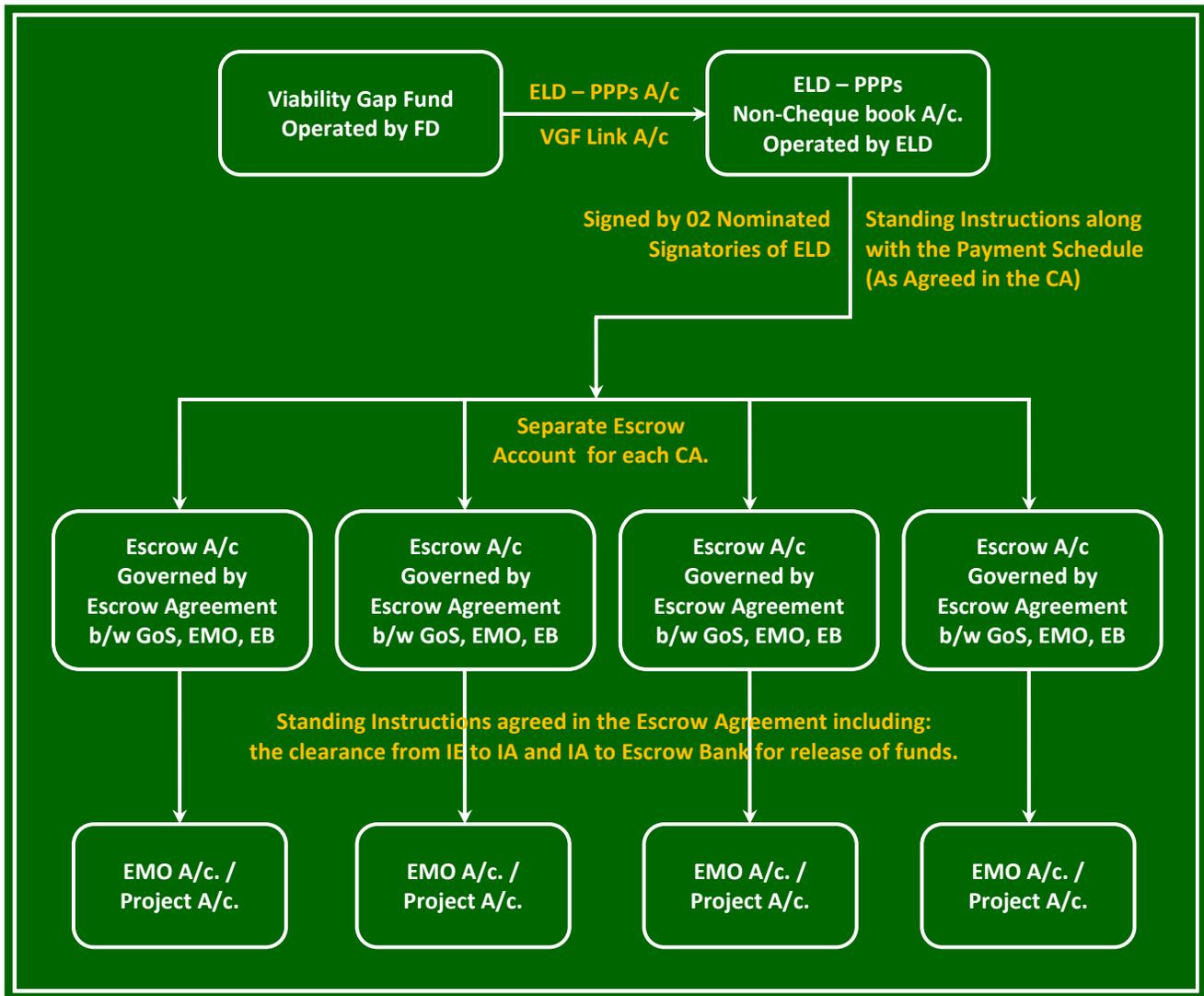
- (4) The flow of funds from the budget of Government of Sindh to the account of School Education & Literacy Department and further to the account of private partners is a frequently asked question by the stakeholders, which is set out herein below. The stake holders are often concerned about the transparent and timely mechanism of disbursement of periodic payments by the Government of Sindh, so that their work in progress is not hampered due to late payments.
- (5) Subsequent to the official written request by the Secretary, School Education & Literacy Department to Finance Department for the release of funds, the amount reserved for PPPs in education is transferred to the Viability Gap Fund (VGF) Account, established in the Finance Department for funding of PPP projects only. The Finance Department sends an intimation to the School Education & Literacy Department, as the funds are transferred to the VGF Account.
- (6) Subsequent to the transfer of funds in the VGF account, School Education & Literacy Department writes a letter to the Chief Investment Specialist, Sindh Fund Management House, who is the custodian of the VGF account in the Finance Department, to transfer the amount (the total amount for PPPs in education) from the VGF account to the ELD – PPPs Account.
- (7) The ELD-PPPs Account is a non-lapsable account, which functions as a VGF account of the School Education & Literacy Department, which shall only be used for funding of the PPP Projects. The ELD-PPPs Account is jointly operated by two (02) signatories of the School Education & Literacy Department, which are nominated by the Secretary SELD.
- (8) The two (02) assigned signatories will issue Standing Instructions to the bank, where the ELD-PPPs account is operated and managed, for the periodic payments to the Escrow Accounts of the Successful Bidders, annexing the Payment Schedules, as agreed with them in their respective Concession Agreements.
- (9) Initially, the ELD-PPPs Account was envisaged to be a non-cheque book account i.e. cheque book for this account will not be issued. Instead, the ELD-PPPs Account should have operated on the basis of Standing Instructions only, which will be signed by the two (02) authorized nominees/signatories of the SELD, and be given to the bank setting out the schedule of payments for the overall term of a project.
- (10) The preamble behind making it a non-cheque book account was that the signing of cheques for every periodic payment (quarterly payment), and separately for each project (each school), will be a hard, time-consuming and cumbersome task, keeping in mind that the change of bureaucracy and turnover of concerned officers happens often, and this eventually disrupts the timely payments to the Concessionaires, which is always a major concern of the private partners. As the schedule of payments is already agreed at the time of executing the Concession Agreement and is annexed thereto, therefore, the instructions for release of such payments for the overall term of the project may be given from the very first day.
- (11) The funds from this ELD-PPPs Account will only be released to the Escrow Bank Accounts on the basis of Standing Instructions and the Payment Schedule (as agreed in the Concession Agreement) attached therewith. However, the non-cheque book mechanism has not been implemented till date, and the two nominated signatories sign the cheque for the release of payments every quarter. Currently, there are only four (04) schools that are in operation under PPP mode; however, when the number will rise, it will be become challenging for the PPP Node to manage the cheque system for each school every quarter.
- (12) A separate Escrow Bank Account is opened for each executed Concession Agreement i.e. each school. The Escrow Bank Accounts will be opened with Sindh Bank for transfer of funds to the

Concessionaire separately for each school from time to time. The Escrow mechanism will be governed by a tri-partite Escrow Agreement, which will be executed between the School Education & Literacy Department, Concessionaire and the Escrow Bank (Sindh Bank).

- (13) The payment mechanism from the Escrow Account to the bank account of the Concessionaire was also supposed to be based on the Standing Instructions and other terms and conditions agreed between the parties under the executed tri-partite Escrow Agreement. However, the non-cheque book mechanism has not been implemented till date, and the same two nominated signatories sign the cheque for the release of payments every quarter from the Escrow Account to the project account of the Concessionaires.
- (14) The other terms and conditions for the release of payment from the Escrow Account are: the assessment from the Independent Expert in form of a report at every quarter (supposing the payments are to be made on quarterly basis) verifying the progress against the set Key Performance Indicator (KPIs), submitted to the PPP Node, SELD and the Independent Auditor. On the basis of the report made by the Independent Expert, the Independent Auditor shall verify the payment against that quarter and generates a certificate (called Independent Auditor Certificate), and send it to the Escrow Bank for the release of payment, with a copy to PPP Node, SELD. While checking and computing the quarterly payment, the Independent Auditor shall also make any payment adjustments, in accordance with the formula set out in the Concession Agreement, if the performance of the Concessionaire was below the agreed standards for that quarter.
- (15) On the basis of the Independent Auditor Certificate and the amount quoted therein, the Escrow Bank released the periodic payment to the project account of the Concessionaire. In broader terms, subject to the Escrow Agreement and the Standing Instructions set out therein including clearance from the Independent Expert and Independent Auditor, the payment for every quarter will be released by the Escrow Bank from the respective Escrow Account(s) to the Concessionaire Bank Account(s).
- (16) Any surplus amount released from the ELD-PPPs Account to the Escrow Account(s) will be transferred back to the ELD-PPPs Account at the end of the term of concession agreement.

For further clarity of the process, a **Fund Flow Diagram** is provided at section 6.6 below.

## 7.6 – FUND FLOW DIAGRAM





**SECTION 8**  
**INDEPENDENT AUDITOR**



It shall be noted that the Concession Agreement or PPP Agreement is a commercial agreement between the parties, and therefore, there is no pre-set template or mechanism for any part of it. The Agreement is usually negotiated between the parties to reach a consensus. Nevertheless, there are certain mechanisms for implementation and execution of an education project under PPP framework including procedures for hiring of Independent Auditor and Independent Experts, which have evolved with time, setting out the basic parameters of each section.

The procurement and execution of service sector PPP projects including education, health and special education sectors including discussions, meetings and negotiations thereon with various stakeholders have led to the development of the basis parameters that are part of this Guide & Toolkit. Therefore, each and every section of it may be changed and improved in the coming times for a better implementation of the PPP projects in future.

## 8.1 – SELECTION

---

- (1) The appointment of an Independent Auditor is generally a condition precedent to the effectiveness of the PPP Agreement. Both the Parties shall jointly appoint an auditor to fulfil the duties and obligations of the Independent Auditor during the term of the PPP Agreement.
- (2) The draft PPP Agreement generally provides a time-frame, in which certain tasks need to be completed. The PPP Agreement generally sets out as follows:
  - i) Within X number of days<sup>4</sup> from the signing date of the PPP Agreement, the Private Partner shall provide the PPP Node, SELD, with a list of two (02) or three (03)<sup>5</sup> reputable firms out of Big Four Firms<sup>6</sup> of Chartered Accountants for appointment of the Independent Auditor (the **IA List**).
  - ii) Within X number of days<sup>7</sup> of receipt of the IA List by the PPP Node, SELD, the PPP Node shall request a TFEC meeting and place the IA List before the TFEC members. The TFEC constituted for the project shall select one of the firms from the IA List as an Independent Auditor for the project. Subsequent to the signing of the TFEC minutes, SELD and the Private Partner shall appoint such firm as the Independent Auditor by way of executing the Independent Auditor Agreement.
  - iii) In the event the firms of auditors identified by the Private Partner in the IA List is not acceptable to the TFEC, the Private Partner and the SELD shall appoint such firm out of the Big Four Firms as the Independent Auditor, as mutually agreed by SELD and the private partner.

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<sup>4</sup> The number of days will be provided in the draft Concession Agreement of the specific PPP project;

<sup>5</sup> As provided in the draft Concession Agreement of the specific PPP project;

<sup>6</sup> Big Four Firms mean:

- (a) A. F. Ferguson & Co. (a member firm of PricewaterhouseCoopers network);
- (b) Ernst & Young Ford Rhodes Sidat Hyder;
- (c) KPMG Taseer Hadi & Co.;
- (d) Deloitte Yousuf Adil & Co. (a member firm of Deloitte Touche Tohmatsu);

<sup>7</sup> The number of days will be provided in the draft Concession Agreement of the specific PPP project;

- (3) The Independent Auditor Agreement shall be signed by the Secretary, SELD on behalf of the Government of Sindh, and the representative of the successful bidder (private partner) whose power of attorney was submitted by the bidder initially with the bid.
- (4) The Independent Auditor shall provide the services set out in the PPP Agreement, Independent Auditor Agreement and as requested by the Parties with mutual consent from time to time. The Independent Auditor Agreement shall generally be in accordance with the indicative Terms of Reference (ToRs) of the Independent Auditor provided in the PPP Agreement.

## **8.2 – TERM OF APPOINTMENT**

---

- (1) The appointment of the Independent Auditor is generally for an initial term of two (02) years or three (03) years<sup>8</sup> from the date of the effectiveness of the Independent Auditor Agreement. However, the initial term of appointment of Independent Auditor shall be extended prior to expiry of the same with the mutual consent of the Parties so as to ensure that at all times during the term of the project, an Independent Auditor is retained/appointed for the purposes set out in the Independent Auditor Agreement and the PPP Agreement.
- (2) The PPP projects are long-term projects having a term of ten (10) years or more; however, the Independent Auditor is appointed for a shorter time period and the contract is renewed based on their impartiality and fairness during the term of the Independent Auditor Agreement. If at any time, either of the Party is of the opinion that the Independent Auditor is not performing its duties professionally and may be colluding and/or is under the influence of the other party, that party shall have the right to disagree on the renewal of the same Independent Auditor, as the renewal shall be done by the parties mutually.
- (3) The above paragraph does not strike out the possibility of the termination of the Independent Auditor Agreement before its expiry. However, as generally, the decision for termination before expiry has to be taken mutually, the shorter term agreements just keep it easy. In addition, the Independent Auditor may be more diligent and proficient in its work, knowing that the renewal of the Agreement is directly linked to its performance.

## **8.3 – TERMINATION AND REPLACEMENT OF INDEPENDENT AUDITOR**

---

- (1) The appointment of the Independent Auditor may be terminated:
  - i) by either Party if the Independent Auditor is adjudged insolvent and / or bankrupt and / or winding up proceedings are filed against the Independent Auditor and/or the Independent Auditor files winding up proceedings in a court of law and / or any action for malpractice and / or misadministration is filed against the Independent Auditor in a court of law;
  - ii) by the Parties if the Independent Auditor fails to discharge its duties in accordance with the terms of engagement set out in the Independent Auditor Agreement and the PPP Agreement;
  - iii) by the Parties with mutual consent of the Parties.

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<sup>8</sup> As provided in the draft Concession Agreement of the specific PPP project;

- (2) Upon the occurrence of any of the events listed at 7.3(1) above, the Parties shall have the right to terminate the Independent Auditor Agreement in accordance with the terms of the same. In such a case, the Parties shall appoint a new Independent Auditor. The Parties shall replace the appointed Independent Auditor with another firm of chartered accountants from the list of the Big Four Firms of Chartered Accountants with mutual consent of the Parties as the new Independent Auditor.
- (3) It shall be noted that the termination and/or replacement of the Independent Auditor shall not have effect till such time as the replacement Independent Auditor has been appointed.
- (4) The term of appointment of the replacement Independent Auditor shall be the unexpired period of the existing Independent Auditor Agreement or such other term as may be mutually agreed between the Parties.

#### **8.4 – INDEPENDENT AUDITOR AUTHORIZED SIGNATORIES**

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- (1) The PPP Agreement generally requires the Independent Auditor to designate and notify to the PPP Node, SELD and the Private Partner, of the authorized representatives of the Independent Auditor that shall be authorized by the Independent Auditor to sign for and on behalf of the Independent Auditor.
- (2) Any communication or document required to be signed by the Independent Auditor shall be valid and effective only if signed by such authorized signatories on behalf of the Independent Auditor; provided, that the Independent Auditor may, by notice in writing to the Parties, change / substitute any of the authorized signatories.

#### **8.5 – DECISION OF INDEPENDENT AUDITOR**

---

- (1) Any advice, instruction, decision, direction and / or award of the Independent Auditor shall generally be binding upon the Parties unless mutually agreed otherwise by the Parties.
- (2) In the event any dispute arises between SELD and the Private Partner with regard to any advice, instruction, decision, direction and / or award of the Independent Auditor, then such dispute shall be resolved in accordance with the procedure of Dispute Resolution commonly provided in the PPP Agreement.
- (3) The procedure of Dispute Resolution generally requires the parties to use their best efforts to resolve any dispute, difference or controversy promptly, equitably and in good faith. If the Parties fail to resolve the dispute amicably, the same will generally be referred for arbitration, which is a preferred mode of resolving any dispute in the commercial agreements these days, instead of going to courts.

#### **8.6 – INDEPENDENT AUDITOR REMUNERATION**

---

- (1) The Private Partner shall be solely responsible for the payment of the fees and expenses payable to the Independent Auditor pursuant to the Independent Auditor Agreement and the PPP Agreement notwithstanding that the Independent Auditor shall be jointly appointed by SELD and the private partner.

- (2) Although the fees, costs, charges and expenses payable to the Independent Auditor shall be borne by the private partner, the Independent Auditor shall act independently and in an unbiased manner and shall perform their services for the benefit and in the best interests of the Project and not that of any other Person or entity.
- (3) The Independent Auditor shall not act on any instructions issued by any one party in respect of the Project unless the same are contemplated by the Agreement to be issued by such party; or jointly issued by the parties.
- (4) The Private Partner shall make the payments to the Independent Auditor in a diligent and timely manner and in accordance with the terms of engagement of the Independent Auditor.

## **8.7 – GENERAL REQUIREMENTS**

---

- (1) The Independent Auditor shall be an independent monitor, and shall not be considered employee, agent or representative of the Parties or any other stakeholder in the Project or any affiliate of any of them, for any purpose.
- (2) The Independent Auditor shall be required to act independently, reasonably, fairly and expeditiously in fulfilling their duties and obligations under the Independent Auditor Agreement and the Concession Agreement.

## **8.8 – INDICATIVE TERMS OF REFERENCE**

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- (1) The Independent Auditor shall perform all such roles, duties and functions as are contemplated to be performed by the Independent Auditor in the Independent Auditor Agreement and the Concession Agreement. During the term of the project, the Independent Auditor will be responsible for, including but not limited to, the following:
  - a. calculating payable periodic payments – quarterly / semi-annually / annually<sup>9</sup>;
  - b. any adjustment(s) in calculating the payable periodic payments in accordance with the adjustment formula provided in the Concession Agreement;
  - c. calculating other payments as stipulated in the concession agreement;
  - d. periodic monitoring (quarterly / semi-annually / annually) of the financial progress against the detailed budgets submitted by the Private Partner at the time of bidding;
  - e. carrying out audits (on an annual basis) to establish compliance or otherwise of the services in accordance with the Key Performance Indicators (KPIs), set out in the Agreement;
  - f. assisting the Parties in determining, under the Concession Agreement:
    - existence and consequences of a Force Majeure Event;
    - event of Default;

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<sup>9</sup> As provided in the financial structure set out in the Concession Agreement of the specific PPP project;

- the remedy of defaults and termination procedures;
  - the existence, nature and consequences of a Change in Law;
  - the existence and consequences of any of the other relief items set out in the Concession Agreement, and/or
  - any other matter of a financial nature referred by both Parties;
- g. reviewing the proposed changes in budget / re-alignment of budget during the term of the project.
- h. carrying out any other duties and functions specified in the Independent Auditor Agreement and the Concession Agreement, other than those listed above.



**SECTION 9**  
**INDEPENDENT EXPERT**



It shall be noted that the Concession Agreement (PPP Agreement) is a commercial agreement between the parties, and therefore, there is no pre-set template or mechanism for any part of it. The Agreement is usually negotiated between the parties to reach a consensus. Nevertheless, there are certain mechanisms for implementation and execution of an education project under PPP framework including procedures for hiring of Independent Auditor and Independent Experts, which have evolved with time, setting out the basic parameters of each section.

The procurement and execution of service sector PPP projects including education, health and special education sectors including discussions, meetings and negotiations thereon with various stakeholders have led to the development of the basis parameters that are part of this Guide & Toolkit. Therefore, each and every section of it may be changed and improved in the coming times for a better implementation of the PPP projects in future.

## 9.1 – SELECTION

---

- (1) The appointment of an Independent Expert is generally a condition precedent to the effectiveness of the Concession Agreement. Both the Parties shall jointly appoint an education expert to fulfil the duties and obligations of the Independent Expert during the term of the Concession Agreement.
- (2) The draft Concession Agreement generally provides a time-frame, in which certain tasks need to be completed. The Concession Agreement generally sets out as follows:
  - i) Within X number of days<sup>10</sup> from the signing date of the Concession Agreement, the Private Partner shall provide the PPP Node, School Education & Literacy Department, with a list of three (03) reputable firms of education experts for appointment of the Independent Expert (the **IE List**).
  - ii) Within X number of days<sup>11</sup> of receipt of the IE List by the PPP Node, SELD, the PPP Node shall request a TFEC meeting and place the IE List before the TFEC members. The TFEC constituted for the project shall select one of the firms from the IE List as an Independent Expert for the project. Subsequent to the signing of the TFEC minutes, the School Education & Literacy Department and the Private Partner shall appoint such firm as the Independent Expert by way of executing the Independent Expert Agreement.
  - iii) In the event the firms of education experts identified by the Private Partner in the IE List is not acceptable to the TFEC, the Private Partner and the SELD shall appoint such firm as the Independent Expert as mutually agreed by the SELD and the Private Partner.
- (3) The Independent Expert Agreement shall be signed by the Secretary, SELD on behalf of the Government of Sindh, and the representative of the Successful Bidder whose power of attorney was submitted by the bidder initially with the bid.
- (4) The Independent Expert shall provide the services set out in the Concession Agreement, Independent Expert Agreement and as requested by the Parties with mutual consent from time to time. The Independent Expert Agreement shall generally be in accordance with the indicative Terms of Reference (ToRs) of the Independent Expert provided in the Concession Agreement.

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<sup>10</sup> The number of days will be provided in the draft Concession Agreement of the specific PPP project;

<sup>11</sup> The number of days will be provided in the draft Concession Agreement of the specific PPP project;

## **9.2 – TERM OF APPOINTMENT**

---

- (1) The appointment of the Independent Expert is generally for an initial term of two (02) years or three (03) years<sup>12</sup> from the date of the effectiveness of the Independent Expert Agreement. However, the initial term of appointment of Independent Expert shall be extended prior to expiry of the same with the mutual consent of the Parties so as to ensure that at all times during the term of the project, an Independent Expert is retained/appointed for the purposes set out in the Independent Expert Agreement and the Concession Agreement.
- (2) The PPP projects are long-term projects having a term of ten (10) years or more; however, the Independent Expert is appointed for a shorter time period and the contract is renewed based on their impartiality and fairness during the term of the Independent Expert Agreement. If at any time, either of the Party is of the opinion that the Independent Expert is not performing its duties professionally and may be colluding and/or is under the influence of the other party, that party shall have the right to disagree on the renewal of the same Independent Expert, as the renewal shall be done by the parties mutually.
- (4) The above paragraph does not strike out the possibility of the termination of the Independent Expert Agreement before its expiry. However, as generally, the decision for termination before expiry has to be taken mutually, the shorter term agreements just keep it easy. In addition, the Independent Auditor may be more diligent and proficient in its work, knowing that the renewal of the Agreement is directly linked to its performance.

## **9.3 – TERMINATION AND REPLACEMENT OF INDEPENDENT EXPERT**

---

- (1) The appointment of the Independent Expert may be terminated:
  - i) by either Party if the Independent Expert is adjudged insolvent and / or bankrupt and / or winding up proceedings are filed against the Independent Expert and/or the Independent Expert files winding up proceedings in a court of law and / or any action for malpractice and / or misadministration is filed against the Independent Expert in a court of law;
  - ii) by the Parties if the Independent Expert fails to discharge its duties in accordance with the terms of engagement set out in the Independent Expert Agreement and the Concession Agreement;
  - iii) by the Parties with the mutual consent of the Parties.
- (2) Upon the occurrence of any of the events listed at 8.3(1) above, the Parties shall have the right to terminate the Independent Expert Agreement in accordance with the terms of the same. In such a case, the Parties shall appoint a new Independent Expert. The Parties shall replace the appointed Independent Auditor with another firm of education experts with mutual consent of the Parties as the new Independent Expert.
- (3) It shall be noted that the termination and/or replacement of the Independent Expert shall not have effect till such time as the replacement Independent Expert has been appointed.
- (4) The term of appointment of the replacement Independent Expert shall be the unexpired period of the existing Independent Auditor Agreement or such other term as may be mutually agreed between the Parties.

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<sup>12</sup> As provided in the draft Concession Agreement of the specific PPP project;

## **9.4 – INDEPENDENT AUDITOR AUTHORIZED SIGNATORIES**

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- (1) The Concession Agreement generally requires the Independent Expert to designate and notify to the PPP Node, SELD and the Private Partner, of the authorized representatives of the Independent Expert that shall be authorized by the Independent Expert to sign for and on behalf of the Independent Expert.
- (2) Any communication or document required to be signed by the Independent Expert shall be valid and effective only if signed by such authorized signatories on behalf of the Independent Expert; provided, that the Independent Expert may, by notice in writing to the Parties, change / substitute any of the authorized signatories.

## **9.5 – DECISION OF INDEPENDENT EXPERT**

---

- (4) Any advice, instruction, decision, direction and / or award of the Independent Expert shall generally be binding upon the Parties unless mutually agreed otherwise by the Parties.
- (5) In the event any dispute arises between the SELD and the Private Partner with regard to any advice, instruction, decision, direction and / or award of the Independent Expert, then such dispute shall be resolved in accordance with the procedure of Dispute Resolution commonly provided in the Concession Agreement.
- (6) The procedure of Dispute Resolution generally requires the parties to use their best efforts to resolve any dispute, difference or controversy promptly, equitably and in good faith. If the Parties fail to resolve the dispute amicably, the same will generally be referred for arbitration, which is a preferred mode of resolving any dispute in the commercial agreements these days, instead of going to courts.

## **9.6 – INDEPENDENT AUDITOR REMUNERATION**

---

- (1) The Private Partner shall be solely responsible for the payment of the fees and expenses payable to the Independent Expert pursuant to the Independent Expert Agreement and the Concession Agreement notwithstanding that the Independent Expert shall be jointly appointed by the SELD and the Private Partner.
- (2) Although the fees, costs, charges and expenses payable to the Independent Expert shall be borne by the Private Partner, the Independent Expert shall act independently and in an unbiased manner and shall perform their services for the benefit and in the best interests of the Project and not that of any other Person or entity.
- (3) The Independent Expert shall not act on any instructions issued by any one party in respect of the Project unless the same are contemplated by the Agreement to be issued by such party; or jointly issued by the parties.
- (4) The Private Partner shall make the payments to the Independent Expert in a diligent and timely manner and in accordance with the terms of engagement of the Independent Expert.

## 9.7 – GENERAL REQUIREMENTS

---

- (1) The Independent Expert shall be an independent monitor, and shall not be considered an employee, agent or representative of the Parties or any other stakeholder in the Project or any affiliate of any of them, for any purpose.
- (2) The Independent Expert shall be required to act independently, reasonably, fairly and expeditiously in fulfilling their duties and obligations under the Independent Expert Agreement and the Concession Agreement.

## 9.8 – INDICATIVE TERMS OF REFERENCE

---

- (1) The Independent Expert shall perform all such roles, duties and functions as are contemplated to be performed by the Independent Expert in the Independent Auditor Agreement and the Concession Agreement. During the term of the project, the Independent Auditor will be responsible for, including but not limited to, the following:
  - (a) Reviewing, approving and certifying all activities associated with the fulfilment of Key Performance Indicators KPIs by the Private Partner;
  - (b) Reporting to the School Education & Literacy Department on technical aspects under the Agreement;
  - (c) Assist the Private Partner in designing of the reporting and other Monitoring Evaluation and Reporting (MER) tools. (This is expected to be a one-time activity, with revisions on need basis);
  - (d) Preparing guidelines with the operator for employment criteria for staff at the School. (This is expected to be a one-time activity);
  - (e) Assisting the Parties in determining, under the Concession Agreement:
    - existence and consequences of a Force Majeure Event;
    - Event of Default;
    - the remedy of defaults and termination procedures;
    - the existence, nature and consequences of a Change in Law;
    - the existence and consequences of any of the other relief items set out in the Concession Agreement, and/or
    - any other matter of a technical nature referred by both Parties;
  - (f) carrying out any other duties and functions specified in the Independent Auditor Agreement and the Concession Agreement, other than those listed above.

**SECTION 10**  
**KEY PERFORMANCE**  
**INDICATORS**



As already explained in previous sections, there is no pre-set template for the agreement that will be finalized between the parties, including the Key Performance Indicators (KPIs). Nevertheless, there are certain KPIs that are developed by the School Education & Literacy Department for schools being handed over under EMOs Reform Project, are reproduced herein below. Please note that the KPIs may be changed and improved in the coming times for better monitoring and evaluation of the PPP projects.

## 10.1 – MANAGEMENT & ORGANIZATION: PLANNING, IMPLEMENTATION AND EVALUATION – 40%

1 Key Progress Indicator School Management Plan – 20%			
<b>Description</b>	Implementation of an all-inclusive management model comprised of planning, designing, budgeting, implementation framework, managing resources, evaluation, reporting and feedback to meet KPIs, improve student achievement and increase school retention and graduation rates.		
<b>Measurement/Criterion:</b>	<b>Action Plan</b>	<b>Frequency</b>	<b>Bifurcation of 20%</b>
	<ul style="list-style-type: none"> <li>Annual Management Plan.</li> </ul>	For the first year of the Concession Period, within 90 days of the effective date and for subsequent years, within 30 days of the start of academic year.	<b>10%</b>
	<ul style="list-style-type: none"> <li>Implementation Framework Timelines. *</li> </ul>	Within 15 days after submission of Annual Management Plan.	<b>05%</b>
	<ul style="list-style-type: none"> <li>Development of an EMIS and Functioning of the EMIS**</li> </ul>	Development within the first academic term, thereafter, reporting on functioning on annual basis	<b>05%</b>
<b>Notes/Guidelines:</b>	<p><b>* Implementation Framework:</b> A framework for day-to-day School Operations and Management Procedures, SOPs, Example: School Assembly, School Timetable, Curriculum Management, Lesson Planning, Teaching Methodology Progress Monitoring, Examination System, Skills Development, Co-Curricular Activities etc.</p>	<p><b>** EMIS:</b> Education and School Management information system including but not limited to Maintenance of School Records. Example: Attendance, Admissions, Transfers, Hiring, Promotions, School Reports; and Inventory: Blackboard, Bulletin Board, Desk, Chairs, Cupboards, Books and Equipment such as Electrical Equipment (Audio Visual Aids, Computer Hardware/Software etc.</p>	

2 Key Progress Indicator		Improved Teachers' Availability and Attendance – 10%		
<b>Description</b>	Work with the school staff, administrators to improve and ensure availability and attendance of all teachers during the entire academic year.			
<b>Measurement/Criterion:</b>	<b>Action Plan</b>	<b>Frequency</b>	<b>Percentage</b>	
	<ul style="list-style-type: none"> <li>Improvement in staff attendance and Functional Attendance Management.*</li> </ul>	Baseline at the start of the academic year or signing of the Concession (within 60 days of the effective date) thereafter, reporting on bi-annual basis	<b>10%</b>	
<b>Notes/Guidelines:</b>	<p><b>* Implementation Framework:</b> Benchmarked with baseline, demonstrated improvement in staff attendance and availability, till optimum level is achieved.</p>	<p><b>* Attendance Management.</b> Introduction of an Attendance System that ensures a systematic method of data collection, of both teachers and administrative staff to maintain a daily/monthly attendance record of the school. A motivational program for teachers may also be developed in consultation with the HM and Teachers for non-monetary mechanisms to appreciate improved attendance and availability of all teachers.</p>		

3 Key Progress Indicator		Improved Students' Enrolment and Retention– 10%		
<b>Description</b>	Adopt a variety of techniques to increase and retain student enrolments, including conducting local community outreach activities to solicit parents/community support for student enrolments and retention.			
<b>Measurement/Criterion:</b>	<b>Action Plan</b>	<b>Frequency</b>	<b>Bifurcation of 10%</b>	
	<ul style="list-style-type: none"> <li>Students Enrolment* and Retention** Plan.</li> </ul>	Baseline at the start of the academic year or signing of the Concession (within 60 days of the effective date).	<b>02%</b>	
	<ul style="list-style-type: none"> <li>Improvement in Students Enrolments, and Retention Rates, benchmarked with baseline</li> </ul>	At the end of the first academic term thereafter, reporting on annual basis.	<b>08%</b>	
<b>Notes/Guidelines:</b>	<p><b>*Students Enrolment Plan: (Grade/Gender)</b> Annual enrolment targets based on baseline student classroom ratio plus 5% for assessment year 1; baseline student classroom ratio plus 10% for assessment year 2, and so on till optimum enrolment of 30 students / classroom is attained.</p>	<p><b>** Students Retention Plan:</b> Annual retention targets based on baseline report with gradual decrease in student drop-out ratio if any. For avoidance of doubt, a student who is absent for a continuous period of ninety (90) days without any prior information or reasonable cause will be considered as dropped-out from the relevant school.</p>		

**10.2 – LEARNING AND TEACHING: CURRICULUM AND ASSESSMENT/TEACHING PEDAGOGY – 35%**

<b>4 Key Progress Indicator Lesson Planning and Student’s Assessment System – 20%</b>			
<b>Description</b>	Implementation of GOS approved curriculum and syllabi; Use of students’ data (formative and summative assessments) to inform and differentiate instruction in order to meet the academic needs of all students; Improved student learning and achievement through systemic pedagogical approach and systematic curricular/co-curricular program.		
<b>Measurement/Criterion:</b>	<b>Action Plan</b>	<b>Frequency</b>	<b>Bifurcation of 20%</b>
	<ul style="list-style-type: none"> <li>Lesson Planning System: * (Curriculum and Syllabus)</li> </ul>	Submission along with Annual Management Plan.	<b>5%</b>
	<ul style="list-style-type: none"> <li>Improved student learning and achievement**</li> </ul>	Bi-annual reporting on Formative Assessment*** and Summative Assessment (In-house)	<b>10%</b>
	<ul style="list-style-type: none"> <li>Improved student learning and achievement</li> </ul>	Sample based annual assessment of student learning and achievement, conducted by Independent Expert.	<b>5%</b>

**10.3 – SCHOOL ETHOS AND COMMUNITY ENGAGEMENT – 25%**

<b>5 Key Progress Indicator Training and Capacity Building of Staff - 15%</b>			
<b>Description</b>	Professional capacity building of staff to enhance teaching pedagogical skills using variety of tools and alternate learning mechanisms to modernize learning process.		
<b>Measurement/Criterion:</b>	<b>Action Plan</b>	<b>Frequency</b>	<b>Bifurcation of 15%</b>
	<ul style="list-style-type: none"> <li>Training Need Assessment (TNA): *</li> </ul>	Baseline at the start of the year or signing of the Concession (within 60 days of the effective date).	<b>05%</b>
	<ul style="list-style-type: none"> <li>Pedagogical Skills Trainings:**</li> </ul>	Within the first year of the Concession. Thereafter, Bi-annual training	<b>10%</b>

5 Key Progress Indicator		Training and Capacity Building of Staff - 15%	
Notes/Guidelines:	<p><b>* Training Need Assessment:</b> A structured way to gather data for determining training needs to be developed to help teachers, school and the EMOs to accomplish their goals and objectives. Assessment may include, but not limited to current knowledge, skills, and abilities, to identify any gaps or other areas of teaching needs.</p>	<p><b>** Pedagogical/IT Skills Training:</b> Pedagogical (teaching) skills training to impart specialized knowledge/content of subject area(s). Training should enable teachers to demonstrate a wide range of skills and abilities that lead to creating a learning environment where students feel comfortable, and encouraged to succeed academically.</p>	
	Grade level; is fully implemented in classrooms; and supports opportunities for all students to master various skills and concepts.	<p><b>*** Assessment System: (In-House/Independent)</b> Implementation of a robust Assessment System that is based on good evaluation practices.</p>	

6 Key Progress Indicator		Improved Community Engagement – 15%		
Description	Support School Management Committee (SMC) meetings to engage parents and community stakeholders to design, develop and implement a comprehensive school improvement plan; and invite inputs from local community on educational and programmatic needs of students;			
Measurement/Criterion:	<b>Action Plan</b>	<b>Frequency</b>	<b>Bifurcation of 15%</b>	
	<ul style="list-style-type: none"> <li>Meetings and engagement with School Management Committees:*</li> </ul>	Within 30 days of the effective date of concession, thereafter, on quarterly basis.	<b>05%</b>	
	<ul style="list-style-type: none"> <li>Improved Community Outreach: **</li> </ul>	Submission of a plan along with the Annual Management Plan, thereafter reporting on bi-annual basis.	<b>05%</b>	
	<ul style="list-style-type: none"> <li>Parent Teacher Meetings (PTM): ***</li> </ul>	Bi-annual meetings, especially at the end of the academic term	<b>05%</b>	
Notes/Guidelines:	<p><b>*School Management Committees:</b> At least one meeting of the General Body of SMC should be conducted in an academic year; and at least one meeting of the Executive Body of SMC should be conducted in each quarter. The school is to engage with SMC to build a supportive environment, keeping in view the cultural contexts whereby within the community everyone is celebrated, respected, and heard.</p>	<p><b>* Community Outreach Program:</b> School develops a program to engage parents, and larger community for increasing and sustaining enrolments, improved management of school and the availability of specialized programs and services at the school to meet the needs of all students, particularly girls.</p>		
	<p><b>*** Parent Teacher Meetings (PTM):</b> Bi-annual meeting of teachers with parents to review the progress of students' academic and behavioural progress.</p>			

**7 Key Progress Indicator Improved Health and Hygiene practices – 10%**

<b>Description</b>	Design and implement school based hygiene and nutrition education and awareness raising activities. Work with parents and SMCs to run social and behaviour change campaigns in school.		
<b>Measurement/Criterion:</b>	<b>Action Plan</b>	<b>Frequency</b>	<b>Bifurcation of 10%</b>
	<ul style="list-style-type: none"> <li>Health and Hygiene practices plan: *</li> </ul>	Annual submission of plan within 30 days after submission of Annual Management Plan.	<b>03%</b>
	<ul style="list-style-type: none"> <li>Demonstrated healthy practices of students, supported with health and hygiene activities and facilities: **</li> </ul>	Reporting at the end of the first academic term, thereafter, reporting on bi-annual basis on progress achieved, and annual reporting on screening	<b>07%</b>
<b>Notes/Guidelines:</b>	<p><b>* Health and Hygiene Practices:</b> Health and Hygiene (H&amp;H) support activities should be part of school management plan. Students and schools staff should be implementing improved H&amp;H practices. Periodic screening of students will be conducted annually to assess student health and to design H&amp;H plan for the next year.</p>		<p><b>** Health and Hygiene Practices / Activities / Facilities:</b> Implementation of H&amp;H practices in school, with proper cleanliness in classrooms, corridors, play areas and wherever movement of students takes place within the premises. Organizing co-curricular activities to inculcate good behaviour, hygiene, manners, discipline and personality.</p>



**SECTION 11**  
**ADJUSTMENT FORMULA**  
**(FOR PERIODIC PAYMENTS)**



- (1) The following formula / working shall be used to make adjustments from the periodic payments based on the level / degree of fulfilment of the KPIs by the Private Partner (the Concessionaire).
- (2) The following adjustments shall be calculated by the Independent Auditor based on the evaluation of the KPIs done by the Independent Expert and the periodic invoice generated by the Private Partner from time to time and in accordance with this Agreement.
- (3) For the sake of clarity, it may be noted that the formula would be utilized in calculating adjustments / deductions, if any, from the Management Fee; and all other cost heads as provided in the Financial Bid form at the bidding stage would be reimbursed on 'as per actual basis' and as claimed in the periodic invoices generated by the Private Partner. However, amount claimed in the periodic invoices cannot exceed the financial projections as stated in the payment schedule (received as part of the Financial Bid; and annexed with the Concession Agreement as its integral part) unless the same are permitted under the Concession Agreement or recommended by the Independent Auditor.
- (4) For the clarify of formula, let us assume that the payments to be made to the Private Partner are on quarterly basis.

$$DP = (MF * PP) + (RA)$$

DP The Due Payment for the quarter that is to be made to the Private Partner.

MF Management Fee for that specific quarter.

PP Performance Percentage given by IE after evaluation of KPIs in the quarter. Performance Percentage shall be calculated on the basis of indicators applicable for a particular quarter. i.e.  
 $PP = \text{Marks Obtained} / \text{Total Marks (of applicable indicators)} \times 100$

RA Total Reimbursable Amount in the quarter, as verified by IA, based on invoices.

- (5) Under the model developed for EMOs, the management fee of the first 2 (two) quarters is not subjected to any adjustments on the basis of performance, and the same shall be paid in full. This is reasonable, and may be followed in subsequent PPP models, as the Private Partner will need some initial time to understand the things on ground and gain pace to achieve the agreed output levels.
- (6) Two sample workings in respect of the above formula, showing how the formula shall be applied to the level of fulfilment of KPIs, are given below:

### EXAMPLE-1

The Operator submitted invoices with reimbursable claims of PKR 5,000,000 (RA) and Management Fee (MF) of PKR 800,000 for the concerned quarter. The Performance Percentage calculated by the Independent Expert is 80% for that quarter. The total Due Payment (DP) shall be calculated using the following formula:

RA (amount as verified by Independent Auditor) =	=	5,000,000 (after any deductions by IA, if any)
Management Fee Payable (MF * PP)	=	800,000 * 80% = 640,000 (PP – Performance percentage to be calculated on the basis of evaluation of KPIs by IE, as shown in the example given in the table)
Total Due Payment (DP)	=	640,000 + 5,000,000 = 5,640,000 (Five million, six hundred forty thousand only).

## EXAMPLE-2

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The Operator submitted invoices with reimbursable claims of PKR 3,000,000 (RA) and Management Fee (MF) of PKR 500,000 for the concerned quarter. The Performance Percentage calculated by the Independent Expert is 90% for that quarter. The total Due Payment (DP) shall be calculated using the following formula:

RA (amount as verified by Independent Auditor)=	2,500,000 (The IA, after verifying the invoices for that quarter, found irregularities and deducted 500,000 from the amount quoted by the Private Partner i.e. 3,000,000; thus making it 2,500,000)
Management Fee Payable (MF * PP)	= 500,000 * 90% = 450,000 (PP – Performance percentage to be calculated on the basis of evaluation of KPIs by IE, as shown in the example given in the table)
Total Due Payment (DP)	= 450,000 + 2,500,000 = 2,950,000 (Five million, six hundred forty thousand only)

**SECTION 12**  
**PRIVATE PARTNER'S**  
**(CONCESSIONAIRE)**  
**SCOPE OF WORK**



As already explained in previous sections, there is no pre-set template for the agreement that will be finalized between the parties, including the Scope of Work of the Private Partner (the Concessionaire). Nevertheless, the Scope of Work that is being followed by the School Education & Literacy Department for handing over the management of schools under PPP framework, is reproduced herein below. Please note that the Scope of Work may be changed and improved in the coming times for a better implementation of the PPP projects.

- (1) Apply an all-inclusive management model comprised of planning, designing, budgeting, implementation, managing resources, evaluation, reporting and feedback to implement fully a comprehensive approach in order to meet key performance indicators, substantially improve student achievement outcomes and increase school retention and graduation rates;
- (2) Work with the school staff, administrators and Government to ensure availability and attendance of teachers;
- (3) Increase opportunities for staff capacity building and professional growth to acquire/refine the skills necessary to meet the needs of the students in the school;
- (4) Provide staff ongoing, high-quality, job-embedded professional development that is aligned with the school's instructional program and designed with Employment Criteria to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;
- (5) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instructional programs in order to meet the academic needs of all students;
- (6) Implement Government approved curriculum and syllabus and help faculty refine their pedagogical and classroom management skills in line with student learning outcomes, as approved by the Government;
- (7) Improve student learning and achievement through a systemic pedagogical approach and a systematic curricular/co-curricular program;
- (8) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are at-risk of academic failure;
- (9) Implement high quality assessments that measure knowledge and application of concepts through the use of a variety of item types and formats;
- (10) Act as the custodian of structure, infrastructure, fixtures, equipment and facilities at school, ensure security of the Facility and conduct regular repair and maintenance while also utilizing any defect liabilities / warranties associated with the aforementioned;
- (11) Be responsible for ensuring safe, clean and hygienic environment in the Facility while also employing safeguards to prevent damage to the school structure/infrastructure.
- (12) Adopt a variety of techniques to increase and retain student enrolments, including conducting local community outreach to solicit parents/community support for student enrolments and retention;
- (13) Engage parents and community stakeholders to design, develop and implement a comprehensive school improvement plan through Community Engagement Activities;

- (14) Be responsible to arrange School Management Committee (SMC) meetings on regular basis (at least one in each quarter) basis and report back to all stakeholders on progress and matters for concern;
- (15) Invite inputs from local community and address comments/concerns concerning the educational and programmatic needs of students;
- (16) Work and coordinate with Government and district education machinery to monitor, ensure quality control and assessment systems;
- (17) Conduct outreach to private sector to provide in-kind support to school and act as custodian of resources provided through private funding/contributions, grant funds or other philanthropic resource in/for the school;
- (18) Be accountable for results through outlined accountability measures, performance monitoring expectations, and key performance indicators, as decided in the contract;
- (19) Managing the day-to-day operations and needs of the school including directly supporting the Principal/Headmaster(s) and other staff on instructional and operational matters;
- (20) Ensure that the quality compliance parameters are invariably adhered to ensure provision of good education and successful program delivery;
- (21) Establishing an embedded presence in the school and maintaining consistent and intensive onsite support;
- (22) Discussing progress and barriers with the Principal/Headmaster(s) and key stakeholders on a regular basis
- (23) Be responsible for all proper accounting, timely disbursement and audit of the expenditures of the allocated amount through the approved budget and contract;
- (24) Stream line school administration processes and promote accountability and transparency at all systems and levels;
- (25) Ensure fulfilment of and compliance with KPIs;
- (26) All other responsibilities as outlined in the contract.

# PROCESS CHECKLIST



This checklist includes the steps required in the procurement and execution of a project under Public Private Partnership mode, from identifying a project to signing of the Concession Agreement, handing over of management of the school and signing of the ancillary agreements for a smooth transfer of funds. The checklist aims to provide a general reminder list to the stakeholders involved in the process.

S. #s	Step by Step Process	Status	Check
1.	Project Identification - Master Plan / Planning Documents of SELD - Unsolicited Proposal	Compulsory	
2.	Project Preparation. • Feasibility Study; • Environmental assessment (if required); • Appropriate PPP modality; • Needed Govt. support (gap funding or otherwise); • Preparation of Bidding Documents, including a Draft Concession Agreement.	Compulsory	
3.	Hiring of Transaction Advisors / Consultants for Project Preparation.	Optional	
4.	If step No. 3 is followed, then the Project will be presented in the PPP Policy Board for approval of hiring Transaction Advisors and the funding thereof from the PDF Account.	Compulsory - in case of step 3 / Optional	
5.	Constitution of the Consultant Selection Committee (CSC), subsequent to approval of the PPP Policy Board.	Compulsory - in case of step 4 / Optional	
6.	Preparation of the Expression of Interest (EoI) and Bidding Documents by the SELD. • Terms of Reference. • Technical and Financial Criteria; • Method of Selection (QBS, QCBS etc.); • Type of Contract		
7.	Approval of the Expression of Interest (EoI) and Bidding Documents including Draft Consultancy Agreement from the CSC.	Compulsory - in case of step 4 / Optional	
8.	Advertisement and the procurement process for hiring consulting services in accordance with the procurement laws of Sindh.	Compulsory - in case of step 4 / Optional	
9.	Signing of Consultancy Agreement with the successful bidder.	Compulsory - in case of step 4 / Optional	
10.	Approval for marketing the Project for Private Partner solicitation from the PPP Policy Board and any funding requirements from the VGF Account.	Compulsory	

S. #s	Step by Step Process	Status	Check
11.	Constitution of the Technical & Financial Evaluation Committee (TFEC) for the Project.	Compulsory	
12.	Constitution of the Compliant Redressal Committee (CRC) for the Project.	Compulsory	
13.	Preparation of the Notice Inviting Tender (NIT) and Bidding Documents including Draft Concession Agreement by the SELD, specifically TFEC. <ul style="list-style-type: none"> <li>• Bidding Procedure;</li> <li>• NCB or ICB;</li> <li>• Key Dates;</li> <li>• Technical and Financial Criteria.</li> </ul>	Compulsory	
14.	Approval of the Notice Inviting Tender (NIT) and Bidding Documents including Draft Concession Agreement from the TFEC.	Compulsory	
15.	Public advertisement of NIT in newspapers and website(s) of SELD, SPPRA and PPP Unit Finance Department, in accordance with the procurement laws.	Compulsory	
16.	Pre-bid meeting(s).	Optional	
17.	Receiving of Bids up till the deadline of Bid Submission by the officer/office designated in the Bidding Documents.	Compulsory	
18.	Opening of Technical Bids by the TFEC.	Compulsory	
19.	Evaluation of Technical Bids by the TFEC and declaration of Technically qualified bidders.		
20.	Opening of Financial Bids of technically qualified bidders only.		
21.	Evaluation of Financial Bids by the TFEC.	Compulsory	
22.	Preparation and Signing of the Bid Evaluation Report by all members of the TFEC.	Compulsory	
23.	Hoisting of Bid Evaluation Report on SPPRA website for minimum three (03) days before awarding it.	Compulsory	
24.	Recommendation of the Successful Bidder to the PPP Policy Board by the TFEC; and seeking of the Board's approval in the PPP Policy Board meeting.	Compulsory	

S. #s	Step by Step Process	Status	Check
25.	Issuance of Letter of Award / Acceptance by the SELD subsequent to Board's approval.	Compulsory	
26.	Vetting of Concession Agreement from the Law Department, Government of Sindh.	Compulsory	
27.	Incorporation of the Project Company / Special Purpose Vehicle (SPV).	Optional / as provided in the RFP.	
28.	Signing of Concession Agreement.	Compulsory	
29.	Handing Over of the Facility / School to the Private Partner (the Concessionaire) through a letter from SELD.	Compulsory	
30.	Signing of all ancillary agreements including: Escrow Agreement, Independent Expert Agreement and Independent Auditor Agreement.	As provided in the signed Concession Agreement.	



# PROCESS FLOW CHART





## School Education & Literacy Department | Government of Sindh Process Flow Chart - PPP Guide & Toolkit





# ANNEXURES





**GOVERNMENT OF SINDH**  
**SCHOOL EDUCATION & LITERACY DEPARTMENT**

Note No: \_\_\_\_\_, dated \_\_\_\_\_

**NOTE FOR THE CHIEF SECRETARY, SINDH**

**SUBJECT: CONSTITUTION OF TECHNICAL AND FINANCIAL EVALUATION COMMITTEE (TFEC) FOR [NAME OF THE PROJECT] UNDER PUBLIC PRIVATE PARTNERSHIP (PPP) MODE**

1. This is with reference to the [\*\*<sup>th</sup>] PPP Policy Board meeting held on [Date] at the Chief Minister House under the chairmanship of the Honorable Chief Minister, Sindh, whereby, the approval for [Name of the Project] under the PPP mode (the **Project**) was sought by the School Education & Literacy Department. The Minutes of the meeting are attached herewith as **Annex – A**.
2. The Project is initiated for [Brief details about the Project including its term – Concession Period]
3. In lieu of the above, the Government shall appoint a Technical and Financial Evaluation Committee (TFEC) for the Project under the PPP mode for the technical and financial evaluation of the project, as required under section 82(2) of the Sindh Public Procurement (SPP) Rules, 2010 (as amended from time to time).
4. In this regard, the Technical & Financial Evaluation Committee (TFEC) may be constituted for marketing the Project for Private Partner solicitation under the PPP mode with the following composition<sup>13</sup> and the attached Terms of Reference [Draft notification is attached herewith as **Annex – B**].

S. No.	Designation	Status
1	Secretary, School Education & Literacy Deptt. (SELD), GoS.	Chairman
2	Director General, PPP Unit, Finance Department, GoS.	Member
3	Senior Director, PPP Node, SELD, GoS.	Member
4	Additional Secretary, Finance Department, GoS.	Member
5	Director Education, PPP Node, SELD, GoS.	Member / Secretary

5. The Honorable Chief Secretary may like to approve **Para 4** above.

(Full Name)  
Secretary to Govt. of Sindh

6. **Chief Secretary, Sindh.**

<sup>13</sup> Please note that the above composition is only for reference purposes, and it may be entirely different for different PPP Projects. However, it shall be noted that one third (1/3) of the total members of the TFEC has to be outside of the SELD. This footnote shall be deleted in fair copy of the Note.



**GOVERNMENT OF SINDH  
SERVICES, GENERAL ADMINISTRATION &  
COORDINATION DEPARTMENT**

Karachi, dated \_\_\_\_\_

## NOTIFICATION

No. \_\_\_\_\_ : In compliance with the Rule 82(2) of the Sindh Public Procurement Rules, 2010, the Government of Sindh is pleased to constitute a Technical & Financial Evaluation Committee (TFEC) for [Name of the Project] under Public Private Partnership (PPP) mode, with the following composition<sup>14</sup> and terms of reference (ToRs):

S. No.	Designation	Status
1	Secretary, School Education & Literacy Deptt. (SELD), GoS.	Chairman
2	Director General, PPP Unit, Finance Department, GoS.	Member
3	Senior Director, PPP Node, SELD, GoS.	Member
4	Additional Secretary, Finance Department, GoS.	Member
5	Director Education, PPP Node, SELD, GoS.	Member / Secretary

**Terms of Reference:**

- i. The Committee shall oversee selection process of private partner;
- ii. The Committee may extend the date in respect of any activity of the Project Timeline in accordance with the provisions of Sindh Public Procurement Rules, 2010 (as amended time to time);
- iii. The Committee shall review and approve the Bidding Documents such as evaluation (selection) criteria, Expression of Interest (EOI), Pre-Qualification Documents, Request for Proposal (RFP), Management Contract, Project brief, Information Memorandum and any another document, for the purpose of issuing the same to prospective bidders, by the Procuring Agency;
- iv. The Committee or its authorized representatives may, if need be, hold pre-bid conference with prospective bidders, and address query of the bidders leading to finalization of RFP and draft Management Contract;
- v. The Committee shall recommend the preferred bidder to the PPP Policy Board for signing of the Management Contract by the procuring agency under the PPP Act 2010;
- vi. The Committee shall perform any other task assigned to it by the PPP Policy Board in the context of the Project.
- vii. The Committee shall be authorized to perform any task it deems appropriate to facilitate / execution of the Management Contracts(s), specific approval of which may not be required by the PPP Policy Board.

**CHIEF SECRETARY, SINDH**

Karachi, dated \_\_\_\_\_

No. \_\_\_\_\_

Copy is forwarded for information and necessary action to:

\_\_\_\_\_

<sup>14</sup> Please note that the above composition is only for reference purposes, and it may be entirely different for different PPP Projects. However, it shall be noted that one third (1/3) of the total members of the TFEC has to be outside of the SELD. This footnote shall be deleted in fair copy of this draft notification.

## ANNEXURE-B



**GOVERNMENT OF SINDH**  
**SCHOOL EDUCATION & LITERACY DEPARTMENT**  
Karachi, dated \_\_\_\_\_

### **NOTIFICATION**

**NO.** : In pursuance of Rule 31 of the Sindh Public Procurement Rules, 2010 (amended 2013), the Government of Sindh is pleased to constitute a Complaint Redressal Committee (CRC) for addressing the complaints of bidders that may occur during the procurement proceedings of the [Name of the Project] under Public Private Partnership (PPP) mode, with the following composition and Terms of Reference:

Sr. No.	Designation	Status
1.	Secretary, School Education & Literacy Department	Chairman
2.	Independent Professional (to be nominated by the Secretary)	Member
3.	Representative of Accountant General Sindh	Member

**Terms of Reference:**

The CRC upon receiving a complaint from an aggrieved bidder may, if satisfied:

- i) Prohibit the procurement committee / technical and financial evaluation committee (TFEC) from acting or deciding in a manner, inconsistent with the Sindh Public Procurement rules and regulations;
- ii) Annul in whole or in part, any unauthorized act or decision of the procurement committee / technical and financial evaluation committee (TFEC);
- iii) Recommend to the Head of Department [Secretary] that the case be declared a mis-procurement, if material violation of Act, Rules, Regulations, Orders, Instructions or any other law relating to public procurement has been established; and
- iv) Reverse any decision of the procurement committee / technical and financial evaluation committee (TFEC) or substitute its own decision for such a decision; provided that the Complaint Redressal Committee shall not make any decision to award the contract.
- v) The Complaint Redressal Committee shall announce its decision within seven (07) days and intimate the same to the bidder and the Authority [SPPRA] within three (03) working days.

**(Full Name)**

**SECRETARY TO GOVT. OF SINDH**

Karachi, dated \_\_\_\_\_

**No.**

Copy is forwarded for information and necessary action to:

1. All members of the CRC.
2. The P.S. to Minister, Education & Literacy, Government of Sindh, Karachi.
3. The P.S. to Secretary, School Education, Government of Sindh, Karachi.
4. Office Order File.
5. Official Website ([www.sindheducation.gov.pk](http://www.sindheducation.gov.pk)).

**SECTION OFFICER (G-III)**

# GOVERNMENT OF SINDH SCHOOLS EDUCATION DEPARTMENT INVITATION FOR BIDS NATIONAL COMPETITIVE BIDDING



**INTRODUCTION:**

In pursuance of the Government of Sindh's (GoS) notification No. SO(G-1)E&J/SEMO/2015 dated March 12, 2015, the Schools Education Department (SED) of the Government of Sindh invites Bids from reputed, experienced and registered NGOs/firms/consortial or joint ventures for the management and operation of 14 selected public sector schools reconstructed with support of USAID under Sindh Basic Education Program (SBEP).

**THE PROJECT:**

The Government of Sindh aims to partner with credible Education Management Organizations (EMOs) from the private sector to manage and improve the functioning of public schools by introducing innovations, modernizing the education system, addressing management gaps, maintaining and cooperatively working along with teachers, schools' staff, school management committees, surrounding communities and local tiers of the Schools Education Department. In order to improve the standard of education in the Province of Sindh, the Government of Sindh, acting through the Schools Education Department, envisages a Public Private Partnership with EMOs in Sindh.

**PROJECT STRUCTURE:**

The Project shall be structured as a multi-year management contract, which shall include, inter alia, the responsibility of managing and operating selected public sector schools and achieving the key performance indicators set by the Government of Sindh. The ownership, however, of the public sector schools will remain with the Government of Sindh.

**BID DOCUMENT:**

From Monday, 3<sup>rd</sup> April 2017 interested organizations can download necessary documents including eligibility criteria free of cost from: [www.sindheducation.gov.pk](http://www.sindheducation.gov.pk) and [www.pprasinhd.gov.pk](http://www.pprasinhd.gov.pk). The hard copy of the Documents may also be obtained free of cost from the office of the PPP (NODE) during office hours.

**SCHEDULE**

Assignment Area	Bidding System	Bid Submission Date	Bid Opening Date
Dist. Khairpur Dist. Sukkur	Single Stage - Two Envelope Procedure Under Rule 46(2) of SPPRA Rules 2010 (Amended 2013)	12-MAY-2017 Time: 02 : 00 PM	12-MAY-2017 Time: 03 : 00 PM

**IMPORTANT NOTES:**

1. Due to Emergency / Holiday announced by the Government on the scheduled date of opening, the bids shall be opened on the next working day.
2. Schools Education Department will organize a pre-bid meeting to explain the bidding process in detail. The date of the pre-bid meeting shall be announced on [www.sindheducation.gov.pk](http://www.sindheducation.gov.pk).
3. All interested bidders are required to be registered with relevant government authorities. Detailed eligibility criteria is given in the bid documents.
4. All interested firms are advised to carry out a comprehensive on-ground survey of the project area and come up with a practical strategy and project proposal in order to minimize any complication during implementation phase.
5. Schools Education Department will not be responsible for any cost or expenses incurred by bidding firms and reserves the right to terminate the procurement process at any time subject to relevant provision of SPP Rules 2010 (Amended 2013).
6. The bids must be delivered in English language under sealed envelope by hand or through courier not later than the above mentioned bid submission date. The bids will be opened in presence of representatives of bidders at the given bid opening date and time.



**Contact for Queries:**

Director, Public Private Partnership (NODE)  
Schools Education Department, Government of Sindh,  
2<sup>nd</sup> Floor, Old KDA Building, Secretariat No.3, Karachi.  
Contact: 021-99211180 | Fax Number: 021-99211311  
Email: [ppp.node@sindheducation.gov.pk](mailto:ppp.node@sindheducation.gov.pk)



## ANNEXURE-D



**GOVERNMENT OF SINDH**  
**SCHOOL EDUCATION & LITERACY DEPARTMENT**  
Karachi, dated \_\_\_\_\_

To,

1. **Director,**  
**Sindh Public Procurement Regulatory Authority (SPPRA), Karachi.**
2. **Director,**  
**Information Department, Govt. of Sindh, Karachi.**
3. **Director,**  
**PPP Unit, Finance Department, Govt. of Sindh, Karachi.**

**Subject: Publication / Hoisting of Notice Inviting Tender (NIT) and Bidding Documents for Private Partner solicitation for [Name of the Project] under Public Private Partnership (PPP) mode.**

With reference to the subject above, the Notice Inviting Tender (NIT) and the Bidding Documents (the Request for Proposal (RFP) and Draft Concession Agreement), for Private Partner solicitation for [Name of the Project] under PPP mode, is attached herewith as **Annex – A** and **Annex – B** respectively.

2. The [Name of the Project] under PPP mode was approved in the [\*\*]th meeting of PPP Policy Board, chaired by the Chief Minister, dated [\*\*]. The Minutes of the meeting are attached herewith as **Annex – C**.
3. It is requested to the Information Department that the attached NIT may please be published in three (03) national daily newspaper, as required by the Sindh Public Procurement Rules, 2010 (as amended from time to time) in the case of National Competitive Bidding.
4. It is requested to SPPRA and PPP Unit that the attached NIT and Bidding Documents may please be hoisted on their respective websites, as required by the Sindh Public Procurement Rules, 2010 (as amended from time to time) in the case of National Competitive Bidding.
5. The soft copy of the NIT and Bidding Documents is enclosed herewith in a CD.

**Director (\*\*)**  
**PPP Node, SELD**  
**Government of Sindh**

*Copy for information to:*

1. P.S. to Secretary, School Education & Literacy Department, Govt. of Sindh, Karachi.
2. Director General, PPP Unit, Finance Department, Govt. of Sindh, Karachi.
3. Senior Director, PPP Node, School Education & Literacy Department, Govt. of Sindh, Karachi.
4. Office File.

## ANNEXURE-E

### TECHNICAL EVALUATION CRITERIA

Only Bidders whose Technical Bids obtain at least 75% (seventy-five percent) of maximum marks, and not less than 50% (fifty percent) of maximum marks in any sub-section below, shall obtain a "pass" score and be technically accepted for evaluation of their Financial Bids under Section 6.4.3:

#### (i) Experience of Management of Schools:

- |   |      |
|---|------|
| a) +10 years and minimum 5 and more schools | [10] |
| b) +5 years and minimum 5 and more schools  | [08] |
| c) 10 years and minimum of 1 to 4 schools   | [06] |
| d) 5 years and minimum of 1 to 4 schools    | [05] |

**Total points for criteria (i): (10)**

#### (ii) Proposed Methodology and Work-Plan:

- |  |      |
|--|------|
| a) Understanding of local context  | [06] |
| b) Strategy to improve governance, access and quality of Education                         | [08] |
| c) Strategy for student assessment   | [04] |
| d) Strategy for teachers' development  | [04] |
| e) Teaching management plan  | [04] |
| f) Plan for data collection and analysis   | [04] |
| g) Detailed strategy to achieve KPIs within specified timeframes.                          | [08] |
| h) Plan for community engagement   | [04] |
| i) Plan co-curricular activities   | [04] |
| j) Plan for establishing and optimal utilization of science and computer laboratories      | [03] |
| k) Plan for provision of alternative energy source for schools; e.g. solar electrification | [03] |
| l) Work plan for first five years (Gantt Chart, supported with narrative)                  | [08] |

**Total points for criteria (ii): (60)**

<b>(iii) Key professional staff qualifications and competence for the assignment:</b>	
a) Comprehensive job descriptions for staff and recruitment plan	[08]
b) <i>Core Team: (Dedicated, skilled human resource proposed for the project)</i>	
Project Director	[05]
Education Expert	[04]
Project Manager	[03]
<b>Total points for criteria (iii):</b>	<b>(20)</b>

<b>(iv) Development Plan and strategy:</b>	
a) Strategy to reduce inefficiencies and management gaps in public education	[05]
b) Exit strategy to achieve sustainability of impact achieved through proposed interventions	[05]
<b>Total points for criteria (iv):</b>	<b>(10)</b>

<b>Total points for Technical Evaluation Criteria:</b>	<b>100</b>
--	------------

The minimum technical score required to pass is: **75** Points overall and minimum **50%** in each criteria.

## ANNEXURE-F

### BID FORM

[ON THE LETTERHEAD OF THE BIDDER]

Date: \_\_\_\_\_

To: School Education & Literacy Department  
Government of Sindh  
1st Floor, Tughlaq House,  
Sindh Secretariat,  
Karachi, Pakistan.

Re: [NAME OF THE PROJECT] UNDER PPP MODE

Dear Sir / Madam,

#### 1. DEFINITIONS

Unless the context indicates otherwise, all capitalized terms and expressions used herein and in our Bids have the meaning given to them in the document entitled 'Invitation for Bids / Request for Proposal' dated [\*\*] (as amended and/or supplemented from time to time) (the **Invitation for Bids**).

#### 2. GENERAL

We, the undersigned, acknowledge, confirm and agree that:

- (a) having carefully examined, read and understood and agreed to the terms of the Concession Agreement (including the annexes), the Bidding Documents, including the Annexes;
- (b) we have satisfied ourselves that we have full and complete understanding of the nature and location of the Project and services referenced above and the general and local conditions to be encountered in the performance thereof; and
- (c) We, the undersigned, offer to carry out all services and obligations of the Operator as defined in the Concession Agreement in conformity with our Bid and the Bidding Documents.

#### 3. PRICING

We understand that you are not bound to accept the lowest Financial Bid or any Bid you may receive.

#### 4. PERFORMANCE SECURITY

If our Bid is accepted, we undertake to provide the Performance Security (as defined in the Concession Agreement) in the form, in the amount and within the times specified in the Concession Agreement.

#### 5. PROPOSAL COMPLIANT WITH SUBMISSION REQUIREMENTS

We declare and confirm that our Bid satisfies and complies with the submission requirements indicated in the Invitation for Bids.

We also undertake that no circumstances have arisen or intervened during the period between the submission of our Application and this Bid that (i) has resulted in us no longer meeting the Eligibility Criteria or (ii) would materially and adversely affect our ability to satisfactorily perform the Services as defined in the Concession Agreement if our Bid is accepted.

## **6. FIRM AND IRREVOCABLE PROPOSAL**

We agree to abide by this Bid, which consists of our Technical Bid and Financial Bid (each as defined in the Bidding Documents), for a period of ninety (90) days from the Bids Submission Deadline as set forth in the Bidding Documents, and that it is irrevocable and shall remain binding upon us and may be accepted by you at any time before the expiration of that period.

Until a formal Concession Agreement is prepared and executed between us, our Bid, together with your written acceptance thereof and your Notification of Award, shall constitute a binding contract between us.

## **7. FURTHER WARRANTIES**

We hereby represent and warrant that all information, data and materials of any nature whatsoever provided by us in the Bid is true and accurate and not misleading in any nature.

We have made a complete and careful examination of the Invitation for Bids and have received all the relevant information from the Authority, as required for the purposes of submission of the Bid. We further warrant that we have verified and understand all the information received from the Authority in connection with the Invitation for Bids.

To the extent that any provision in our Bid conflicts with the terms and conditions of the Bidding Documents, such provision is hereby withdrawn.

## **8. CONFIDENTIALITY**

In connection with the transaction contemplated by the Invitation for Bids, the Bidder has been (or will be) given access to information regarding the Project, including, but not limited to, financial data, agreements, business plans, software, reports, data, records, forms and other information, as well as information regarding the Authority or provided by the Authority (all such information being referred to as "**Confidential Information**").

The Bidder hereby agrees and warrants that to the extent it receives Confidential Information, the Bidder and its affiliates, controlling and related persons and agents (collectively, the "**Recipient**"), the Recipient shall:

- (a) keep and maintain the Confidential Information strictly confidential;
- (b) disclose such Confidential Information (if at all) only to its controlling persons, its attorneys and professional advisors, and to such employees who have a reasonable need to know such Confidential Information (subject in each case to such person's agreement to make no further disclosure), or as may be required by law;
- (c) use such Confidential Information solely for the purpose of determining whether to enter into the transaction contemplated hereby; and

- (d) promptly upon request of the Authority disclosing Confidential Information following the abandonment of the transaction contemplated by the Invitation for Bids, return such Confidential Information (and all copies thereof) to the Authority.

**9. ADDITIONAL DOCUMENTS**

In addition to the Bid Form the Bidder shall submit the information identified in **SCHEDULE 1 (ADDITIONAL DOCUMENTS)** to this Bid Form together with the Bid Form.

We acknowledge and agree that the Authority will not be responsible for any errors or omissions on our part in preparing this Bid, and we shall indemnify the Authority fully in connection therewith.

[Signature]

In the capacity of [Position]

Authorized to sign this Bid Form of [Name of Bidder]

## **SCHEDULE 1 – ADDITIONAL DOCUMENT**

### **1. DESCRIPTION OF THE BIDDER**

- (a) Each Bidder must provide the following information:
- i. A detailed description of the Bidder, including:
    - Legal name;
    - Complete head office contact information, including mailing address, telephone and fax numbers, and an e-mail address;
  - ii. Incorporation details, including corporate charter, articles of incorporation, and proof of legal authorization to operate in Pakistan. If the Bidder is an unincorporated legal entity, then the proof of that legal entity's existence must be provided.
- (b) In case of a Consortium, the members of the Consortium shall enter into a binding joint bidding agreement for the purpose of submitting the Bids. The joint Bidding agreement to be submitted along with the Bid, shall, inter alia;
- i. convey the intent to form a Project Company (with shareholding / ownership equity commitment(s) in the Project Company in accordance with this Invitation for Bids) which would enter into the Concession Agreement and subsequently perform all the obligations of the Operator in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium;
  - ii. clearly outline the proposed roles and responsibilities, if any, of each member (including each Member);
  - iii. commit the minimum equity stake to be held by each Member;
  - iv. commit that all of the Members (whose experience will be evaluated for the purposes of this Invitation for Bids) shall subscribe to a cumulative of 100% of the paid up shares capital of the Project Company and subscribe to the shares in the Project Company.
  - v. provide for the members of the Consortium to undertake that they shall collectively submit/ include a statement to the effect that all members of the Consortium shall be liable, jointly and severally, for all obligations of the Operator in relation to the Project until the expiry of the Concession Agreement; and
  - vi. except as provided under this Invitation for Bids, there shall not be any amendment to the joint bidding agreement without the prior written consent of the Authority.
- (c) In case of a single Bidder (not being a Consortium), it must provide with an undertaking that it shall be liable for all obligations of the Operator in relation to the Project until the expiry of the Concession Period.

**ANNEXURE-G**

**POWER OF ATTORNEY**

**RELATING TO [NAME OF THE PROJECT] UNDER PPP MODE**

[On stamp paper of at least Rs. 200]

On this ..... day of .....

Before me

The Notary in this office

The undersigned

Mr./Ms.: \_\_\_\_\_

In his/her capacity as: \_\_\_\_\_

Nationality: \_\_\_\_\_

Holder of Passport or CNIC No: \_\_\_\_\_

Issued from: \_\_\_\_\_

Dated: \_\_\_\_\_

Residing at: \_\_\_\_\_

Hereby appoints Mr./Ms. \_\_\_\_\_ in his/her capacity as \_\_\_\_\_, to:

- (a) Execute under hand, or under seal, and deliver to the competent authorities all the documents listed in Schedule 1 attached hereto;
- (b) Deliver and receive any document or instrument in relation to the documents listed in Schedule 1 attached hereto; and
- (c) Do all things necessary and incidental in respect of the matters set out herein including to do, execute and perform any other deed or act ought to be done executed or performed to perfect or otherwise give effect to the documents listed in Schedule 1.

And is hereby authorized to appoint others for all or part of the powers delegated by the present Power of Attorney.

**SCHEDULE - 1**

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- A. DATED: **[INSERT DATE OF EXECUTION]**
  
- B. THE GRANTOR: **[INSERT NAME OF PROSPECTIVE BIDDER/  
CONSORTIUM MEMBER]**
  
- C. THE ATTORNEY: **[INSERT NAME OF REPRESENTATIVE LEAD  
MEMBER]**
  
- D. PLACE IN WHICH DOCUMENTS ARE TO BE EXECUTED AND DELIVERED: **PUBLIC PRIVATE PARTNERSHIP (PPP) NODE,  
SCHOOL EDUCATION & LITERACY  
DEPARTMENT, GOVERNMENT OF SINDH  
KARACHI, PAKISTAN**
  
- E. DOCUMENTS: **ALL DOCUMENTS IN RESPECT OF THE  
AUTHORITY'S APPLICATION IN RELATION TO  
THE PROJECT.**

IN WITNESS WHEREOF the Grantor has executed this Power of Attorney **[under seal]** on the date set out above.

**[SEAL]** )  
 )  
 )  
 )

**[NAME / TITLE OF GRANTOR REPRESENTATIVE]**

## ANNEXURE-H

### CONFLICT OF INTEREST STATEMENT

#### RELATING TO [NAME OF THE PROJECT] UNDER PPP MODE

[Insert the date]

Re: [NAME OF THE PROJECT] UNDER PPP MODE

Dear Sir/Madam,

We, the undersigned, are not aware of any conflict or potential conflict arising from prior or existing contract or relationship which could materially affect our capability to comply with our obligations under the Concession Agreement for the Project.

In particular, other than as disclosed below, we have no prior or existing contracts, negotiations or relationships with the Authority, its affiliates, representatives, advisors or consultants.

We disclose that the following transactions may be in conflict with the Project:

Name of Project	Date Started	Description of Conflict

Yours Sincerely,

Authorized Signature:  
Name and Title Signatory:  
Name of Firm:  
Address:

## ANNEXURE-I

### INTEGRITY PACT, DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC. PAYABLE BY THE BIDDERS

**CONTRACT TITLE: [NAME OF THE PROJECT] UNDER PPP MODE**

[Bidder] hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Sindh (the GoS) or any administrative subdivision or agency thereof or any other entity owned or controlled by it (i.e. the GoS) through any corrupt business practice.

Without limiting the generality of the foregoing, [Bidder] represents and warrants that it has fully declared the brokerage, commission, fees etc., paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit, in whatsoever form, from the GoS, except that which has been expressly declared pursuant hereto.

[Bidder] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with the GoS and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty. [Bidder] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty.

It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the GoS under any law, contract or other instrument, be voidable at the option of the GoS.

Notwithstanding any rights and remedies exercised by the GoS in this regard, the [Bidder] agrees to indemnify the GoS for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to the GoS in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [Bidder] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit, in whatsoever form, from the GoS.

**Acknowledged, Accepted & Agreed  
For & On Behalf of:**

**SCHOOL EDUCATION & LITERACY  
DEPARTMENT, GOVERNMENT OF  
SINDH  
through its duly authorized signatory**

**Acknowledged, Accepted & Agreed  
For & On Behalf of:**

**[INSERT NAME OF BIDDER]  
through its duly authorized signatory**

\_\_\_\_\_  
(Signatures)  
Name:  
Designation:

\_\_\_\_\_  
(Signatures)  
Name:  
Designation:

## ANNEXURE-J

### FINANCIAL BID FORM

To: School Education & Literacy Department  
Government of Sindh  
1<sup>st</sup> Floor, Tughlaq House,  
Sindh Secretariat,  
Karachi, Pakistan.

Date: \_\_\_\_\_

Re: **[NAME OF THE PROJECT] UNDER PPP MODE**

Dear Sir / Madam,

Having carefully examined the Bidding Documents, including the Annexes, the receipt of which is hereby acknowledged, and having satisfied ourselves with the nature and location of the works and services referenced above and the general and local conditions to be encountered in the performance thereof, we, the undersigned, propose:

<b>Total Project Cost</b>	<b>PKR [●]/- (Pakistani Rupees [●] Only)</b>
---------------------------	--

We acknowledge that the Financial Bid that we have submitted will remain fixed and will be only indexed in accordance with the terms and conditions of the Concession Agreement.

We acknowledge and agree that the Authority will not be responsible for any errors or omissions on our part in preparing this Financial Bid and the Project Cost, and we shall indemnify the Authority fully in connection therewith.

[*Signature*]

In the capacity of  
[*Position*]

Authorized to sign this Financial Bid Form of  
[*Name of Bidder*]

## BUDGET SUMMARY

DESCRIPTION	Yr-1	Yr-2	Yr-3	Yr-4	Yr-5	Yr-6	Yr-7	Yr-8	Yr-9	Yr-10	Total
Budget for Proposed											
A Interventions ( <i>As identified in Technical Bid</i> )											
B Direct Costs											
C Overhead and Fixed Costs											
D Other Direct Cost											
E Unforeseen Costs											
F Management Cost											
G Other fixed Costs											
<b>GRAND TOTAL</b>											

## DETAILED BUDGET

<b>A</b>	<b>Budget for Proposed Interventions</b>										
A-1	<i>Teacher Training</i>										
A-2	<i>Staff Training</i>										
A-3	<i>Assessment System (formative &amp; summative)</i>										
A-4	<i>Supplementary learning material</i>										
A-5	<i>Interventions for screening Health, Hygiene &amp; Nutrition of children</i>										
A-6	<i>ICT and innovative approaches</i>										
A-7	<i>SMC Meetings</i>										
A-8	<i>Community mobilization, activation and outreach</i>										
A-9	<i>Co- curricular activities</i>										
A-10	<i>Games and sporting activities</i>										
A-11	<i>Proposed study/exchange tours</i>										
A-12	<i>Events/ festivals / festivities</i>										
A-13	<i>School inauguration activities</i>										
	<i>(Other(s) interventions proposed by EMOs in technical bid)</i>										
	<b>Sub-Total</b>										
<b>B</b>	<b>Direct Cost</b>										
B-1	<i>Salary of School Based Teaching staff; Hired by EMO</i>										
B-2	<i>Salary of School Based Non-Teaching Staff; Hired by EMO</i>										
B-3	<i>Travel and General Expenses</i>										
B-4	<i>Project Office Establishment Cost</i>										
	<i>(Other(s) interventions proposed by EMOs in technical bid)</i>										
	<b>Sub-Total</b>										

<b>C</b>	<b>Overhead and Fixed Cost</b>	
C-1	<i>Repair and Maintenance</i>	
C-2	<i>Purchase of Assets including furniture, equipment, etc.</i>	
C-3	<i>Costs of the Independent Auditor</i>	
C-4	<i>Costs of the Independent Expert</i>	
C-5	<i>Cost of Science Lab (establishment and running cost)</i>	
C-6	<i>Cost of Computer Lab (establishment and running cost)</i>	
C-7	<i>Cost of Solar Power for School (establishment and running cost)</i>	
C-8	<i>Utilities</i>	
C-9	<i>Taxes</i>	
	<i>(Other(s) interventions proposed by EMOs in technical bid)</i>	
		<b>Sub-Total</b>
<b>D</b>	<b>Other Direct Cost</b>	
D-1	<i>Baseline Survey</i>	
D-2	<i>Purchase of Science Lab Material</i>	
D-3	<i>Purchase of Computer Lab Material</i>	
D-4	<i>Monitoring and Reporting</i>	
	<i>(Other(s) interventions proposed by EMOs in technical bid)</i>	
		<b>Sub-Total</b>
<b>E</b>	<b>Unforeseen Cost</b>	
E-1	<i>Contingencies</i>	
		<b>Sub-Total</b>
		<b>TOTAL - 1 (A+B+C+D+E)</b>
<b>F</b>	<b>Management Cost</b>	
F-1	<i>Management Fee</i>	
		<b>Sub-Total</b>
		<b>TOTAL - 2</b>
<b>G</b>	<b>Other fixed Cost</b>	
.G-1	<i>Stamp Duty</i>	
		<b>Sub-Total</b>
		<b>TOTAL - 3</b>
		<b>GRAND TOTAL (1+2+3)</b>

## **SAMPLE FINANCIAL STRUCTURE**

---

### **Government Financial Structure**

The current financial structure defined by GOS for a school budget consists of Salary Budget, and Non-Salary Budget, which are defined below, with a proposed mechanism under the EMO initiative.

### **Salary of Government staff:**

- Salary of Government staff will continue to come from the office of Accountant General (AG) Sindh.
- Salary budget of Government staff is allocated in provincial budget against sanctioned positions for each school.

### **Salary of staff hired by EMO:**

- EMOs will budget for staff hired by EMOs.
- This expenditure would be reimbursed on actual basis.

### **School Specific Budget (SSB)**

- SSB is allocated at the recurrent side of the provincial budget.
- The school-wise SSB of EMO schools is also given in Annex-8 of this Invitation for Bid.

### **SMC fund**

- SMC fund will be disbursed by the SELD to respective SMCs of schools as per current practice.
- EMO will provide technical support to SMCs to develop the School Improvement Plans (SIPs), approval of SIPs by General Body of SMCs, and implementation of SIPs.
- SIPs will not be restricted to SMC funding only, and will also include resources such as the SSB, and private sector resources.

### **Repair and Maintenance**

- EMO will be responsible for repair and maintenance of the school.
- For year-1 of the contract, “25%” percent of non-salary component of the School Specific Budget will be allocated to school for repair and maintenance.
- For every consecutive year starting year-2, a projected resource requirement will be submitted by EMO at the end of each financial year (latest by April 30th of each FY).
- EMO will be responsible to request SELD to pitch this resource requirement in its budget to GOS.

### **Utilities/Bills/Fees**

- Utilities/Bills will be paid by the EMO in a timely manner and will be reimbursed on actual basis. However for budgetary purposes Rs. 700/month/room shall be allocated for each school and the bidder shall make provision of the same in the financial bid form. Classrooms and all places in the schools will be construed as ‘rooms’; such as library, computer and science labs, admin offices etc. The budget will be released through Escrow account.

### **Board Registration / Examination Fees**

- Board registration and examination fees of matric students will be paid by the EMO, which will be reimbursed on actual basis. However for budgetary purposes Rs. 2,500/- per student of classes 9 and 10 shall be allocated for each school and the bidder shall make provision of the same in the financial bid form.
- The Financial Model from Bidders shall further outline the flow of resources to schools to meet the KPIs set by the government.

## ANNEXURE-K

### BID SECURITY FORM

Re: [NAME OF THE PROJECT] UNDER PPP MODE

Date: \_\_\_\_\_

To:

The Government of Sindh, [*Insert Address*] (the "**Beneficiary**")

**Guarantee No:** \_\_\_\_\_ **(the Guarantee)**  
**Date of Issue:** \_\_\_\_\_  
**Date of Expiry:** \_\_\_\_\_  
**Guarantee Amount:** \_\_\_\_\_  
**Name of Guarantor:** \_\_\_\_\_  
**Name of Principal:** \_\_\_\_\_  
**Penal Sum of Security:** \_\_\_\_\_

We, [\*\*]<sup>15</sup>, being the Guarantee issuing bank (the **Issuing Bank**) understand that the following party / parties have responded to the 'Invitation for Bids / Request for Proposals' issued by the Government of Sindh, dated [\*\*] in relation to the [Name of the Project] under PPP mode (as amended and/or supplemented or as clarified from time to time) (the **Invitation for Bid**), by submitting their respective formal proposals / bids:

[Name of the Bidder], a [*Insert legal status*] existing under the laws of [*Insert Country*] having its [*registered office or place of business*] located at [*Insert address*], (the **Bidder**, which expression includes its successors, assignees and transferees).

Further, We, the Issuing Bank, understand that pursuant to the Invitation for Bid, the Bidder is required to provide the Government of Sindh (the **Beneficiary**), a bid security in the form of a bank guarantee equal to PKR [\*\*] and issued by a scheduled commercial bank operating in Pakistan (with a minimum credit rating of at least 'A-' as rated by JCR VIS or an equivalent rating by PACRA).

The above premised, we (the **Issuing Bank**) hereby undertake irrevocably and unconditionally on demand to pay to the Beneficiary, without any notice, reference, recourse, evidence, document in support of the demand, the validity, proprietary or legality of the said demand to the Bidder or to any other entity or without any recourse or reference to the Invitation for Bids or any other document, agreement, instrument or deed, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [\*\*]/- (Pakistani Rupees [\*\*])

(the **Guaranteed Amount**)

<sup>15</sup> Insert name of issuing Bank;

at sight and immediately, provided however not later than 1 business day from the date of receipt of the Beneficiary's first written demand (the **Demand**) at the Issuing Bank's offices located at [\*\*] or through SWIFT instructions transmitted by the Beneficiary's bank (i.e. [\*\*]), on behalf of the Beneficiary, to the Issuing Bank, such Demand referring to this Guarantee and stating the amounts demanded.

We, the Issuing Bank, shall unconditionally honour a Demand hereunder made in compliance with this Guarantee at sight and immediately on the date of receipt of your Demand, as stated earlier, and shall transfer the amount specified in the Demand to the bank account, as notified in the Demand, in immediately available and freely transferable funds in the currency of this Guarantee, free and clear of and without any set-off or deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

This Guarantee shall come into force and shall become automatically effective upon the submission of the Proposal by the Guarantor to the Beneficiary in response to the Invitation for Bid.

After having come into force, this Guarantee and our obligations hereunder will expire on the earlier of:

- (i) Bids Submission Deadline + [119 days] (the **Guarantee Original Expiry Date**) provided that, in the event the Issuing Bank has receipt of the Demand on or immediately prior to the Guarantee Original Expiry Date, the Issuing Bank shall honour that Demand; or
- (ii) when the aggregate of all payments made by us under this Guarantee equals the Guaranteed Amount.

Upon expiry, this Guarantee shall be returned to the Guarantor in terms of the conditions stipulated under the RFP. Multiple Demands may be made by the Beneficiary under this Guarantee but our aggregate liability will be restricted up to the Guaranteed Amount.

We hereby agree that any amendment, renewal, extension, modification, compromise, release or discharge by mutual agreement by the Beneficiary, the Bidder or any other entity of any document, agreement, instrument or deed shall not in any way impair or affect our liabilities hereunder and maybe undertaken without notice to us and without the necessity for any additional endorsement, consent or guarantee by us.

This Guarantee for its validity period shall not be prejudiced or affected in any manner by any change in our constitution or of the Bidder's constitution or of their successors and assignees and this Guarantee shall be legally valid, enforceable and binding on each of their successors and permitted assignees.

All references to any contract, agreement, deed or other instruments or documents are by way of reference only and shall not affect our obligations to make payment under the terms of this Guarantee.

The Beneficiary may not assign / transfer or cause or permit to be assigned or transferred any of their rights, interests and benefits of this Guarantee without our prior written consent, which consent shall not be unreasonably withheld or delayed.

If one or more of the provisions of this Guarantee are held or found to be invalid, illegal, or unenforceable for any reason whatsoever, in any respect, any such invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Guarantee.

We hereby declare and confirm that under our constitution and applicable laws and regulations, we have the necessary power and authority, and all necessary authorizations, approvals and consents thereunder to enter into, execute, deliver and perform the obligations we have undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against us under the Pakistani law and under the

laws of the jurisdiction where this Guarantee is issued. Further, that the signatory (ies) to this Guarantee is/are our duly authorized officer(s) to execute this Guarantee.

This Guarantee and all rights and obligations arising from this Guarantee shall be governed and construed in all respects in accordance with the laws of Pakistan. The courts of Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein.

The issuance of this Guarantee is permitted according to the Pakistani law and the laws of the jurisdiction where this Guarantee is issued.

**Authorized signatory:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Place:** \_\_\_\_\_

**Authorized signatory:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Place:** \_\_\_\_\_

## ANNEXURE-L



**GOVERNMENT OF SINDH  
SCHOOL EDUCATION & LITERACY DEPARTMENT  
PUBLIC PRIVATE PARTNERSHIP NODE**

Karachi, dated \_\_\_\_\_

To,

1. **Director,  
Sindh Public Procurement Regulatory Authority (SPPRA),  
Karachi.**
2. **Director,  
PPP Unit, Finance Department, Govt. of Sindh,  
Karachi.**

**Subject: Publication / Hoisting of Bid Evaluation Report of [Name of the Project] under Public Private Partnership (PPP) mode.**

This is with reference to Rule-45 of the Sindh Public Procurement Rules, 2010 (as amended from time to time), which states:

*“Procuring agencies [SELD] shall announce the results of bid evaluation in the form of a report [Bid Evaluation Report] giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority [SPPRA] and that of the procuring agency [SELD] if its website exists and intimated to all the bidders at least three (03) days prior to the award of contract.”*

3. In lieu of the above, it is requested to SPPRA and PPP Unit that the Bid Evaluation Report (attached herewith along its annexes, as **Annex – A**) may please be hoisted on their respective websites.
4. The soft copy of the Bid Evaluation Report along with its annexes is enclosed herewith in a CD.

**Director (\*\*\*)  
PPP Node, SELD  
Government of Sindh**

Copy for information to:

1. P.S. to Secretary, School Education & Literacy Department, Govt. of Sindh, Karachi.
2. Director General, PPP Unit, Finance Department, Govt. of Sindh, Karachi.
3. Senior Director, PPP Node, School Education & Literacy Department, Govt. of Sindh, Karachi.
4. Office File.

## ANNEXURE-M

### PERFORMANCE SECURITY FORM

[ON APPROPRIATE STAMP PAPER]

Re: [NAME OF THE PROJECT] UNDER PPP MODE

Date: \_\_\_\_\_

To: School Education & Literacy Department  
Government of Sindh, [Insert Address]

Guarantee No: \_\_\_\_\_ (the Guarantee)

Date of Issue: \_\_\_\_\_

Date of Expiry: \_\_\_\_\_

[Insert Name of Bank], being the Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an agreement entitled the “**Concession Agreement**” dated [\*\*] (hereinafter referred to as the “**Agreement**”) for the implementation of the [Name of the Project] in the Province of Sindh under the public private partnership (PPP) mode:

- a) **The Governor of Sindh**, acting through School Education & Literacy Department, having its offices at [\*\*] (hereinafter referred to as the “**Authority**”); and
- b) [\*\*], a company incorporated under the laws of Pakistan, having its registered office located at [\*\*] (hereinafter referred to as the “**Operator**”, which expression shall, where the context so permits, be deemed to mean and include its legal heirs, successors in interest, administrators, executors, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Operator is required to provide the Authority with a bank guarantee in an amount equal to PKR [Insert Amount in Numbers]/- (Pakistani Rupees [Insert Amount in Words]).

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the Authority, without any notice, reference or prior recourse to the Operator or to any other entity or without any recourse or reference to the Agreement, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [\*\*]/- (Pakistani Rupees [\*\*])  
(hereinafter referred to as the “**Guaranteed Amount**”)

At sight and immediately, provided however not later than within three (03) business days from the date of the Guarantor Bank’s receipt of the Authority’s first written demand (hereinafter referred to as the “**Demand**”) at the Guarantor Bank’s offices located at [Insert Address of the Guarantor Bank at which Demand will be made], such Demand stating:

- a) the total amounts demanded; and
- b) the bank account to which the amounts demanded pursuant to the demand are to be credited/transferred (hereinafter referred to as the “**bank account**”).

A Demand shall only be honoured by the Guarantor Bank if it is made by and bears the signature of an authorised officer or representative of the Authority.

The Guarantor Bank shall unconditionally honour a Demand hereunder (notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Operator or any other person) immediately (however not later than three (03) business days) of its receipt of the Authority's Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any applicable law, the Guarantor Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Authority receives the full amount due hereunder as if no such withholding had occurred.

This Guarantee shall come into force and shall become automatically effective upon its issuance.

After having come into force, this Guarantee and the Guarantor Bank's obligations hereunder shall expire on [Insert date and time] (the **Guarantee Expiry Hard Date**) irrespective of whether this Guarantee has been returned to the Guarantor Bank provided that, if the Authority issues a Demand to the Guarantor Bank on or immediately prior to the Guarantee Expiry Hard Date and the same is received by the Guarantor Bank on or prior to the Guarantee Expiry Hard Date, the Guarantor Bank shall honour such Demand.

Upon expiry, this Guarantee shall be returned to the Operator without undue delay. Multiple Demands may be made by the Authority under this Guarantee but the Guarantor Bank's aggregate liability shall be restricted up to the Guaranteed Amount.

The Guarantor Bank hereby agrees that any part of the Agreement may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between the Authority and the Operator without:

- a) in any way impairing or affecting the Guarantor Bank's liabilities hereunder;
- b) notice to the Guarantor Bank; and
- c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

The obligations of the Guarantor Bank herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement or the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Operator or any change in ownership of the Operator or any purported assignment by the Operator or any other circumstance whatsoever which might otherwise constitute a discharge or defence of a guarantor or a surety. In order to give effect to this Guarantee, the Authority shall be entitled to treat the Guarantor Bank as the principal debtor.

This Guarantee for its validity period shall not be affected in any manner by any change in the Guarantor Bank's constitution or of the Operator's constitution or of their successors and assignees and this Guarantee shall be legally valid, enforceable and binding on each of their successors and permitted assignees.

All references to any contract or other instruments are by way of reference only and shall not affect the Guarantor Bank's obligations to make payment under the terms of this Guarantee.

The Authority may assign / transfer or cause or permit to be assigned or transferred any of its rights, title, interests and benefits of this Guarantee with prior notification to the Guarantor Bank. The Guarantor Bank shall not assign or transfer any of its rights or obligations under this Guarantee.

If one or more of the provisions of this Guarantee are held or found to be invalid, illegal, or unenforceable for any reason whatsoever, in any respect, any such invalidity, illegality, or unenforceability of any provision shall not affect the validity of the remaining provisions of this Guarantee.

The Guarantor Bank hereby represents and warrants to the Authority that:

- a) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorize the execution, delivery and performance by it of this Guarantee;
- b) the Guarantor Bank has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms;
- c) neither the execution, delivery or performance by the Guarantor Bank of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any law, statute, rule or regulations or any order, writ, injunction or decree of any court or governmental instrumentality; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Guarantor Bank is a party of by which it or any of its property or assets is bound; or (iii) violate any provision of the Guarantor Bank's constituent documents; and
- d) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee.

Further, the Guarantor Bank hereby declares and confirms that the signatory(ies) to this Guarantee is/are its duly authorized officer(s) to execute this Guarantee.

This Guarantee and all rights and obligations arising from this Guarantee shall be governed and construed in all respects in accordance with the laws of Pakistan. The courts in Karachi, Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein.

**EXECUTED & ISSUED  
FOR & ON BEHALF OF THE GUARANTOR BANK**

.....  
NAME:  
DESIGNATION:  
DATED:

**WITNESS I**

.....  
NAME:  
CNIC:

**WITNESS II**

.....  
NAME:  
CNIC:

*The precise form of the Performance Security (whether a bank guarantee or a standby letter of credit) shall be agreed between the Operator and the Authority prior to signing of the Concession Agreement. The quantum, duration and renewal mechanism of the Performance Security shall follow the principles set out in Article 8.*



**GOVERNMENT OF SINDH  
SCHOOL EDUCATION & LITERACY DEPARTMENT  
PUBLIC PRIVATE PARTNERSHIP NODE**

Karachi, dated \_\_\_\_\_

To,

**The Secretary,  
Law Department,  
Government of Sindh,  
Karachi.**

**Subject: Vetting of Concession Agreement of [Name of the Project] under Public Private Partnership (PPP) mode.**

Dear Sir,

The School Education & Literacy Department, assisted by the Public Private Partnership (PPP) Unit, Finance Department, invited bids for [Name of the Project] (the “Project”) under the Public Private Partnership (PPP) mode.

The Request for Proposal (RFP) for the Project was published dated [\*\*]. In response to the RFP, [Number of bidders] bidder submitted their bid for the Project. After the technical evaluation of the bids and the subsequent financial evaluation by the Technical and Financial Evaluation Committee (TFEC) constituted for the Project, [Name of the Successful Bidder] was found to be the Successful Bidder in terms of the RFP. Consequently, the Letter of Award / Acceptance (LoA) was issued to [Name of the Successful Bidder] dated [\*\*].

In lieu of the above, the School Education & Literacy Department may sign the Concession Agreement of the Project with the [Name of the Successful Bidder]. Therefore, you are kindly requested to vet the draft Concession Agreement of the Project (attached herewith as **Annex – A**) and send us your response at the earliest.

4. The soft copy of the Concession Agreement is enclosed herewith in a CD.

**Director (\*\*)  
PPP Node, SELD  
Government of Sindh**

Copy for information to:

1. P.S. to Secretary, School Education & Literacy Department, Govt. of Sindh, Karachi.
2. Director General, PPP Unit, Finance Department, Govt. of Sindh, Karachi.
3. Senior Director, PPP Node, School Education & Literacy Department, Govt. of Sindh, Karachi.
4. Office File.



**GOVERNMENT OF SINDH  
SCHOOL EDUCATION & LITERACY DEPARTMENT  
PUBLIC PRIVATE PARTNERSHIP NODE**

Karachi, dated \_\_\_\_\_

To,

**The Secretary,  
Law Department,  
Government of Sindh,  
Karachi.**

**Subject: Vetting of [Agreement(s)] of [Name of the Project] under Public Private Partnership (PPP) mode.**

Dear Sir,

The Concession Agreement of [Name of the Project] under PPP mode has been executed between the School Education & Literacy Department, and [Name of the Successful Bidder] dated [\*\*].

2. In this regard, the School Education & Literacy Department may sign the following agreement(s) envisaged in the Concession Agreement with the [Name of the Successful Bidder / Independent Auditor / Independent Expert / Escrow Bank, as the case may be].

- i. Independent Auditor Agreement (attached as **Annex – A**);
- ii. Independent Engineer Agreement (attached as **Annex – B**);
- iii. Escrow Agreement (attached as **Annex – C**).

3. In lieu of the above, you are kindly requested to vet the attached draft Agreement(s) of the Project and send us your response at the earliest.

4. The soft copy of the Agreement(s) is enclosed herewith in a CD.

**Director (\*\*)  
PPP Node, SELD  
Government of Sindh**

Copy for information to:

1. P.S. to Secretary, School Education & Literacy Department, Govt. of Sindh, Karachi.
2. Director General, PPP Unit, Finance Department, Govt. of Sindh, Karachi.
3. Senior Director, PPP Node, School Education & Literacy Department, Govt. of Sindh, Karachi.
4. Office File.



**GOVERNMENT OF SINDH**  
**SCHOOL EDUCATION & LITERACY DEPARTMENT**  
 Karachi, dated \_\_\_\_\_

## NOTIFICATION

**No. \_\_\_\_\_**: In compliance with the Rule 67 of Sindh Public Procurement Rules, 2010 (as amended from time to time), the School Education & Literacy Department, Government of Sindh is pleased to constitute the Consultant Selection Committee (CSC) for hiring of transaction advisors / consultants for [Name of the Project] under PPP mode, with the following composition<sup>16</sup> and terms of reference (ToRs):

S. No.	Designation	Status
1	Additional Secretary (GA), SELD, Govt. of Sindh	Chairman
2	Senior Director, PPP Node, SELD, Govt. of Sindh	Member / Secretary
3	Head of Curriculum Wing, SELD, Govt. of Sindh	Member
4	Nominee of P&D Department, Govt. of Sindh (Not below BS-18)	Member
5	Nominee of Finance Department, Govt. of Sindh (Not below BS-18)	Member

**Terms of Reference:**

- i) The Consultant Selection Committee (CSC) shall approve Expression of Interest (EoI), Request for Proposal (RFP) and other bidding documents before issuance for the procurement of consultant(s);
- ii) Short listing of consultants, responding to the Request of Expression of Interest, where applicable, in accordance with the criteria mentioned in Expression of Interest;
- iii) The CSC shall evaluate technical and financial proposals, according to selection method and evaluation criteria, set out in the Request for Proposal (RFP);
- iv) Finalization of recommendation based on evaluation as mentioned in point (3) above.
- v) The Chairman, representatives of the Finance Department, and the Planning and Development Department shall form the quorum for conducting the business of the Consultants Selection Committee

**(ABDUL AZIZ UQAILI)**  
**SECRETARY TO GOVT. OF SINDH**

No. \_\_\_\_\_

Karachi, dated \_\_\_\_\_

**A copy is forwarded for information and necessary action to:**

1. Chairman and all members of the Committee.
2. PS to Secretary, School Education & Literacy Department, Govt. of Sindh.
3. Director General, PPP Unit, Finance Department, Govt. of Sindh.
4. Director Education, PPP Node, School Education & Literacy Department, Govt. of Sindh.
5. Official website of School Education & Literacy Department ([www.sindheducation.gov.pk](http://www.sindheducation.gov.pk)).
6. Office File.

<sup>16</sup> Please note that the above composition is only for reference purposes, and it may be entirely different for different PPP Projects. However, it shall be noted that there shall be Nominee of Finance Department and P&D Department, not below BS-18. This footnote shall be deleted in fair copy of this draft notification.

## ANNEXURE-P



### SCHOOL EDUCATION & LITERACY DEPARTMENT GOVERNMENT OF SINDH

#### EXPRESSION OF INTEREST FOR TRANSACTION ADVISORY SERVICES FOR TEACHER TRAINING INSTITUTIONS/COLLEGES

##### INTRODUCTION

The Public Private Partnership (PPP) Node, of School Education Department (SED), Government of Sindh, invites Expression of Interest for Transaction Advisory Services from firms / consortia representing a team of suitably qualified and experienced financial, legal, and technical education advisers to assist the SED in soliciting a private partner(s) to undertake the project (as defined below) under public private partnership basis. The transaction advisor shall be expected to assist the SED in selection of the most appropriate private partner for the project through a structured and transparent bidding process.

##### THE PROJECT

The PPP Policy Board of Government of Sindh approved the management and operations of Teacher Training Institutes and Colleges (TTICs) of School Education Department (the Project). The Project envisages the rehabilitation, refurbishment, maintenance, management and operations of the existing six (06) TTICs in Sukkur, Larkana, Mirpurkhas, Shaheed Benazirabad each & two (2) in Karachi for a term of fifteen (15) years including one (1) year for the designing, planning and take off.

##### SPECIFIC MANDATE OF TRANSACTION ADVISORY SERVICES (TAS) PROVIDER

The TAS Provider shall assist the SED in the PPP procurement, including preparation of the PPP Project, *inter alia* determination of the appropriate PPP modality, making suitable financial model for the Project, development of Key Performance Indicators (KPIs) for monitoring of the Project, and preparation of bidding documents (Request for Qualification, Request for Proposal, Project Information memorandum, Evaluation Criteria, Draft Concession Agreement, Independent Auditor / Expert Agreements and any other Agreements to execute the Project with elaborate mechanism of performance indicators, risk sharing and terms of concession by SED etc.). The TAS Provider shall assist in conducting the bidding process under SPPRA Act, 2009 and the Rules 2010 thereto, and in evaluating the bids to select a preferred bidder.

##### BASIC ELIGIBILITY FOR TRANSACTION ADVISORY SERVICES (TAS) PROVIDER

- Minimum 5 years experience of Project Advisory in public sector.
- Successful completion of minimum 3 assignments of Transaction Advisory in PPPs, whereby the TAS Provider has been involved in the preparation and execution of the PPP Project *inter alia* preparation of bidding documents, structuring of PPP project, running procurement cycle, evaluation of bids to select a preferred bidder and/or any other steps to execute the PPP Project.
- The TAS Provider shall have a minimum turnover of PKR 100 Million in the last 5 years, which shall be proved by submitting its audited financial reports of last 5 years.
- The TAS Provider shall have the capacity to handle the process independently with minimum support service from the Government until the signing of the PPP Agreement.
- Interested firms must provide information indicating that they are qualified to perform the services (description of similar assignments, availability of appropriate skills among staff). Only firms with demonstrated experience and good track record in similar assignments will be shortlisted for issuance of Request for Proposal (RFP) and subsequent submission of full technical and financial proposals.

##### SUBMISSION OF EOI DOCUMENT(S)

All EOI documents along with any annexures / schedules shall reach in a sealed envelope clearly marked "**Expression of Interest for Soliciting Private Partner for Operating Teacher Training Institutes and Colleges (TTICs)**" to the below-given address, no later than **2.00 p.m. on 5<sup>th</sup> July, 2017**.

**ADDRESS FOR SUBMISSION:** *Director*, Public Private Partnership Node  
School Education Department, Government of Sindh,  
2<sup>nd</sup> Floor, Old KDA Building, Secretariat No.3, Karachi.  
Contact No: 021-35296931-4  
Email: ppp.node@sindheducation.gov.pk





PUBLIC PRIVATE PARTNERSHIP NODE  
SCHOOL EDUCATION & LITERACY DEPARTMENT | GOVERNMENT OF SINDH

**2nd Floor, Old KDA Building, Secretariat No.3, Karachi.**  
**Email: [ppp.node@sindheducation.gov.pk](mailto:ppp.node@sindheducation.gov.pk)**