

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা  
কর্তৃপক্ষ কর্তৃক প্রকাশিত

মঙ্গলবার, মার্চ ৮, ২০১৬

Government of the People's Republic of Bangladesh  
Prime Minister's Office

Notification

Date : 16 November 1422 Bangla/28 February 2016

**S. R. O No.44-Law/2016.**—In exercise of the powers conferred under section 38, read with section 8, of the Bangladesh Economic Zones Act, 2010 (Act No. 42 of 2010) the Government is pleased to make the following rules, namely:—

#### CHAPTER I

#### GENERAL PROVISIONS

1. **Title, commencement and application.**—(1) These rules may be called the Bangladesh Economic Zones (the Procedure of Appointment of Developer) Rules, 2016.

(2) It shall come into force at once.

(3) It shall be applicable to the Economic Zones and Special Economic Zones on Design, Build, Finance, Operate and Transfer (DBFOT) basis through Public-Private Partnership (PPP).

(১৯৭৯)

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

- (i) **“Act”** means the Bangladesh Economic Zones Act, 2010 (Act No. 42 of 2010);
- (ii) **“applicable law”** means any Act, Ordinance, Order, rule, regulation, bye-law, notification or any other legal instrument having the force of law in Bangladesh including any government resolution or any international agreement, convention, charter or treaty ratified and adopted by Bangladesh;
- (iii) **“applicant”** means an entity or a consortium which submits an application in response to the RFQ;
- (iv) **“application”** means the application which contains the information as per requirements of the RFQ document and is submitted by the applicant in order to be pre-qualified and short-listed for the submitting the bid in response to the RFP;
- (v) **“Authority”** means Bangladesh Economic Zones Authority established under section 17 of the Act;
- (vi) **“bid” or “proposal”** means the bidder’s written proposal based on the information, instructions, covenants, terms and conditions as contained in the RFP;
- (vii) **“bidder”** means the entity or consortium who submits a proposal in response to the RFP;
- (viii) **“Bid Security”** means the Bid Security mentioned in rule 14;
- (ix) **“Bid Validity Period”** means the Bid Validity Period mentioned in rule 17;
- (x) **“consortium”** is a group of entities coming together to submit a bid or proposal;
- (xi) **“consortium member”** means a member of a consortium;
- (xii) **“day”** means a calendar day unless otherwise specified as the working day;
- (xiii) **“developer”** means the successful or selected bidder who has signed the Developer Agreement with the Authority;

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- (xiv) **“Developer Agreement”** means an agreement signed between the Authority and a developer;
- (xv) **“Economic Zone”** means any economic zone declared by the Government under section 5 of the Act;
- (xvi) **“Evaluation Committee”** means the Evaluation Committee constituted under rule 20;
- (xvii) **“lead member”** with respect to a consortium means the consortium member who—
- (a) has entered into an agreement with the remaining consortium members having at least 26% equity shareholding;
- (b) is or shall be the largest shareholder in the company; and
- (c) is authorized by all other consortium members to be responsible to act on behalf of the consortium members;
- (xviii) **“LoA”** means a Letter of Award issued by the Authority to the successful bidder;
- (xix) **“non-lead member”** means a consortium member who has entered into an agreement with the remaining consortium members having at least 11% of the equity in the Project Company;
- (xx) **“Opening Committee”** means the Opening Committee constituted under rule 19;
- (xxi) **“party”** means the party or parties to the Developer Agreement;
- (xxii) **“Performance Security”** means the Performance Security mentioned in rule 37;
- (xxiii) **“Project”** means the Design, Build, Financing, Operation and Transfer to the Authority and performance of services provided by the developer in the Economic Zone;
- (xxiv) **“Project Company”** means the company which is incorporated under the laws of Bangladesh by the private-partner for delivery of the Project.

- (xxv) **“Request for Proposal”** or **“RFP”** means the Request for Proposal issued by the Authority in order to appoint a developer;
- (xxvi) **“Request for Qualification”** or **“RFQ”** means the Request for Qualification documents issued by the Authority in order to pre-qualify and shortlist the prospective bidders;
- (xxvii) **“Rules 2014”** means the Bangladesh Economic Zones (Appointment of Developer, etc.) Rules, 2014;
- (xxviii) **“services”** means design, build, finance, operate, transfer and maintenance as detailed in the Developer Agreement provided by the developer in the Economic Zone;
- (xxix) **“submission deadline”** means the deadline for submission of applications or proposals, as the case may be, as prescribed in the RFQ or RFP documents or the extension thereof under sub-rule (2) of rule 11 or for any other reason; and
- (xxx) **“successful bidder”** or **“selected bidder”** means the bidder selected by the Authority upon evaluation of the proposals based on the evaluation criteria as set out in the RFP documents.

(2) The words or expressions used in these rules and not defined but defined in the Act or Rules 2014 shall have the meanings respectively assigned to them in the Act or Rules 2014.

3. **Application of Rules 2014.**—With respect to the eligibility, rights, privileges and duties of the developer, the provisions of Rules 2014 shall be applicable.

4. **Corrupt, fraudulent, collusive, coercive, obstructive Practices, etc. prohibited.**—(1) The applicant or bidder shall observe the highest standard of ethics and shall not involve in corrupt, fraudulent, collusive, coercive or obstructive practice during the bidding process and in the case of successful bidder, during the execution and implementation of the Developer Agreement.

**Explanation :** For the purpose of this rule—

- (i) “corrupt practice” means offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions of the Authority;
- (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead the Authority with an intent to get any unlawful financial or other benefit or to avoid any lawful obligation;
- (iii) “collusive practice” means arrangement between two or more parties designed to achieve an improper purpose including, but not limited to, improperly influencing the actions of another party or the Authority;
- (iv) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of any party to improperly influence the actions of such party;
- (v) “obstructive practice” means—
  - (a) deliberately destroying, falsifying, altering, or concealing evidence and materials relevant for any investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant for the investigation or from pursuing the investigation; or
  - (b) acts intended to materially impede the exercise of the Authority’s inspection and audit rights.

(2) If the Authority finds any reason to believe that any applicant or bidder or any of its personnel, agent, consultant, sub-contractor, service provider, supplier or their employee has engaged directly or indirectly in corrupt, fraudulent, collusive, coercive or obstructive practice, the Authority shall reject the application or proposal of such applicant or bidder and may take such legal action as may be appropriate.

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**CHAPTER II****PROCESS FLOW IN APPOINTMENT OF DEVELOPER**

5. **Invitation of bids:**—(1) Subject to the provision of sub-rule (2), the Authority, for selecting a developer shall follow a single stage process for inviting the proposals by directly issuing the RFP.

(2) If the Authority considers it necessary for any particular Economic Zone it may follow a two stage process, namely :—

- (a) RFQ; and
- (b) RFP.

(3) In case of a two-stage process, the RFP shall be issued to the applicants who have been pre-qualified and shortlisted at the RFQ stage.

6. **Process flow.**—The following process-flow, in accordance with the act, rules 2014, and all other applicable laws, shall be followed in appointment of a developer, namely:—

- (a) RFQ stage (applicable in case of a two-stage bidding process):
  - (i) preparation of RFQ according to the needs of a particular Economic Zone;
  - (ii) issuance of RFQ;
  - (iii) submission of queries;
  - (iv) Authority's response to queries;
  - (v) pre-application meeting;
  - (vi) site visit;
  - (vii) submission of application;
  - (viii) opening of applications;
  - (ix) evaluation of applications;
  - (x) finalizing the list of pre-qualified and shortlisted applicants;  
and
  - (xi) notifying the pre-qualified and shortlisted applicants.

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- (b) RFP stage (applicable in case of both a single stage bidding process as well as two-stage bidding process):
- (i) preparation of RFP documents according to the needs of a particular Economic Zone;
  - (ii) issuance of RFP;
  - (iii) submission of queries;
  - (iv) Authority's response to queries;
  - (v) pre-proposal meeting;
  - (vi) site visit;
  - (vii) submission of bids;
  - (viii) opening of bids;
  - (ix) evaluation of bids;
  - (x) negotiations;
  - (xi) revision of draft Agreement, when applicable;
  - (xii) finalization of draft Developer Agreement;
  - (xiii) issuance of Letter of Award (LoA);
  - (xiv) signing of the Developer Agreement;

**7. Preparation of standard RFQ and RFP documents and its publication—**(1) The Authority shall prepare a standard or project specific RFQ and RFP documents in accordance with the applicable laws.

(2) The RFQ or RFP documents shall contain all necessary information and instructions.

(5) The Authority shall publish the RFQ or RFP, as the case may be, in at least two national English and two national Bangla daily newspapers of wide circulation and upload in its official website and the website of any other authority or Authorities, as may be considered necessary and, may publish in one international newspaper or magazine or technical journal of wide circulation or in on-line version of them.

**8. Queries on and clarification of RFQ or RFP.**—(1) Any prospective applicant or bidder having any query on or requiring any clarification of the RFQ or RFP documents may notify the Authority requesting response to such query or clarification.

(2) The Authority shall respond to the query or requests for clarifications from any applicant or bidder.

(3) The Authority may, on its own motion, issue clarifications of the RFQ or RFP documents.

(4) If any change is brought in the RFQ or RFP documents on the basis of response to the query or requests for clarifications, or on Authority's own motion, the Authority shall notify all the applicants or bidders, as the case may be, of such changes.

(5) All clarifications notified by the Authority shall be deemed to be the part of the RFQ or RFP, as the case may be.

**9. Pre-application or pre-proposal meeting.**—(1) The Authority shall arrange for a pre-application or pre-proposal meeting at the place, date and time to be specified by the Authority according to the time table as set out in the RFQ and RFP documents.

(2) Each prospective applicant or bidder shall be invited to attend the pre-application and pre-proposal meeting, as the case may be.

(3) The purpose of the pre-application and pre-proposal meeting is to—

(a) Provide a technical presentation; and

(b) clarify issues and answer to questions on any matter that may be raised at the meeting.



(4) Each prospective applicant or bidder shall be requested to submit question, if any, in writing to reach the Authority within such date and time as may be specified by the Authority.

(5) Minutes of the pre-application or pre-proposal meeting shall be transmitted, without delay, to all prospective applicants or bidders, as the case may be, and shall be uploaded in the official website of the Authority.

10. **Site visit.**—(1) Each applicant or bidder, whether being advised by the Authority or on its own motion, shall visit and inspect the site of the concerned Economic Zone and its surroundings according to the time and date prescribed by the Authority in the RFQ or RFP documents.

(2) The Authority shall inform all applicants and bidders of the time and date for site visit.

(3) Each applicant and bidder shall obtain for itself on its own responsibility and costs all information including the site information that may be necessary for preparing the application or proposal and for entering into the Developer Agreement.

11. **Amendment of RFQ or RFP.**—(1) Prior to the submission deadline, the Authority may, for any reason, whether on its own accord or in response to a request of any prospective applicant or bidder, amend the RFQ or RFP documents by issuing an addendum.

(2) In the case of amendment of the RFQ or RFP documents, the Authority may, extend the submission deadline.

(3) In the event of amendment of RFQ or RFP under sub-rule (1) and extension of submission deadline under sub-rule (2), the Authority shall publish the addendum and extended submission deadline in accordance with sub-rule (3) of rule 7.

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**CHAPTER III**  
**SUBMISSION OF APPLICATION OR PROPOSAL**

12. **Preparing the application or proposal.**—The application or proposal, as the case may be, shall be prepared in accordance with the information and instructions contained in the RFQ or RFP.

13. **Signing, sealing and marking application or proposal.**—(1) The applicant or bidder shall submit, in the sealed envelope, one signed and initialed original of its application or proposal, as the case may be, and the number of copies of the application or proposal, as per instruction provided in the RFQ or RFP document, clearly marking each one as “ Original Bid”, copy No.1, Copy No.2”, etc., as may be appropriate.

(2) The original and all copies of the application or proposal shall be typed or written in indelible ink and in the event of any discrepancy between the copies and the original the original shall prevail.

(3) The person duly authorized to bind the bidder shall sign the bid in the following manner, namely:—

- (a) by signing the original of the application or proposal; and
- (b) by putting initial in all the pages of the original or the application or bid and the documents attached therewith.

(4) The authority of the person signing the bid to bind the bidder shall be demonstrated by a duly notarized Power of Attorney.

14. **Bid Security.**— (1) The bidders shall submit, with the proposal, a Bid Security in USD or in Bangladeshi Taka, as may be Prescribed in the RFP document, with at least 180 days’ validity.

(2) The Bid Security shall be in the form of Bank Guarantee Acceptable to the Authority and the format of the Bank Guarantee shall be in accordance with format of Bid Security prescribed in the RFP document:

(3) The Bidder shall ensure that the Bid Security remains valid for a period of 60 days after the end of the Bid Validity Period.

(4) Any proposal not accompanied by the Bid Security shall not be taken up for evaluation.

(5) The Authority shall return the Bid Securities of—

- (a) the unsuccessful bidders as promptly as practicable;
- (b) the successful bidder after providing Performance Security by such bidder.

(6) The Bid Security of a bidder may, in the discretion of the Authority, be forfeited—

- (a) if a bidder withdraws its bid during the Bid Validity Period;
- (b) if the bidder is found to have engaged in any corrupt, fraudulent, collusive, coercive or obstructive practice mentioned in rule 4;
- (c) in the case of the successful bidder, if the successful bidder fails to furnish the Performance Security to the Authority within the prescribed time; and
- (d) if the selected bidder fails to sign the Developer Agreement within the stipulated time,

**15. Deadline for submission of application or proposal.—**(1) The application or proposal must be received by the Authority at the submission place and no later than the date and time as prescribed in the RFQ or RFP document or the extension thereof under sub-rule (2) of rule 11 or for any other reason.

(2) The applicant or bidder shall submit its application or proposal in such delivery mode as may be prescribed in the RFQ or RFP documents.

16. **Consequence of late submission of application or proposal.**—Any application or proposal, as the case may be, received by the Authority after the submission deadline shall not be considered and shall be returned unopened to the respective applicant or bidder.

17. **Bid Validity Period.**—(1) A bid shall remain valid for 180 days after the submission deadline.

(2) The Authority may extend the Bid Validity Period with the consent of the respective Bidder.

(3) If the Bid Validity Period is extended under sub-rule (1) the, the bidder shall ensure that the Bid Security shall remain valid for a period of 60 days from the end date of such extension.

18. **Modification, substitution or withdrawal of application or proposal.**—The applicant or bidder may modify, substitute or withdraw its application or proposal, as the case may be, after submission in the manner as prescribed in the RFQ or RFP document;

Provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the submission deadline.

#### CHAPTER IV

##### OPENING AND EVALUATION OF APPLICATIONS OR PROPOSALS

19. **Constitution of Opening Committee.**—(1)The Authority may constitute an Opening Committee for opening of the applications or proposals comprising of one member from the Evaluation Committee and two members from the Authority's office as nominated by the Executive Chairman.

(2) The Authority may designate one of the members of Opening Committee as the Chairperson and one of them as the Member Secretary.

20. **Constitution of the Evaluation Committee.**—(1) The Authority shall constitute an Evaluation Committee before the submission deadline for evaluation of applications or proposals comprising of minimum 5 (five) members and maximum 7 (seven) members of whom at least 2 (two) shall be the external members who shall be outside from the administrative Ministry.

(2) The members of the Evaluation Committee may be nominated from the following offices, namely:—

- (a) representatives from the Authority;
- (b) representatives from the administrative Ministry; and
- (c) officers experienced in technical, commercial financial or legal matters from other ministries or divisions, agencies, or experts from universities or reputable professional bodies or specialists from the relevant fields in the case of external members.

(3) The Authority may designate one of the Members of Evaluation Committee as the Chairperson and one of them as the Member Secretary.

**21. Declaration by the Evaluation Committee Members**—Each member of the Evaluation Committee shall sign individually a Declaration of Impartiality in the manner prescribed in the Schedule-1.

**22. Replacement of member of Evaluation Committee:**—The Authority may replace any member of the Evaluation Committee by a new member for any of the following reasons, namely:—

- (a) if a member has business links or relationship with any of the applicants or bidders;
- (b) if a member remains absent for 2 (two) consecutive meetings of the Evaluation Committee;
- (c) if a member dies, remains absent from the country or is transferred; or
- (d) if it deems necessary for proper and expeditious evaluation of the applications or proposals.

**23. Appointment of Technical Sub-committee, etc**—The Authority may appoint a Technical Sub-committee, if needed, for proper evaluation of the applications or proposals or the Evaluation Committee may, with the approval of the Authority, subject to the number limitation in sub-rule (1) of rule 20, co-opt any person in the Evaluation Committee.

**24. Honorarium for the Committee Members**—The Authority may:—

- (a) determine honorarium of the members of Opening Committee and Evaluation Committee; and
- (b) provide the necessary resource and facilities for the said Committees to enable them to carry out the opening and evaluation in an expeditious manner.

**25. Procedure for opening of applications and proposals:**—(1) The opening Committee shall open the applications or Proposals, including modifications, substitution, withdrawal notices or requests, at the time, date and place specified for opening, in the presence of the bidders' representatives, if any.

(2) The representative of the bidders who attend at the opening of the applications or proposals shall sign a register to record their attendance:

provided that the opening procedure shall not be invalid for the reason of not putting the signature by any such representative.

**26. Preliminary examination of applications or proposals:**—(1) The Opening Committee shall preliminarily examine each application or proposal in line with the instructions set out in the RFQ or RFP documents to assess the application or proposals' completeness and eligibility.

(2) The ineligible and incomplete application or proposal shall be eliminated at this stage and shall not be considered for evaluation.

**27. Working procedure of the Evaluation Committee**—(1) The meetings of the Evaluation Committee shall be held with notice to all its members and the meeting shall be valid only when two-third members of it are present therein.

(2) The Evaluation Committee may work over successive days once they have begun the evaluation or may work with short interval subject to completion of the evaluation within the time prescribed by the Authority.

(3) The Evaluation Committee Members shall examine and evaluate the applications or proposals, as the case may be, in accordance with the provisions of the Act, Rules 2014, these rules and the terms, conditions and instructions of the RFQ or RFP documents.

**28. Criteria for selection of developer:—**(1) A bidder may be evaluated as the successful bidder on the following criteria, namely:—

(a) technical criteria:

- (i) design philosophy, drawings and project concepts;
- (ii) project marketing concept;
- (iii) implementation plan;
- (iv) environmental and social development impact;
- (v) operation and maintenance;
- (vi) key staff, organization and development agreement administration plan; and
- (vii) economic growth and job creation.

(b) financial criteria:

- (i) projected capital investment, operational cost and revenue;
- (ii) projected source of financing; and
- (iii) payments and returns to the Authority.

(2) The criteria under sub-rule (1) are not intended to restrict the Authority's discretion to set out more criteria in the RFQ and RFP documents.

**29. Clarification of applications or proposals.—**(1) During evaluation, the Evaluation Committee with the approval of the Authority, may, if necessary, ask the applicants or bidders for any clarification of its application or proposal.

(2) The applicant or bidder shall respond to the request of the Evaluation Committee within the prescribed time and in the manner prescribed in the RFQ or RFP documents.

**30. Recommendation of the Evaluation Committee, its approval, etc.—**

(1) The Evaluation Committee, after completion of evaluation of the applications or proposal, shall prepare the evaluation report and submit it to the Authority which, among other necessary details, shall contain:

- (a) in the case of applications, particulars of short-listed and prequalified applicants; and
- (b) in the case of proposals, recommendations with reasons for identifying the successful bidder.

(2) The Evaluation Committee shall sign collectively in the evaluation report by certifying in the manner prescribed in the Schedule-11.

(3) The Authority upon reviewing the evaluation report with the recommendation and the reasons for such recommendation may either—

- (a) approve the recommendation and accept any application or proposal as recommended; or
- (b) seek any clarification from the Evaluation Committee on any specific issues in connection with such evaluation report and recommendation; or
- (c) explaining the reasons—
  - (i) reject the evaluation report and request the Evaluation Committee for a re-evaluation; or
  - (ii) reject the evaluation report and issue instructions to re-process the appointment of developer.

**31. Authority's right to accept or reject applications or proposals and waive minor irregularities.**—(1) The Authority, upon sufficient reasons to be recorded, may—

- (a) reject any application or proposal;
- (b) annul the bidding process and reject all application or proposal;
- (c) commence a new bidding process after annulment of bidding process and rejection of all Application and/or proposal.

(2) The Authority may waive any minor informality, nonconformity or irregularity in any application or proposal if such informality, nonconformity or irregularity does not—

- (a) constitute any material deviation from the provisions of RFQ or RFP documents, the Act, Rules 2014, these rules and the applicable laws; and
- (b) prejudice or affect the qualification or relative ranking of any other applicant or bidder in any way, particularly in technical and financial evaluation.



(3) Nothing in sub-rule (1) is intended to permit the Authority to refuse to provide reasons for rejection to an unsuccessful applicant or bidder, if requested.

(4) The Authority, at its direction or on application of any applicant or bidder, may allow rectification of any bona fide arithmetical errors in any application or proposal.

(5) If any applicant or bidder refuse to accept the rectification, made under sub-rule (4), its application or proposal, may be rejected.

32. **Negotiation**—The Authority may make necessary arrangements for negotiation with the successful bidder on any issue that may be considered relevant.

## CHAPTER V

### PREPARATION, FINALIZATION AND SIGNING OF DEVELOPER AGREEMENT

33. **Format of Developer Agreement:**—(1) The Authority may develop a format of standard Developer Agreement which may be modified on case to case basis to reflect the unique requirements for individual Economic Zone.

(2) The Developer Agreement shall, among others things, contain—

- (i) day, month and year of signing;
- (ii) name and official address of the Authority and the developer with country of incorporation, principal place of business and shall include the name of the developer's parent company or any other entity or entities, as required by the Authority;
- (iii) reference of law empowering the Authority and necessary approval for signing the Agreement;
- (iv) purpose of entering into the Agreement;
- (v) short statement of developer's ability to serve the purpose;
- (vi) developer's capacity to enter into the agreement;
- (vii) reference to developer's parent company's guarantee;
- (viii) period of lease and provision relating to its extension;

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- (ix) effective date, starting and completion dates of design-build service and new operations service;
  - (x) rights and obligations of the parties;
  - (xi) amount and procedure of payment and returns by the developer to the Authority which shall include one-time up-front payment per acre of gross land, annual land lease payment per square meter of leased land with the escalation formula and payment on Profit and Revenue Sharing;
  - (xii) amount of investment to be made by the developer in setting up and operation of the Economic Zone;
  - (xiii) specification and standards of design-build services and operation services and provisions for execution of those services;
  - (xiv) provisions relating to—
    - (a) administration, supervision, monitoring of the Economic Zone;
    - (b) reporting obligation of the developer; and
    - (c) maintenance, inspection and audit of the developer's records and accounts;
  - (xv) provisions for generating revenue by the developer including, levy and collection of appropriate rentals and user based-service charges from the Economic Zone Users;
  - (xvi) provision in respect of taxes and duties, charges, fees payable and exemption therefrom to be enjoyed by the developer;
  - (xvii) prohibition clause with a list of prohibited acts;
  - (xviii) provisions relating to labor safeguards, equal treatment for national and foreign enterprises, gender equality and environmental protection;
  - (xix) necessary Appendix, Annexure, Attachment and Forms;
  - (xx) remedies for breach and delay in providing the required services;

- (xxi) provisions relating to unforeseeable adverse physical condition, force majeure, change in laws and other risks and consequences thereof, liability and risk distribution, indemnification and insurance;
- (xxii) termination clauses which includes termination by the Authority, termination by the developer, termination for no breach of either party, effect and consequence of termination, arrangement for keeping the Economic Zone Activities and facilities operational and other provisions as required for the concerned Economic Zone;
- (xxiii) survival obligation upon termination or expiration of Agreement;
- (xxiv) mode and process of transfer of Economic Zone to the Authority after expiry of Developer Agreement term;
- (xxv) dispute resolution mechanism; and
- (xxvi) other necessary provisions in accordance with the RFP documents and as may be necessary for a particular Economic Zone.

(3) The format of Developer Agreement is not intended to restrict the discretion of the Authority to any addition, alteration and modification, as needed to meet the unique requirements for a particular Economic Zone.

**34. Preparing, initialing and finalizing the draft Developer Agreement.**—(1) The Authority shall prepare the draft of the Developer Agreement in accordance with rule 33 incorporating all necessary terms and conditions including the outcome of the negotiation, if any.

(2) The draft Developer Agreement shall be initialed by the Authority and the successful bidder.

(3) The Authority shall finalize the draft of the Developer Agreement after vetting from the legislative and Parliamentary Affairs Division and approval from the Cabinet Committee on Economic Affairs.

**35. Letter of Award.**—(1) When the draft Developer Agreement is finalized under rule 34, the Authority, prior to the expiration of the Bid Validity Period, may issue Letter of Award (LoA) to the successful bidder.

(2) The LoA shall contain the provisions, among others, clearly indicating that—

- (a) the LoA alone, before signing the Developer Agreement by the parties does not create any right to the successful bidder as the developer or any obligation on it except providing Performance Security and compliance of the requirements to be notified by the Authority under rule 36; and
- (b) the Authority reserves the right to revoke the LoA for any reason justifying such revocation.

(3) If the LoA is revoked after providing Performance Security under rule 37 and commencement of compliance of the requirements under rule 36, for no fault of the successful bidder, the Authority shall make necessary arrangements for refund of the Performance Security and shall pay to the successful bidder the actual cost incurred by it, if any, for undertaking the works for compliance of the requirements.

(4) The Authority and the successful bidder shall, upon mutual agreement, make an assessment of actual cost under sub-rule (3).

(5) The Authority, either in the LoA or in a separate communication, shall provide the instruction to the successful bidder to comply with the requirements as provided in rule 36.

**36. Requirements to be complied with by the successful bidder.**—(1) The Authority shall, according to the time schedule given in the RFP document, notify the successful bidder, either in the LoA or by issuing a separate letter, of the requirements to be complied with by the successful bidder and the following, but not limited to, shall be the requirements to be complied with by the successful bidder, namely:—

- (a) submitting of a comprehensive master plan that includes land use planning and zoning, on-site infrastructure plans and phasing plans;

- (b) carrying out a feasibility study with business and marketing plan of the designated Economic Zone land and such feasibility study shall clearly demonstrate that—
  - (i) the Economic Zone is economically and financially viable and commercially sustainable; and
  - (ii) the Economic Zone will provide benefits to Bangladesh such as increased investment, job creation and diversification of exports that outweigh the costs incurred by the Government to facilitate the project; and
- (c) carrying out an environmental and social impact assessments which shall contain approved environmental management plan and appropriate health and safety schemes to mitigate negative impacts.

37. **Performance Security.**—(1) Within the time specified in the RFP documents, the successful bidder awarded with the LoA shall provide, to the Authority, security for the proper performance of its obligation under the Developer Agreement.

(2) The performance Security shall be furnished in the prescribed format and in the form of Bank Guarantee acceptable to the Authority, of the amount and for a validity period as specified in the RFP documents.

38. **Signing of Developer Agreement.**—After satisfactory compliance of the requirements under rule 36 by the successful bidder, the person authorized by the Authority and the person authorized by the successful bidder shall sign and date the Developer Agreement and initial each page of the Developer Agreement on the date and at the time as may be prescribed by the Authority in accordance with the time table contained in the RFP documents.

39. **Effective date.**—The Developer Agreement shall come into force and be effective from the date of signing the Developer Agreement by the parties or from any date agreed by the both parties.

## CHAPTER VI

### EXPIRATION, EXTENSION, SUSPENSION, TERMINATION, EFFECT OF TERMINATION OF DEVELOPER AGREEMENT

40. **Expiration, extension, suspension, termination, effect of termination of Developer Agreement.**—With respect to expiration, extension, suspension, termination, effect of termination, etc. of the Developer Agreement, the provisions of Rules 2014 shall be applicable.

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**CHAPTER VII**  
**DISPUTE RESOLUTION**

41. **Appointment of Adjudicator.**—(1) The Authority shall propose a panel of 3 (three) persons out of whom the bidder may short list 2(two) persons and the Authority shall appoint one of those 2(two) persons as the Adjudicator at the hourly fees.

(2) Resumes with description of reimbursable expenses of the named 3(three) persons shall be attached to the RFP Documents.

(3) The Adjudicator shall be paid his fees and shall be reimbursed for the actual expenses incurred in execution of his duties as the Adjudicator. The Adjudicator's fee shall be borne equally by the Authority and the developer.

(4) if the Adjudicator resigns or dies or is removed by the Authority, another person from the 2(two) persons shortlisted by the bidder shall be appointed as the Adjudicator.

42. **Settlement of Disputes by mutual consultation or Adjudicator.**—(1) If any dispute arises between the Authority and the developer in connection with or arising out of any provision of the Developer Agreement including any question regarding the existence, validity or termination of the Developer Agreement and any matter related to the performance of the services and rights and obligations, the parties shall seek to resolve any such dispute of difference by mutual consultation.

(2) if the parties fail to resolve a dispute of difference by mutual consultation, the dispute shall be referred in writing, by either of the parties, to the Adjudicator with a copy to the other party.

(3) The Adjudicator shall give its decision in writing to the both parties no later than 30 days after the referral of a dispute.

(4) The Adjudicator's decision shall become final and binding upon the Authority and the developer, if no notice of intention to commence arbitration has been given by either the Authority or the developer within 30 days after the Adjudicator's decision on the dispute.

(5) Any decision of the Adjudicator, that has become final and binding, shall be implemented by the parties.

43. **Arbitration.**—(1) If either the Authority or the developer is aggrieved by the Adjudicator's decision, or if the Adjudicator fails to give a decision within 30 days after a dispute being referred to it, either the Authority or the developer may, within 60 days after such referral, give notice to the other party, with a copy of such notice to the Adjudicator, of its intention to commence arbitration on the issue in dispute.

(2) Any dispute in respect of which a notice of intention to commence arbitration has been given, shall be finally settled by Arbitration in accordance with the laws in force in Bangladesh.

(3) The venue of arbitration shall be Dhaka, Bangladesh.

**44. Obligations of the parties pending reference to the Adjudicator or during Arbitration.**—Notwithstanding any reference to the Adjudicator of Arbitration, the parties shall continue to perform their respective obligations under the Developer Agreement until the matter in dispute is disposed of by the Adjudicator or through Arbitration or unless the parties otherwise agree.

#### **Schedule-I**

*[See rule 21]*

I..... do hereby declare and confirm that I have no business links or relationship with any of the competing applicants/bidders.

#### **Schedule-II**

*[See rule 30]*

The Evaluation Committee certifies that the evaluation has been performed in accordance with the requirements of the Act, Rules 2014, these Rules and the terms and conditions of the RFQ/RFP documents;

That all facts and information have been correctly reflected in the Evaluation Report; and

That no substantial or important information has been omitted and overlooked.

By order of the President,

**NAFIUL HASAN**

Director.