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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

MINISTRY OF INFORMATION TECHNOLOGY

(Information Technology and Telecommunication Division)

NOTIFICATIONS

Islamabad, the 5th June, 2007

S. R. O. 567 (I)/2007.— In exercise of the powers conferred by sub-section (2) of section 57 of the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996) read with section 33-A thereof, the Federal Government is pleased to direct that the following amendments shall be made in the Universal Service Fund Rules, 2006, namely:—

In the aforesaid Rules,—

(1) in rule 2,

(a) for clause (xix), the following shall be substituted, namely:—

“(xix) “project” means a plan prepared for a lot before the auction describing the telecommunication system and

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telecommunication services required to be provided in the lot, and any applicable reserve price for the auction;”;

(b) for clause (xx), the following shall be substituted, namely:—

“(xx) “reserve price” means a maximum subsidy value calculated for a particular project or special project;”;

(c) for clause (xxi), the following shall be substituted, namely:—

“(xxi) “special project” means any plan prepared before auction or other grant of contract, not defined by lot, describing the telecommunication services, telecommunication systems or electronic services required to be provided in the unserved or underserved areas, any required bidder qualifications and any applicable reserve price;”;

(d) for clause (xxvi) the following shall be substituted, namely:—

“(xxvi) “USF contribution” means contribution made by a licensee to the Fund in accordance with sub-rule (2) of rule 4 and applicable licence conditions;”.

(2) in rule 3,—

(a) in sub-rule (3), after the word “determine”, the words and figure “pursuant to rule 5” shall be inserted;

(b) sub-rule (4) shall be omitted;

(c) in sub-rule (5),

(i) for the word “may” the word “shall” shall be substituted; and

(ii) clause (c) shall be omitted;

(iii) in clause (d), the words “make shall” shall be omitted; and

(iv) in clause (g) for the words “relevant licensees”, the letters and words “USF contributors” shall be substituted; and

(d) after sub-rule (5), amended as aforesaid, the new sub-rule shall be added, namely:—

“(6) In the course of managing the Fund, the Federal Government may determine, make, monitor and liquidate investments and make re-investments of surplus sums standing to the credit of the Fund account ”.

(3) in rule 5,—

(a) sub-rule (2) shall be omitted; and

(b) for sub-rule (3), the following shall be substituted, namely:—

“(3) The Authority shall monitor and enforce the obligations of the USF contributors to make the prescribed contributions in a timely and proper manner. In case the Authority collects any prescribed contribution directly from the USF contributors then the Authority will transfer that amount directly to the Fund’s designated account within one month of the receipt of that money.”;

(4) in rule 11,—

in sub-rule (4), for the figure “3” the figure “1” shall be substituted.

(5) in rule 15,—

in sub-rule (2), in clause (m), after the word “lots” the words “and special projects” shall be inserted.

(6) in rule 22,—

(a) in the marginal note for the words “Powers and functions” the word “Functions” shall be substituted;

(b) the words “powers and” shall be omitted; and

(c) for clause (1), the following shall be substituted, namely:—

“(1) to finally approve or reject the successful bidder in any USF auction, and to enter into contracts, agreements and arrangements and execute necessary documents;”;

(7) in rule 23, for sub-rule (1) and (2) the following shall be substituted, namely:—

“(1) An officer of the USF company designated for projects shall prepare a project plan for each project which shall include a clear and complete description of the lots, all applicable service requirements, specifications and standards, any applicable service implementation timetable and any special commercial terms that would have a particular impact on financial viability or business

planning. Where the project is to be auctioned with a reserve price, the project plan shall also identify the maximum subsidy amount for the lots.

- (2) An officer of the USF company designated for projects shall prepare a project plan for each special project. The project plan shall include a clear and complete description of the intended services and service areas, all applicable service requirements, specifications and standards, the applicable service implementation timetable and any special commercial terms that would have a particular impact on financial viability or business planning. Every effort shall be made to put special projects to auction, provided that if auction is not possible because of the nature of the special project then detailed reasons to that effect shall be given with detail of the mode and manner of its grant. Where the project is to be auctioned with a reserve price, the project plan shall also identify the maximum subsidy amount for the project.”;

- (8) in rule 24,—

(a) in sub-rule (1), the word “open” shall be omitted;

(b) for sub-rule (2), the following shall be substituted, namely:—

“(2) In the reverse auction only USF contributors having a valid licence for the relevant region and telecommunication service shall be eligible to participate. The CEO may disqualify any USF contributor to take part in auction if the USF contributor—

(a) is a defaulter in the payment of USF contribution;

(b) has failed to complete any previously granted contract; and

(c) made a successful bid but failed to execute the contract:

Provided that public sector entities and other non-licencees will be eligible to participate in special projects relating to electronic services and for special projects relating to telecommunication services or systems, if such systems or services do not require a licence from the Authority.”;

(c) for sub-rule (3) and (4), the following shall be substituted, namely:—

“(3) The advertisement for auction shall be published at least in one English and one Urdu national daily newspaper in addition to the

website of USF company. The advertisement shall include a description of the intended project or special project, a summary of the timing and process steps for the auction, including whether the auction will be open or be conducted by sealed tender, and whether or not subsidy bids will be subject to a reserve price. The advertisement will also set out instructions regarding how to register for and obtain additional information about the auction.

- (4) The advertisement for auction shall be published at least thirty but not more than ninety days before the deadline for the submission of bids. All eligible potential bidders shall be required to register for the auction at least ten days before the deadline for the submission of bids.”;

- (d) for sub-rule (6), (7), (8) and (9), the following shall be substituted, namely:—

“(6) The USF company shall prepare a bidder’s information package which will be provided to all potential bidders who register for the auction. The bidder’s information package shall include additional information about the lot, project or special project, and any applicable reserve price. The bidder’s information package shall also include instructions to potential bidders on how to participate in the auction, including the format of bid submissions, eligibility requirements, the amount of the performance guarantee and the other requirement of any bid.

- (6A) Registered licensees shall submit a bid bond, in the amount identified in the bidder information package, in the form of a demand draft in the name of the USF company. Registered licensees shall be asked to submit financial bids identifying their proposed subsidy amount. Where the project is to be auctioned with a reserve price, bidders shall be asked to offer subsidy bids lower than the reserve price. The lowest subsidy bid received in the auction that meets all bid submission requirements shall be forwarded by the auction committee with its related recommendations to the CEO of the USF company for final approval.

- (7) The auction committee may recommend cancellation of the auction or rejection of the lowest bid received where it determines that the auction results are not satisfactory or where it has reason to believe that all or some bidders have colluded in the auction result.

- (8) Where only one qualified bidder has been registered for the auction of a project for a lot then instead of holding the auction, the auction committee may offer a flat subsidy subject to approval of the Board and for the purposes of these rules the qualified bidder shall be considered the successful bidder.
- (9) The bid bond of the unsuccessful bidder shall be returned at the end of the auction except the bid bond of the second lowest bidder. The bid bond of the successful bidder and second lowest bidder shall be returned after the execution of the contract with either of them, provided that if the successful bidder fails to submit a bank guarantee in accordance with rule 26, his bid bond shall be forfeited and offer shall be made to the second lowest bidder. The second lowest bidder shall then be considered a successful bidder for the purpose of these rules.”
- (e) in sub-rule (10), for the words “he shall to” the words and letters “the CEO shall” shall be substituted;
- (f) for sub-rules (11) and (12), the following shall be substituted, namely:—
 - “(11) If a lot receives no acceptable bid in three consecutive auctions then the CEO may either recommend to the Board that the project be offered at an identified reserve price which shall be lower than any previously received subsidy bid to any licensee including a non-USF contributing licensee, or may submit a revised project to the Board for approval.
 - (12) No single licensee may accumulate more than fifty per cent of the total amount of USF subsidies awarded by the USF company in multiple auctions. The period relating to a licensee’s accumulation and proportion of USF subsidy amounts will be defined in guidelines or statements of auction procedures to be issued by the USF company from time to time.”;
- (9) in rule 26,—
 - (a) for sub-rules (1), (2) and (3), the following shall be substituted, namely:—
 - (1) Within ten days of the approval of the bid, the successful bidder shall be required to submit a further bank guarantee to secure proper performance of the contract. The amount of the

performance guarantee shall be defined in the bidder's information package developed pursuant to sub-rule (6) of rule 24, up to a maximum value equal to the successful bidder's subsidy bid amount, and shall remain in place for the duration of subsidy payments pursuant to sub-rule (3).

- (2) After the submission of the appropriate bank guarantee, as provided in sub-rule (1), the successful bidder shall be required to execute the contract for the project or special project and commence work to complete service roll-out in accordance with the roll-out period identified in the contract. Any extension of the roll-out period shall require fresh approval of the Board.
- “(3) The officer of the USF company designated for disbursements shall release the subsidy amounts in accordance with the subsidy payment terms of the contract using the payment method identified in the contract. No tax shall be deducted on such disbursement or release unless required by law for the time being in force. In case of release in instalments, the contract shall clearly mention the dates of further releases.”;
- (b) in sub-rule (4), after the word “reports” the words “and shall comply with any other information requirements included in the contract” shall be inserted;
- (c) for sub-rule (6), the following shall be substituted, namely:—
 - “(6) All the assets procured by the contractor for the implementation of the project from the subsidy amount shall be subject to lien exercisable by the Federal Government in accordance with sub-rule (3) of rule 29 and terms of the contract and the contractor shall execute documents to substantiate the lien or support its enforceability.”;
- (10) in rule 27,- for sub-rules (1) and (2), the following shall be substituted, namely:—
 - (1) Every contractor shall share the infrastructure and essential facilities developed through USF funding with at least one requesting USF contributor on a first come first served basis at rates based on reasonable cost. For greater certainty, the obligation to share infrastructure shall include access to network elements and associated facilities which may involve the connection of

equipment, access to the local loop and facilities and services necessary to provide services over the local loop, and access to physical structures including buildings, ducts, masts, equipment enclosures and similar facilities.

- (2) The contractor shall not refuse to share the infrastructure and essential facilities developed through USF funding unless such sharing is not technically feasible.”,
- (11) in rule 28, for sub-rules (1) and (2), the following shall be substituted, namely:—
 - “(1) No contractor shall charge a higher tariff in the lot than its national or regional tariff for the same or equivalent services.
 - (2) The Federal Government may require the Authority to introduce an upper limit of tariff for the telecommunication services provided in the lot, including where the contractor does not have a significant market power.”; and
- (12) for rule 31, the following shall be substituted, namely:—

“31. *Appeal*.— (1) Any licensee aggrieved by any decision or order of any employee of the USF company including the CEO may, within thirty days of the receipt of the decision or order, prefer an appeal to an Appeal Committee to be appointed by the Board in accordance with appeal procedures to be provided in the Procedure Manual.”

- (2) The Appeals Committee shall consist of three members of appropriate qualifications including one with technical expertise, one person with financial and commercial expertise and one with legal expertise:

Provided that members of the Board, employees of the USF company and any person with conflict of interest in connection with subject of appeal shall not be appointed as members of the Appeals Committee.”

[File No. 1-101/2004-Dir. (Legal).]

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