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GOVERNMENT OF KERALA
Public Works (H) Department

NOTIFICATION

No. 22098/H1/02/PWD.

Dated, Thiruvananthapuram, 30th May, 2003

S.R.O. No. 497/2003.-In exercise of the powers conferred by section 25 of the Kerala Road Fund Act, 2001, (Act 10 of 2001) the Government of Kerala hereby makes the following Rules, namely:-

RULES

1. *Short title and commencement.*-(1) These Rules may be called “The Kerala Road Fund Rules, 2003”.

(2) They shall come into force at once.

2. *Definitions.*- In these Rules, unless the context otherwise requires,-

(a) “Act” means the Kerala Road Fund Act, 2001 (Act, 10 of 2001);

(b) “Chairman” means the Chairman of the Board or of the executive committee, as the case may be;

(c) “member” means member of the Board or of the executive committee, as the case may be;

(d) “nominated member” means a member of the Board nominated by the Government pursuant to clause (h) of sub-section (3) of section 3 of the Act;

(e) “Vice Chairman” means the Vice Chairman of the Board or of the executive committee, as the case may be.

(2) Words and expressions used but not defined in these rules but defined in the Act shall have the meaning assigned to them in the Act.

3. *Meetings of the Board.*-(1) The Board shall meet at least once in six months at such time and place as the Chairman may decide.

(2) A meeting of the Board shall be convened by the Member Secretary.

(3) Notice of not less than clear fifteen clear days' shall ordinarily be given of each meeting of the Board and such notice shall be sent to every member at his usual address on the records of the Board.

(4) Every notice of a meeting of the Board shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted at such meeting.

(5) The agenda papers for the meeting shall be circulated to all the Members at least clear seven days before the date of the meeting.

(6) Notwithstanding anything contained in sub-rules (3), (4) and (5), the Chairman may on a written request made by two or members or otherwise, convene an emergency meeting of the Board at a shorter notice but no business other than the business for which the same is convened shall be transacted thereat.

(7) Every meeting of the Board shall be presided over by the Chairman, or in his absence, by its Vice Chairman, or in the absence of both, by a member chosen by the members present at the meeting.

(8) No business other than that specified in the notice shall be transacted at a meeting, except with the consent of the Chairman.

(9) The quorum for the transaction of business at a meeting of the Board shall be one half of the total number of the Members of the Board for the time being (any fraction contained in that one half being rounded off as one):

Provided that no such quorum shall be complete unless at least one of the nominated members is present.

(10) All decisions by the Board shall be taken by the majority vote of the members present and voting and the Chairman shall not have a casting or a second vote.

(11) A resolution in writing circulated to all the Members at their usual addresses on the record of the Board and approved and signed by the majority of such members which includes the Chairman or the Vice Chairman and at least one nominated member, shall be valid and effectual and shall be deemed to be the resolution passed by the Board on the date on which it is concurred and signed by the last signatory to the resolution:

Provided that where any dissenting member requires in writing that any resolution deemed to have been passed under this sub-rule shall be placed before a meeting of the Board, the resolution shall not be deemed to be valid and effectual as aforesaid, unless the same is passed at such meeting.

(12) The Board shall cause to be maintained minute books recording therein the proceedings of every meeting along with the names of the members present.

(13) The minutes of a meeting of the Board shall be circulated as soon as possible after the meeting, but not later than thirty days, for the information of the members, and shall be placed before the next meeting of the Board, for confirmation and shall bear the signature of the person presiding over such meeting.

(14) Every member who is in any way, whether directly or indirectly, concerned or interested in any matter to be discussed at the meeting of the Board shall disclose the nature of his concern or interest to the Board. Such member shall not participate in the deliberation or decision of the Board with respect to that matter and his presence shall not be counted for the purpose of quorum.

4. *Meetings of the Executive Committee.*-(1) The executive committee may meet as frequently as may be necessary but at least once in each quarter at such time and place as the Chairman may decide.

(2) A meeting of the executive committee may be convened by the Vice Chairman.

(3) Notice less than seven clear days shall ordinarily be given of each meeting of the executive committee.

(4) The quorum for the transaction of business at a meeting of the executive committee shall be one half of the total number of the members of the executive committee (any fraction contained in that one half being rounded off as one):

Provided that no quorum shall be complete unless at least one of the members nominated by the Board from among the Nominated Members is present.

(5) Save as otherwise provided in this rule 6 the provisions of rule 5 applicable to the meetings of the Board shall apply *mutatis mutandis* to the meetings of the executive committee.

5. *Utilisation of the Fund.*-In addition to the purposes specified in sub-section (4) of section 6 of the Act and in these rules, the amount standing to the credit of the Fund may be utilised for the following purposes.-

(a) to provide subsidy, capital grant or other capital support to transport facility projects in terms of a concession agreement;

(b) to guarantee and/ or make payments to be made to the concessionaire under the concession agreement including, where applicable, payment of annuity, shadow toll or other deferred payment, revenue shortfall support or payment arising out of termination of the concession agreement;

(c) to make payments to consultants or experts such as independent engineers, independent auditors appointed under the concession agreement either on its own account or on behalf of the Government agency or statutory body;

(d) to make payments to other consultants or experts appointed by and on behalf of the Board or the executive committee in discharge of their functions under the Act.

Explanation.-For the purpose of this rule,-

- (i) 'annuity' means the fixed sum payable by the Board to the concessionaire periodically during the concession period without reference to the number or type of vehicles using the transport facility project but subject to the terms and conditions stipulated in the concession agreement to compensate the concessionaire for the capital costs, operations and maintenance expenses and return thereon.
- (ii) 'shadow toll' means the sum, computed at specified rate (s) and on the basis of the number and type of vehicles using the transport facility project payable by the board to the concessionaire periodically during the construction period on the terms and conditions stipulated in the construction agreement to compensate the concessionaire for the capital costs, operations and maintenance expenses and return thereon.

6. *Selection of the Concessionaire.*-(1) Selection of a concessionaire shall be made by the Board through a process of competitive public bidding or by direct negotiation.

(2) Where the competitive bidding process does not result in selection of a concessionaire, or where the Board considers it necessary for the expeditious implementation of a transport facility project, the Board, may for reasons to be recorded, select a corporation or a company or such other entity owned or controlled by the Government of India or a State Government, through direct negotiation.

(3) The selection of concessionaire from persons who have submitted suo motu any innovative or other proposal in respect of any transport facility project shall be made in the following manner, namely:-

(i) A proposal in respect of a transport facility project may be submitted by a party to the project management agency, either directly or through a Government agency or a statutory body and such proposal shall contain the following details, namely:-

(a) Information relating to the party including information relating to its constitution, ownership pattern, management structure, technical, managerial and financial capabilities its track record in developing and implementing infrastructure projects and other relevant information;

(b) Detailed feasibility/project report which shall include details of the transport facility project estimates of the project cost, implementation schedule, details of arrangements being made for construction and operation of the transport facility, present market/traffic and forecast of demand traffic for the proposed transport facility, financial analysis including sensitivity analysis, setting out the indicative financial rate of return and debt service coverage ratios together with assumptions made;

(c) Other relevant technical/market studies including environmental and social impact assessment studies;

(d) Key terms and conditions for the concession proposed;

(ii) The project management agency after evaluating the technical feasibility and commercial viability of the project and the technical, managerial and financial capability of such party shall forward its appraisal report on the proposal to the Member Secretary who shall place the same for the consideration of the executive committee.

(iii) The executive committee may after considering the proposal accept the same with or without modifications or return the same to the project management agency with such recommendations as it may deem fit.

(iv) If the proposal is approved without any modification by the executive committee or if approved with modification or recommendation upon acceptance thereof by the party, the project management agency or the Government agency or the statutory body, as the case may be, shall put the project to competitive public bidding on the same project parameters as contained in the approved proposal.

(v) If the competitive public bidding results in a superior proposal, the party shall be given an opportunity to match the same within such time as may be stipulated. If the party matches the superior proposal it shall be selected as the concessionaire.

(vi) If the party declines to match the superior proposal then the person who has made the superior proposal shall be selected as the concessionaire. Upon such selection, the Board may reimburse to the party the development costs as certified by the project management agency and may recover the same from the successful bidder.

(vii) For this purpose, the estimated development costs shall be determined by the project management agency prior to such competitive bidding.

(viii) If the competitive bidding process does not result in a superior proposal, the bidding process shall be annulled and the party shall be selected as the concessionaire on the basis of the approved proposal.

Explanation:- For the purpose of this rule, innovative proposal shall mean proposal in respect of the transport facility which satisfies the following criteria-

(i) The proposal has been submitted suo motu, that is, solely at the initiative of the party making such proposal and not in response to an invitation made by the Government or any of its agencies;

(ii) The proposal involves an element of innovation (including improved designs, systems or processes which would result in substantial savings in costs or improvement in the level or service) in as much as it contains elements which are not generally seen in transport facility prospects at the time of such proposal;

(iii) The proposal requires no capital support or revenue shortfall support out of the fund;

(iv) The user fee where charged is as fixed by the Board; and

(v) Information as set out in clause (1) of this sub-rule has been provided.

(4) All proposals submitted to the Board or the project management agency shall at all times be the property of the Board.

7. Revision of User fees.—Where the concession agreement provides for revision of user fees such revision of user fees may be linked to all or any of the following, namely:-

(a) wholesale price index published by the Ministry of Industry, Government of India; or

(b) consumer price index published by Labour Bureau, Ministry of Labour, Government of India; or

(c) foreign exchange fluctuation, based on the foreign exchange rates published by the Reserve Bank of India; or

(d) such other index or reference rate as the Board of the executive committee may approve; or

(e) a combination of any of the above.

8. *Term of office and other conditions of service of members of the Board.-*

(1) Subject to the provisions of sub-section (4) of section 3 of the Act, a nominated member shall hold office initially for a period of two years which term may be extended by the Government by further periods not exceeding two years at a time, provided such member continues or be eligible for being a nominated member at the time of such extension.

(2) A person shall be disqualified for being nominated or for being a member if he –

(a) is above the age of 65 years; or

(b) has been convicted and sentenced to imprisonment for an offence, which in the opinion of the Government, involves moral; turpitude; or

(c) is an undischarged insolvent; or

(d) is of sound mind and stands so declared by a competent court; or

(e) has been removed or dismissed from the service of the financial institution, Scheduled Banks or National level institution , as the case may be ; or

(f) has, in the opinion of the Government, such financial or other interests in the functioning of the Board as is likely to affect prejudicially the discharge by him of his functions as a Member.

(3) Each nominated member may be paid out by the Fund such sum as may be determined by the Board from time to time for attending each meeting of the Board.

(4) The Board may pay or reimburse out of the fund traveling, lodging, boarding and other incidental expenses incurred by or on account of a nominated member in connection with attending the meetings of the Board.

(5) The provisions of sub-rules (3) and (4) of this rule shall apply mutatis mutandis to the meetings of the executive committee attended by the nominated members who are members of the executive committee.

(6) A nominated member if called upon and willing to render extra services to the Board may be paid additional remuneration as may determined by the Board.

(7) The *ex-officio* members shall not be entitled to be paid out of the Fund any fee or remuneration in connection with attending meetings of the Board or the executive committee or other meetings.

(8) If any vacancy arises in the Board by reason of death, resignation or otherwise of a member, the same shall be filled by the Government as soon as possible.

9. *Common Seal.*– The common seal of the Board shall not be affixed to any instrument except in pursuance of the resolution of the executive committee and in the presence of member Secretary and in his absence any other *ex-officio* member duly authorized by the executive committee who shall countersign the instrument

in token of his presence and such signing shall be independent of the signature of any person, who signs the instrument as a witness or otherwise.

By order of the Governor

BABU JACOB,
Additional Chief Secretary to Government

Explanatory Note

(This does not form part of the Notification, but is intended to indicate its general purpose.)

Section 25 of the Kerala Road fund Act, 2001, empowers the Government to make rules for the purpose of carrying into effect the provisions of the Act. The Government have, therefore decided to issue the Rules for the purpose.

The Notification is intended to achieve the above object.