

GOVERNMENT



G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 24th MARCH, 2017.

GOVERNMENT OF KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT

NOTIFICATION

Dated: 07th March, 2017.

No. SO(E)/MDD/6-1/D&R/2017: In exercise of the powers conferred by the section 101 of the Khyber Pakhtunkhwa Minerals Sector Governance Act, 2016 (Khyber Pakhtunkhwa Act No. 1 of 2017) read with sub-section (2) of section 58 thereof, the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA ROYALTY AUCTION RULES, 2017

1. **Short title and commencement.**--- (1) These rules may be called the Khyber Pakhtunkhwa Royalty Auction Rules, 2017.

(2) These rules shall come into force at once.

2. **Definitions.**--- (1) In these rules, unless the text or context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them, that is to say-

- (a) "Act" means the Khyber Pakhtunkhwa Minerals Sector Governance Act, 2016 (Khyber Pakhtunkhwa Act No. 1 of 2017);
- (b) "Appellate Authority" in relation to rule 8 of these rules means the Secretary to Government, Mines and Minerals Development Department;
- (c) "Auction Committee" means the Committee constituted under rule 3 of these rules;
- (d) "Division" means a Division of the Province of the Khyber Pakhtunkhwa;
- (e) "royalty" means the levy charged by Government on production of minerals;
- (f) "Schedules" means the Schedules appended to these rules;
- (g) "successful bidder" means the bidder, who offered the highest bid approved by the Licensing Authority;

- (h) "reserve price" means the minimum price fixed by the Auction Committee for auction of royalty on minerals; and
- (i) "person" means an individual, firm or a company who is registered with the Director General for the purpose of participation in the auction under these rules.

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

3. Constitution and Composition of the Auction Committee.--- (1) Subject to the provisions of sub-section (2) of section 58 of the Act, Government shall constitute an Auction Committee to-

- (a) conduct auctions for collection of royalty on minerals;
- (b) fix reserve price of royalty on minerals for each Division of the Province;
- (c) submit to the Licensing Authority the highest bid for approval; and
- (d) submit, for the purpose of clauses (b) and (c) above, its recommendations to the Licensing Authority for final decision.

(2) The auction committee shall consist of-

- | | |
|--|----------------------|
| (a) Director General; | Chairperson |
| (b) Director Licensing-I; | Member |
| (c) Director Licensing-II; | Member |
| (d) Deputy Secretary Mineral Development Department; | Member |
| (e) Deputy Secretary Finance Department; | Member |
| (f) Deputy Secretary Law Department; and | Member |
| (g) Assistant Director (Royalty). | Secretary-cum-member |

4. Public Notice of Auction.--- (1) Subject to the provisions of these rules, the Chairman of the Auction Committee shall invite sealed tenders or conduct open auction of the royalty on minerals on Divisional basis by publication through website of the Department, print and electronic media.

(2) The public notice shall contain the following information, namely:

- (a) the details of the auction schedule specifying the date, time and venue where the auction is to take place; and
- (b) the terms and conditions of the auction.

5. Terms and Conditions of Auction.--- (1) Save as otherwise provided hereinafter, all auctions will be held in the first place through "sealed tenders" in accordance with the following procedure:

- (a) the advertisement shall indicate a date, time and venue of the auction;

- (b) the interested person shall submit their bids on Tender Form as provided in Schedule I, along with requisite documents, as mentioned in the Tender Form, three days before the date of auction;
- (c) all sealed tenders shall be opened on the day of auction in the presence of the bidder or through their representatives duly authorized in writing;
- (d) the highest bidder will be announced, provided he otherwise fulfills all pre-requisites for the tender;
- (e) the Committee shall submit its recommendations to the Licensing Authority for approval;
- (f) the Licensing Authority may accept the recommendations of the Committee or may reject it on grounds to be recorded in writing; and
- (g) the successful bidder shall be issued the "Offer Letter" by the officer authorized by the Licensing Authority.

(2) In case the recommendations received as a result of the process in sub-rule (1) are rejected or when the Committee so recommends in case of non-receipt of responsive bids, such Division shall be offered through open auction in the following manner, namely:

- (a) the respective Division shall be freshly advertised and the advertisement shall indicate a date, time and venue for auction;
- (b) the interested persons shall submit an application on a form as provided in Schedule-II, annexed to these rules, alongwith requisite documents as mentioned in the application form, three days before the date of auction;
- (c) the auction shall be open for participation by the bidders in person or through their representatives duly authorized in writing;
- (d) the highest bidder shall be announced on the fall of hammer;
- (e) the Committee shall submit its recommendations to the Licensing Authority for approval;
- (f) the Licensing Authority may accept the recommendations of the Committee or may reject it on grounds to be recorded in writing; and
- (g) the successful bidder shall be issued the "Offer Letter" by the officer authorized by the Licensing Authority.

(3) In case where the Licensing Authority reject the recommendations of the Auction Committee in case of open auction or failure of the bidder to comply with the terms and conditions of the auction or in case of non-auction, as the case may be, the procedure as given in the provisions of sub-rule (1) and (2) respectively shall be followed.

(4) No person, if found to be a defaulter or blacklisted with any Government Agency, shall be eligible to take part in the auction.

(5) The amount of security provided in the shape of call deposits of all participants shall be refunded immediately after the auction except to the highest bidder.

(6) On receipt of the offer letter, the highest bidder shall be required to deposit one-tenth of his bid amount as security within seven working days. In such case the

security amount already deposited shall be adjusted towards the gross security amount in respect of the highest bidder. If the highest bidder fails to comply with the directions, the amount of security in the shape of call deposit shall be forfeited.

(7) On receipt of the offer letter, the successful bidder shall deposit within seven working days, under the proper head of account, twenty five percent of the bid amount as first installment, the withholding tax and professional tax as prescribed by Government from time to time.

(8) If the successful bidder fails to comply with the terms and conditions of the offer letter within the prescribed time, the call deposit shall be forfeited.

(9) The successful bidder shall deposit the remaining bid amount in three equal installments from the date of issuance of the work order, failing which the royalty contract shall be processed for cancellation subject to 30 days' notice served upon him.

(10) The royalty Contractor shall execute an agreement at Schedule-III annexed to these rules with the Licensing Authority before the issuance of work order.

6. Procedure for Registration.--- (1) For the purpose of taking part in auction, a person shall register himself with the Licensing Authority.

(2) The following documents shall be submitted to the Director General with the application for registration:

- (a) Bank challan showing deposit of registration fee in the relevant head of account;
- (b) Bank certificate showing financial soundness of the person;
- (c) attested copy of the duly registered partnership deed, in case of a firm or partnership and Articles and Memorandum of Association in case of a company; and
- (d) attested copies of the National Identity Card or passport of the individual, partners or directors, as the case may be.

(3) The registration shall be renewable every year after depositing the prescribed renewal fee and fresh Bank certificate showing the financial soundness of the person.

(4) Un-registered person, defaulter in payment of Government outstanding dues or black listed, shall not be entitled to take part in the auction proceedings.

7. Appeal.--- In case the Contractor is aggrieved by any order of Licensing Authority or his authorized representative, he may prefer an appeal to the Appellate Authority within thirty days from the issuance of such order. The decision of the Appellate Authority on appeal shall be final and binding by all concerned.

8. Exemptions.--- The provisions of these rules shall not apply to royalty on-

- (a) precious stones group, Semi-precious stones group, precious metals group and Radioactive minerals; and

KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24th MARCH, 2017 546

- (b) royalty on minerals excavated and transported by the cement factories from their own granted areas:

Provided that Government may through notification in the official Gazette, extend the provisions of these rules to any of the minerals specified in clause (a) and (b).

**Secretary to the
Government of Khyber Pakhtunkhwa,
Minerals Development Department.**

KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24th MARCH, 2017 548

SCHEDULE-II
(rule 6 (2) (b))

FORM FOR OPEN AUCTION

1. Name of Division:
2. Name of Applicant:
3. Registration No.
4. Address:
5. Contact Number. Phone Cell:
6. Email:
7. Original copy of Treasury Receipt / Bank Draft of Rs. /-
(Rupees) dated:
as application form fee, under the Head of Account "C 038-Other Receipts C
03808 Receipts under the Mines - Oil Fields and Mineral Development Act".
Deposited in the State Bank of Pakistan / National Bank of Pakistan or any other
scheduled bank / Government Treasury at
8. Detail of Security amount:
 - a. Name of Bank:
 - b. Pay order No.
 - c. Amount in Figure:
 - d. Amount in words.

Signature of the applicant

CNIC No.

Dated

549 KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24th MARCH, 2017

SCHEDULE-III

**CONTRACT/AGREEMENT PERTAINING TO
COLLECTION OF ROYALTY ON MINERALS
(see sub-rule (9) of rule 6)**

This Agreement is made on this _____ day of _____ for the collection of royalty on the minerals excavated in _____ **Division**, Khyber Pakhtunkhwa, is made between the Licensing Authority (hereinafter referred to as "Party of the First Part") which expression shall include his successor in office and permitted assigns of the First _____ Part, _____ and Mr. _____ S/O _____ R/O _____ (hereinafter referred to as the "Contractor") which expression shall include his successor-in- interest/ office and permitted assigns of the Second Part.

WHEREAS the Contractor has deposited Rs. _____ as 10% Security, Rs. _____ as 25% down payment (First Installment).

AND WHEREAS the Party of the First Part has found that there is no objection in granting of the contract.

NOW THEREFORE, both the Parties agree as follows:

1. The period of the contract shall be for one year effective from _____ to _____ at the total auction money of Rs. _____ (Rupees: _____) and shall not be extendable.
2. The Contractor shall have the authority (during the existence of this agreement) to collect or recover royalty on minerals excavated and transported from _____ **Division** as per Government royalty rate notified from time to time.
3. The Contractor shall deposit the remaining auction money amounting to Rs. _____ in advance in the State Bank of Pakistan or National Bank of Pakistan, as the case may be, under Head of account _____ and shall submit the Bank challan to the Party of the First Part.
4. The auction money shall be payable in accordance with the following payment schedule:

PAYMENT SCHEDULE

S.No	Installment Amount	Due date
1.	Rupees _____ /-	
2.	Rupees _____ /-	
3.	Rupees _____ /-	

KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24th MARCH, 2017 550

5. (a) In case the Contractor fails to deposit the installments as per clause 4 of the Agreement, a penalty at the rate of 1% per day on the amount or any part thereof, from time to time remaining unpaid shall be imposed on the default period, starting from the day on which the payment of installment becomes due. In case of non-payment of the amount, the royalty Agreement shall be processed for cancellation subject to thirty days notice served upon the Contractor. The outstanding dues shall be recovered as arrears of land revenue, if not paid in normal course.
- (b) The Contractor shall deposit Advance Withholding Tax as per rules under section 236-A of the Finance Act, 2009 of the gross value of Agreement amount of (Rupees : _____) and shall submit the Bank challan to the Party of the First Part.
- (c) The Contractor shall deposit Rupees, _____/-as professional tax against the bid amount.
6. In case the royalty rates are enhanced by Government, the Contractor shall be bound to accept proportionate increase in the principal auction amount, otherwise the Agreement shall be cancelled at the risk and cost of the Contractor.
7. The Contractor shall not charge, recover or receive royalty on unauthorized excavated or transported minerals.

EXPLANATION

Unauthorized excavated and transported minerals means the minerals extracted or transported from an area which has not been granted by the Party of the First Part under the Act and the rules framed thereunder or the minerals being transported without duly verified challan or the minerals extracted from the area where the mining operation has been suspended or the minerals for which the challan has been refused for minerals being transported under wrong nomenclature.

8. The Contractor shall charge royalty on notified rates according to the load of the vehicles and shall issue proper receipt to each vehicle duly signed by himself or his authorized representative. In case the royalty tariff is revised or enhanced by the Government, the Contractor shall be bound to accept proportionate increase in the principal auction amount.
9. If a vehicle transporting minerals having valid challans is found passing without payment of royalty by using unfair means, the Contractor shall be authorized to impose and recover a fine three (3) times of the royalty in addition to actual royalty recoverable under intimation to the Party of the First Part. Half of the amount of such fine shall be deposited with the Party of the First Part under relevant head of account.

551 KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24th MARCH, 2017

10. The Contractor shall not charge royalty on minerals having valid permission from FATA Development Corporation or Political Agent of the concerned tribal areas (FATA) or outside the contract jurisdiction of the Contractor. The mineral illegally transported from FATA shall be penalized in accordance with the procedure adopted for settled areas.
11. In case a mineral title is suspended or cancelled by the Party of the First Part or his authorized representative, the Contractor shall not claim any compensation or remission etc. for the losses caused due to such suspension or cancellation.
12. The Contractor shall appoint his own staff or agents for collection of royalty at his own cost. The list of such staff or agents shall be provided by the Contractor to the Party of the First Part, who will be given proper identification or recognition letters to avoid the charge of impersonation. In case of any change or retirement or new appointment in the staff, the Contractor shall inform the Party of the First Part, so that recognition letter could be issued accordingly.
13. (a) The Contractor on recovery of royalty shall issue receipt from the books signed or stamped by the Party of the First Part or any other officer authorized in this behalf.

(b) The Contractor shall return all the used receipt books alongwith statement of minerals passed through each royalty post pertaining to proceedings and receipt of fines fortnightly to the Party of the First Part on 18th and 3rd of each month.
14. The Contractor is allowed to establish check posts or barriers anywhere within and at the Divisional boundaries where the royalty contract has been awarded.
15. The Party of the First Part shall assist the Contractor in recovery of royalty from the mineral title holder in accordance with the Act and rules. If a mineral title holder failed or refused the payment of royalty to the Contractor, the Contractor may adopt other legal means for recovery of his legitimate dues. However, it shall not have any effect on this agreement and the Contractor shall not be entitled to obtain status-quo orders from any court of law in respect of payment of installments to Government and award of contract after the expiry of this agreement period or any other terms and conditions of this Agreement.
16. The schedule of royalty rates of different minerals shall be exhibited in a conspicuous place or on the notice board at the collection posts. The inspecting officer shall check the schedule and record its existence or otherwise in the inspection books.
17. The Party of the First Part or its authorized representative shall have the powers to check the royalty collection points and the Contractor record. The Contractor shall provide assistance to such staff in discharging their official duties.

~~MINERAL CONCESSIONS GOVT. GAZETTE, EXTRAORDINARY, 29 MARCH, 2017, 532~~

18. A public complaint register or inspection book shall be maintained and placed by the Contractor in a conspicuous place at the royalty collection posts. These shall properly be "page marked" and "signed" by the Party of the First Part or any other officers authorized for the purpose and the inspecting officers shall check it on their visits. On demand by the public for recording a complaint, it shall be the duty of the Contractor or his representative to provide the said register to the complainant.
19. If required by the Contractor the Party of the First Part shall post Government staff to protect the Government writ, the interest of the Government and assist the Contractor in recovery of royalty. The Contractor shall provide reasonable facilities and accommodation to the Government staff at barriers or check posts.
20. The Contractor shall print receipt books at his own expenses according to the proforma at Schedule-IV annexed to these rules. Such books shall be verified by the Party of the First Part or its authorized officers.
21. The Contract once awarded shall not be subletted to any other party. In case the Contract is subletted to any other party by the Contractor, this Agreement shall be liable to be cancelled by the Party of the First Part. If the original Contractor is not interested to continue, this Agreement shall be cancelled and shall be re-auctioned at the cost and risks of the Contractor and security amount deposited by such Contractor shall be forfeited in favour of the Government.
22. If the Contractor is found defaulter or blacklisted by any Government Agency during the currency of this Agreement, his Contract shall be liable to cancellation without any notice and the possession of royalty collection posts or barriers shall vest with the Party of the First Part at the risk and cost of the Contractor.
23. The Contractor shall not be entitled for any exemption or remission.
24. Violation of each of the following clauses of this Agreement shall be liable for penalty noted against each:

S. No.	VIOLATION OF CLAUSES	PENALTY
1.	<u>Violation of Clauses 7&8</u> Recovery of royalty on unauthorized mineral or excess charging of royalty and its non-depositing to the Directorate.	Rs. 2000/- in each case in addition to action specified in clause 6 & 7.
2.	<u>VIOLATION OF CLAUSE-9</u> Non deposit of half of the amount of fine collected by the Contractor.	An amount equal to three times of the amount of fine not deposited.
3.	<u>VIOLATION OF CLAUSE-10</u> Charging of royalty on minerals from tribal areas or outside the contract jurisdiction.	Equal to 03 times of the over charge amount.
4.	<u>VIOLATION OF CLAUSE-12</u> Non intimation of the name & addresses of the staff/agents appointed by the Contractor on different royalty collection posts.	Rs. 5000/- in each case.

553 KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24th MARCH, 2017

5.	<u>VIOLATION OF CLAUSE-13</u> (a) Issuance of receipt from books being not verified/signed by the Licensing Authority or his authorized officer. (b) Non filling in each column of receipt in proper manner. (c) Non submission in time the used receipt books etc to the Regional Office.	Rs. 5000/- in each case. Rs. 500/- in each case. Rs. 1000/- in each case.
6.	<u>VIOLATION OF CLAUSE-16</u> Non exhibition of royalty rates schedule in a conspicuous place.	Rs. 5000/- in each case.
7.	<u>VIOLATION OF CLAUSE-18</u> Non maintaining public complaint register or its non provision to any person from public or inspecting officer for recording remarks.	Rs. 5000/- in each case.

IN WITNESSES WHEREOF, both the Parties hereto have set their hands and signed this Agreement on the day, month and year hereinabove mentioned.

**For and on behalf of the Party
of the First Part.**

**For and on behalf of the Party
of the Second Part.**

Name _____ Name _____

Designation _____ Designation _____

WITNESSES

1. Name _____ Name _____

CNIC _____ CNIC _____

KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24th MARCH, 2017 554

ADDRESS _____ ADDRESS _____

2. Name _____ Name _____

CNIC _____ CNIC _____

Address _____ Address _____

555 KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 24th MARCH, 2017

SCHEDULE-IV

(see clause 20 of Schedule-III)

Form showing the receipt of Royalty by the Royalty Contractors

**ORIGINAL
Royalty Receipt**

Date: _____ Book No: _____
 Time _____ Receipt No. _____
 Name of Contractor, _____ Division: _____
 Name of Mineral Titles Holder & File Number: _____
 Name of District: _____
 Name of Mineral _____
 Weight _____
 Royalty Rate: _____
 Total Royalty: _____
 Place of sending Mineral: _____

Signature _____