

Guide to Public Private Partnership in Dubai



Dubai Government
Department of Finance
First Edition – 2016



Guide to Public Private Partnership in Dubai

**Dubai Government
Department of Finance**

First Edition – 2016



This Guide

Public Private Partnership (PPP) is an effective way to enhance sustainable development, and a major contributor in driving the economy of the Emirate forward. This is done by expanding investments, providing jobs, and offering a variety of services, under responsible stakeholders engaged in added value projects, and represented in a strong responsible public sector that provides facilitation and coordinates efforts, and a competitive private sector marked by a spirit of initiative.

The Department of Finance (DoF) understands the importance of PPP in executing projects that depend on citizens and residents, and which must be developed and studied for current and future benefits, thus providing room for national, regional and foreign investments. Hence, Dubai Government firmly believes that such integration and harmony of roles and responsibilities will contribute positively to the development of public sector programs and to opening channels for the private sector to expand its investments and activities. Consequently, DoF has developed this guide as per Item (5) of Article (9) of its mandate: “Develop a general guide covering rules and regulations to be followed when a government entity wishes to enter into a partnership contract”, under Law No. 22 for 2015 on regulating PPP in Dubai.

In developing this guide, DoF has ensured reviewing several international and regional guides, as well as studying a number of local and international experiences on PPP, and presenting most of them in the Guide along with a number of international practices. The purpose is to promote the role of government entities in making decisions that lead to effective partnership for all parties included, while taking into account the unique nature of Dubai.

DoF has developed the Guide to provide guidelines on the various stages of PPP, from the mechanism to propose projects, to project follow up, taking into account the importance of reviewing other relevant laws, and sector-specific requirements. Hence, Version 1 of the Guide does not identify project processes that are fit-for-all. Rather, it is a first step presenting an initial view on partnership projects as per PPP Regulation Law No. 22 of 2015, and all relevant decisions issued by the Head of Supreme Fiscal Policy Committee, as per Article 38 of the same law, stating that: “the Head of the Committee shall take decisions necessary to execute provisions of this law”.

Finally, the DoF would like to extend deep thanks and gratitude to the team of the DoF, the Supreme Legislation Committee, and all government entities that contributed their expertise and experiences to enrich the Guide its first edition, thus bringing about further cooperation towards the prosperity of our Emirate.

For more information and inquiries about this guide, please contact the Department of Finance at:

Tel: 00971 (04) 3533330

Fax: 00971 (04) 3534915

Email: EFRD@dof.gov.ae

P.O Box 516, Dubai, UAE

© All Rights Reserved. Department of Finance – Dubai

Contents of this booklet may not be reprinted, copied, or transferred, whether in part or in total, by any means without prior written approval by Dubai Department of Finance.



His Highness Sheikh Mohammed Bin Rashid Al Maktoum
UAE Vice President, Prime Minister, and Ruler of Dubai



His Highness Sheikh Hamdan Bin Mohammed Bin Rashid Al Maktoum
Dubai Crown Prince





Foreword

We firmly believe in the insight and vision of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, UAE Vice President, Prime Minister, and Ruler of Dubai, on the importance of engaging the private sector in the development process, and focusing on quality and excellence as pillars for growth and competition in the private sector. To His Highness, the private sector is complementary to, and key partner of, the public sector. With partnership of both sectors, the different areas of the Emirate's economy will achieve growth and prosperity.

This is also in line with the directions of His Highness Sheikh Ahmed Bin Saeed Al Maktoum, Head of the Supreme Fiscal Committee, to bridge the gap between public and private sectors and engage private sector expertise and capabilities, especially new technologies and capabilities, as well as embedding concepts of leadership and innovation. There also the use of management disciplines, and developing strategies as per international best practice to realize the vision of HH Sheikh Mohammed Bin Rashid Al Maktoum. As such, those are all critical factors to identifying streams of sustainable development in Dubai.



Under the economy theme in Dubai 2021 Plan, the Emirate seeks to promote itself as an international business hub, and to be among the world's top five hubs for trade, transport, finance, and tourism by having a sustainable economic development, enhancing ease of doing business, and being the preferred destination for investment. In addition, under 'leading and excellence' theme, the Government seeks to have sustainable and innovative financial resources, and to fairly and reliably execute all laws, thus protecting the rights of all stakeholders – individuals and businesses – and ensuring transparency and credibility. To this end, Law No. 22 of 2015 regulating PPP in the Emirate, and the PPP Guide both come together to enable partnerships that release benefits of private sector management systems, efficiencies and methodologies into the provision of public services, with specific benefits related to the cost, value, and quality of services provided. This also creates new jobs and encourages investment and consumption, leading to increased growth rates and attracting investments. Both the law and the Guide reaffirm Dubai Government's resolution and strong belief in the role of the private sector in driving Dubai's sustainable economic growth rates.

AbdulRahman Saleh Al Saleh
Director General of the Department of Finance



Contents

Chapter 1	17
Public Private Partnership – Theory (Concepts)	
First: Definition of Public Private Partnership	20
Second: Reasons for the public private partnership	21
Third: Objectives of Partnership	24
Fourth: Benefits of Partnership	24
Fifth: Types of Partnership	26
Chapter 2	35
The legal framework regulating public private partnership in Dubai	
First: Key features of law No(22) of year 2015 on the public private partnership in Dubai	37
Second: Law No. (22) of 2015 Regulating PPP in the Emirate of Dubai	44
Third: Inquiries concerning Law (22) of Year 2015 Concerning Regulating PPP in Dubai	66
Chapter 3	80
The Partnership Cycle between public and private sector companies in Dubai	
Phase 1 : Proposal of Partnership Projects in the Emirate of Dubai	85
Phase 2 : Studying and Approving Partnership Projects	99
Phase 3 : Partnership Project Tendering and Contracting	133
Phase 4 : Contracting	173
Phase 5 : Monitoring the Partnership Projects Performance	213
Conclusion	229
References	230



Table of Frameworks

Framework No. (1)	Requirements of PPT Successful contracts	67
Framework No. (2)	ternational Practices as regards the commitments of Government Entities in case of appointing tendering consultants	95
Framework No. (3)	Financing Partnership Approaches	129
Framework No. (4)	lternational Practices concerning Activating Bidding Mechanism	137
Framework No. (5)	The Best International Practices concerning Activating Prequalification	143
Framework No. (6)	Best International practices concerning the Competitive Dialogue Effectiveness	146
Framework No. (7)	Best international practices concerning the tender conditions and specifications for a project	151
Framework No. (8)	International practices concerning proposals preparation, receipt and opening	155
Framework No. (9)	International practices for proposals assessment procedures:	161
Framework No. (10)	International practices concerning grievances pertinent to partnership projects	170
Framework No. (11)	International practices concerning establishing the partnership company	181
Framework No. (12)	International Practices of Addressing the Time Value of Money	211
Framework No. (13)	International practices of partnership projects monitoring planning	225



Table of Frameworks

Figure No. (1-2)	Conditions for listing projects for partnership in Dubai	67
Figure No. (3-1)	Dubai Partnership Project Proposal Mechanism	88
Figure No. (3-2)	Partnership Project Study and Approval in the Emirate of Dubai	117
Figure No. (3-3)	Invitation and award procedures for partnership projects	150
Figure No. (3-4)	Elements of a partnership contract in Dubai	177
Figure No. (3-5)	Elements related to PPP contracts	191
Figure No. (3-6)	Monitoring Partnership Projects in Dubai	219



Guide Drafting Team

Team Leader:

Ibrahim Gamal El Deen Abou Seif

Developed By:

Dr. Shoukry Ragab Elashmawy

Content Support By:

Fatma Mohd. Thani Al Mehairi

Hani Fahim El Sehity

Maryam Khalifa AlMakhmari

Appreciation and Thanks

The team would like to thank:

- Mr. Mohamed Hamad Al Shihi – Deputy Director General
 - Jamal Hamed Al Marri – Executive Director, Central Accounts Sector
 - Arif AbdulRahman Ahli – Executive Director, Budget and Financial Planning Sector
- for their valuable inputs and contributions to drafting Law No. 22 of 2015 on Regulating PPP in Dubai, and the first edition of the PPP Guide.

Review Team:

1. Dubai Supreme Legislation Committee
2. Dubai Municipality
3. Dubai Police GHQ
4. Dubai Health Authority
5. Dubai RTA

01



Chapter 01

Public Private Partnership – Theory (Concepts)

This chapter sheds light on a set of basic concepts about PPP to serve as a preamble, so that the reader can have full knowledge of all theoretical aspects of partnership. It constitutes a good basis to build a knowledge base for all the next partnership stages, which include local, regional and international processes and experiences. These covered will be under the Partnership Cycle in Dubai.

This Chapter Covers:

- First: Definition of Public Private Partnership
- Second: Reasons for Public Private Partnership
- Third: Objectives of Partnership
- Fourth: Partnership Benefits
- Fifth: Partnership Types



In essence, partnership based is on providing public services by the government contracting with private sector companies to build, finance, and operate public services infrastructure. At the end of the contract, the infrastructure assets owned become by the government, which increases the volume of its assets.

Globally, PPP has become dominant over the last few years due to lack of investments and increasing pressure on government budgets, in addition to the public concern about the inefficiency of services provided by some government entities. PPP has been mainly applied in economic infrastructure fields, such as Radio Telecoms, power, water and roads. However, it has been moving recently into social infrastructure aspects like health, educations and other services. Governments before mainly provided such services, as they require hefty investments, and need long time before they can, generate in economy terms, revenues. Governments usually want to keep control over providing such services due to their importance to modern societies, and since the pricing of such services tend to be inflexible, due to social considerations. However, infrastructure services provided by governments were, in many cases, inefficient, over-priced, inaccessible, and poorly maintained. Hence, the need for better, more efficient services, and the need for additional sources of funding, increasingly drive governments now to adopt PPP to deliver those services.



First: Definition of Public Private Partnership

There are several definitions for the term ‘Public Private Partnership’, hence we can there is no specific definition of the partnership concept. However, these different definitions refer to the same meaning indicated by the term itself. Generally, Partnership is defined as a contractual relationship bringing together public and private sectors. It arises as per the provisions of partnership regulation law, the relevant decisions, and the partnership contract. It aims to implement all or part of the project to ensure the quality of services, to develop the revenues of the government entity, or for any other purpose, by making use of private sector efficacies, potentials, and technical and financial capabilities. Such contractual arrangements may include a simple form of providing inputs, or the different aspects of outsourcing. They may also extend to include transferring or sharing management or decision making, or some sort or degree of coordination and exchange of information. It may also be in the form of the private sector providing the commodity in the market (privatization). The form of contract between the public and private sectors is subject to the tasks that handled can be by the private sector. To know the limits of this public-private sharing, some sources define a framework that divides a project providing a service or a product into four tasks:

1. Project Definition and Design
2. Funding the project's capital assets
3. Building and Establishing the project
4. Operating and maintaining the project

The government may identify any of those fours tasks, or stages, to be handled by the private sector, thus entering into a contract that forms a type of partnership. The government may assign tasks 2 and 3, or 3 & 4 to the private sector. It may spread the tasks across a number of different partners, or the same partner may undertake a number of tasks.



By this definition, partnership involves:

- Commitment & Undertaking: to deliver and implement development decisions as per a methodology and objectives defining the role of each partner, in an effective management environment where each party is committed to their pre-defined roles.
- Continuity: It is often that PPP projects implementation extends over long periods. During this time, government policies may change, which would lead in turn to cancelling partnership Projects. So, proper timelines must be observed when implementing politically sensitive projects. In addition, a general framework and management approach defined must be in light of market forces that govern the partnership.
- Transparency: this refers to coordination between the partners through a clear vision of the ways followed by each partner to meet the set objectives, while dealing clearly and honestly with both internal and external changes that take place during the partnership.

Second: Reasons for the public private partnership

The public private partnership – if established on proper bases – is an optimum option – either on the strategic or administrative level – to render commodities and services and to make use of the private sector expertise.

1- The strategic side:

Contracts for the public private partnership enhance credibility through determining liabilities and focus on fundamental elements of such commodity or service, which is subject of partnership. In addition, the public private partnership may bring benefits to the administrative efficiency of the government. Financial, human and administrative resources redirected may be to other strategic fields.



2- The administrative side

- Focus on outputs
- Economies developed by designs, construction, finance and integrated operation of assets.
- Innovative usage of assets.
- Administrative experience.
- Optimum description of projects.

Those characteristics may facilitate the provision of the best and largest deal of commodities and services using the same financial resources. In addition, the government may, thanks to such characteristics, achieve surplus so the latter can be used to provide other commodities or services or for other investments.

Characteristics of the public private partnership include the following:

- Increase in economic growth and creation of job opportunities in the end.
- Efficiency in provision and spread of services.
- Reducing financing burdens falling on the governmental budget.

Studies showed close relationship between economic growth and infrastructure development, as lack and low efficiency of infrastructure hinder fast economic growth, whilst, effective infrastructure help create job opportunities, develop human capital, encourage domestic and foreign trade and investments and increase both productivity and economic growth in the business sector. In addition, infrastructure actively participate in social development and increasing living standards through facilitating making use of vital services such as health and education.

3- Making use of the private sector expertise and characteristics:

The private sector participation in providing social and economic. Services gives local economy an opportunity to utilize additional resources from the private sector to invest the same in infrastructure against each unit available (or rare) from the public sector resources, the participation of which enables making use of the financing and administrative expertise in the private sector and opens the door to new markets and technologies. At the end, PPP aims at reaching optimum utilization of available resources and



achieving purposes of the public policy – in a practical and flexible manner – through best possible means and designs making use of the following characteristics:

- Making use of skills and administrative efficiency in the private sector to render public services, thus, increasing level of services and/or reducing costs thereof.
- The public private partnership reduces risks incurred by the government to execute projects through redistribution of the same between the public and private sector, particularly as the latter is more able to face risks.
- It will be able to make use of the private sector capital, thus, improving the public fund in both the short and long run.
- The private sector can maximize utilization of costs of assets and balance between capital and operating expenses in a manner that cannot be achieved by the public sector.
- The private sector can make investments using new technical means and it makes use of economies of scale.
- Surplus stock in infrastructure results in increasing economic growth, which will, lead in turn, to increasing levels of income and creating more job opportunities.

Building on the above, PPP allows making use of miscellaneous expertise in both sectors. In addition other international expertise will be brought to achieve tangible progress in value and quality of rendered services with least costs, enhance quality of services rendered to citizens, ease burden on the public budget (without affecting its ability to intervene to provide services at socially fair prices), to create new job opportunities and to encourage investment and consumption. Thus, growth rates can be increased and foreign investments can be attracted whilst government entities will control the level of rendered services according to the agreed upon standards. However, the government will have a vital role still concerning basic social services (such as education and healthcare).

The government focuses more on preparing an appropriate legal framework - that gives confidence to the private sector concerning conditions of PPP - and achieving services with protecting interests of beneficiaries.



Third: Objectives of Partnership

- 1- The objective is to change activity of the government from construction and direct operation of infrastructure and services to:
 - Focus on laying down policies for the infrastructure sector.
 - Identifying priorities for infrastructure objectives and projects.
 - Control service providers and service organization.
- 2- Inclusion of the management and efficiencies of the private sector in the public services field and getting the private sector involved in incurring risks.
- 3- Achieving better value for money with regard to public funding, i.e., lesser total cost (along the project life) for design, construction, operation and maintenance for new public projects.
- 4- Executing investment projects in the scheduled time with the specified budget.
- 5- Avoiding deterioration of necessary assets and establishments for public services as a result of ineffective maintenance or inefficient operation.
- 6- Innovative ideas for project design concerning assets, operation and maintenance.
- 7- Transferring those risks – that can managed in a better manner by the private sector (design, establishment, finance and maintenance) away from limited resources of the government.

Fourth: Benefits of Partnership

PPP may have several benefits as compared to traditional procurement methods, such as:

- 1- **Cost Savings:** concerned government entities may, through this kind of partnership, achieve saving in costs with regard to capital projects, operation and maintenance of services, operation of utilities and services systems and maintenance of the same. The private sector can reduce operating and maintenance costs of infrastructure and systems through such major savings made by economies of scale and innovative technologies, through flexibility in procurement and compensation arrangements or through reducing administrative expenses.



- 2- **Sharing risks:** Governmental bodies can share risks, through this partnership, with a private partner. Risks may be in the form of exceeding costs limits, failure to comply with schedules or dates for delivery of services, having difficulty in complying with legislations on environment and others or revenues may be insufficient to pay operating and capital costs.
- 3- **Improvement or preserving current levels of service:** PPP may lead to innovation and creativity concerning service performance organization. In addition, this kind of partnership may lead to inclusion of new technologies and achieving major savings, thus, reducing costs or improving quality and level of services.
- 4- **Revenues Increase:** PPP may impose fees on beneficiaries to reflect actual costs of providing a certain service. In addition, this kind of partnership creates opportunities to provide services through innovative resources of income that cannot achieved through traditional methods.
- 5- **More efficient performance:** more efficiency can be achieved through the combination of different activities, such as design and construction, flexibility in contracting and procurement, quick dependence on capital financing or more efficiency in decision making. Efficient provision of services not only allows quick provision of services to beneficiaries but also reduce costs.
- 6- **Economic benefits:** Growing income made by government entities through partnership helps motivate the private partner, participates in creating more job opportunities and increases economic growth rates. Domestic companies become more able to work through this kind of partnership, thus, exporting their expertise and making additional income.
- 7- **Business Opportunities:** Partnership projects provide more business opportunities to private partners, thus, allowing the private sector to innovate, diversify activities, increase its business fields and gain expertise exceeding the traditional procurement system.
- 8- **Public Interest:** Individuals benefit a great deal from the integration of efforts and expertise of both the government entities and the private partners to provide services to the people. Public interest is a goal that the government seeks to achieve and is interested in, which can achieved through PPP.



Fifth: Types of Partnership

Partnership between the Public and private sectors includes forming a contractual relation with one or more Government Entity and one or more partners from the private sector. Partnership may also be achieved through organizing the roles of the private and public sectors, so that each party plays a certain role, integrated in one development framework.

There is no one means of partnership between the public and private sectors in partnership projects that can be applied in all cases, but the best scenario can be achieved in each case separately, depending on the prevalent social and political circumstances in every society. Also, there are various ways of partnership with the private sector, the degree of its contribution and responsibilities in carrying it out according to each type. These types of partnership vary from service contracts, where the government bears the whole responsibility of finance, risks and implementation investments, to complete privatization or sale, where the private sector bears all responsibilities concerning construction, operation and management in full, in addition to complete ownership of the project assets. There are many types of partnership with the private sector in providing service projects in general and the degree of its share in it, as follows:

1- Service Contracts

- Definition: Service contracts are a type of binding agreements between two parties, a Government Entity that has the competent authority and one or more private sector companies, which perform certain tasks against a compensation to be agreed upon. This type of contracts is widely used in a number of countries including Malaysia, India, Chile and other countries to offer a number of services including repair, maintenance, replacement and renovation of potable water networks, operation and maintenance of sewage lift stations ...etc.

The advantage of such type of partnership is the introduction of competition factor by means of contracting with more than one private sector partner, utilizing the expertise of the private sector in technical aspects, making the entity focus more on its basic responsibilities. Since the contract term is



short, there is an increased competition between contractors, which in turn enhances working to realize efficient performance and decrease the cost of contracts. In this type of contract, the load of operation and maintenance still lies with the government (the public sector), while the responsibility of capital investment and commercial risks related to operating the facility lies completely with the private sector. The success of the business covered by the contract depends on the company doing the business. Moreover, this type of contracts has a direct effect on the operation manpower, making them redundant if they are not utilized within the works covered by the service contract.

2- Management Contracts

- Definition: It is an agreement through which a government entity contracts with a private company to manage a public entity. In such case, only the operation rights are transferred to the private company, but not ownership rights. The private company receives fees against its services. These fees can be tied to the profits of the company or its performance; however, the Government Entity remains responsible for the operation and investment costs.

This method is used when the Government wants to activate a losing company, by introducing the private sector management methods to increase the value of these companies and their price when they are offered for sale. Such contracts proved a success in a number of sectors in many countries; for example, in Lebanon management contracts were used in 3 projects: waste collection, operation and management of waste incinerators and waste treatment plants. In addition, in Guinea-Bissau this method was used in the electricity sector, when the State requested technical assistance from France to develop this sector, after which it contracted with the French Electricity Authority to run this sector. The result was an increase in electric power and improvement in the operation performance and financial efficiency. The main advantage of the management contract from the Government's point of view is that it allows it to keep its ownership, in addition to allowing it to resolve administrative deficiencies, by obtaining the best administrative expertise and at the same time control the range and extent of utilization of such expertise by means of the management contract.



The problem with these contracts is that sometimes there is duplication in private management and public ownership. As the party contracted with the government does not bear risks, where the government bears any losses resulting from the operation of the company and the Government Entity. According to the terms and conditions of such contracts – is committed to pay management fees to the private sector as lump sum fees, or a percentage of the project profits or both, aiming to motivate the managing company to increase the facility's efficiency and effectiveness.

3- Leasing Contracts:

- Definition: It is a contract through which the owner of the assets (Government) gives a private company the right to use these assets and maintain their profits for an agreed time against paying a rent.

On the contrary, of Management Contracts, the private company bears the commercial risks, which motivates it to reduce the costs and maintain the value of the assets. However, the Government will be responsible for the fixed investments and debt service.

This method used a lot in a number of African and Asian countries in water, land transport and mining sectors. Where the concerned companies found difficulty in attracting investors, for instance in Thailand the leasing contracts used in the railway sector in a certain number of passenger transport lines, the trial was a success and the leased lines attracted a big number of passengers and started to bring in big profits.

In Cote D'Ivoire, the government conducted major reformatations in the electricity sector, as it contracted with two French companies and local investors. During the lease period, the revenues of electricity and maintenance sector improved due to the introduction of modern technologies in the operation, leading to an increase in the electric energy and developing the service. This type of contracts also used widely in the water sector in France and Spain and currently implemented in Guinea, Czech Republic and Senegal.

One of the advantages leasing provides to the Government is saving the operation costs without giving up ownership and also getting an annual income without being exposed to market risks, in addition to stopping sub-



sidy and other money transfers. Leasing also attracts advanced technical and administrative skills, which helps in using the company assets more effectively.

The main problem related to lease contracts is that as long as the assets ownership are not transferred to the private company contracted with, the Government does not have any incentives for raising the value of the assets. More than the limit that guarantees it a suitable return on its investments during the lease period, hence this type of contracts is suitable for the projects that require raising the operation efficiency, not those that require expansions or improvements.

4- Concession Contracts:

- Definition: When the Government gives Concession Contracts to the private sector, it transfers the rights of operation and development to the beneficiary private company. The concession contract may include all characteristics of lease, in addition to capital costs and investments that the concession beneficiary bears.

The assets go back to the Government at the end of the concession period, which is usually 15 to 30 years, according to the investment lifecycle. The revenues gained by the concession beneficiary are set in a way that guarantees for them covering the operation costs, debt service and exhaustion of their investments.

This successfully method was used in some countries, such as Argentina, where it was used in transport sector (railways) and on the international level; the concession contracts in service projects represent about 80% of the total contracts in the eighties.

The main privilege of this method is that the concession beneficiary remains responsible for the capital and investment costs, which lightens the financial burden on the State. But for the same reason, a number of countries have difficulty in finding investors due to the large sum of some investments required for such type of contracts.

The main idea of such an investment is that a private company finances, builds and operates a new service project in the area of communications, electricity, water and irrigation, transport...etc.) for a limited time, at the end



of which the assets go back to the State, which – during the concession period – regulates and oversees the investment operation, quality and prices. In this type of partnership, contracts must define very carefully the range and nature of services the company contracting with the government will provide and the authorities of both parties during the contract period; accordingly, the Government must be keen not to interfere in the company's management, to ensure the success of this method of partnership.

5- Build, Operate, Transfer (BOT):

- Definition: This method is a form of service delivery, through which the Government or a government entity gives – for a limited time – a special financial consortium called “the Project Company” the right to design, build, operate and manage a certain project proposed by the Government. In addition to the right to commercial exploitation for a number of years – to be agreed upon – that would be sufficient for the Project Company to recover the building costs, in addition to realizing suitable profits from the return of this project, or any other privileges given to the company as part of the agreement. The transferred of the project ownership is, according to the contract or agreement terms, to the donor free of charge or against an agreed price. The roots of BOT go back to concession contracts, which were prevalent at the end of the 19th century and early 20th century in France and other countries. France used these contracts to execute railway, power plants, and potable water supply projects. In 1984, BOT was implemented through signing an agreement for executing the Channel tunnel connecting France and England, between the English and French governments on one hand and Euro Tunnel Co. on the other hand.

The advantage of such method is that the risks of building, operation and management are transferred to the private sector; moreover, the Government makes use of the private sector expertise in the management and maintenance of the projects and the transfer of advanced technologies.

This type of partnership requires giving special care to designing the RFP. The tendering and awarding process may be somewhat lengthy and complicated compared to other types of contracts, which affects making development plans related to the implementation of this partnership. It also requires a suitable political and economic stability, as well as a certain legal and regulatory environment, financial stability and other factors required



for foreign investments. These requirements are characterized by their instability and fluctuation according to the international, regional and local circumstances.

5.1 Build, Own, Operate, Transfer

- Definition: In this method, the State or one of its government entities give the private sector the right to establish a service project, finance it from their own resources, own its assets, operate the project and maintain it. Collect a fee for providing the service to cover their finance and make a reasonable profit for a certain agreed time, after which the ownership of the project assets is transferred to the Government.

This is different from BOT, as BOOT is a prominent implementation of the private sector projects of public interest, where the ownership of the assets during the project period is owned completely by the private sector, which is not the case with the other types of contracts referred to earlier.

This type, as well as BOT, is characterized by transferring the risks of building, operation and management to the private sector; moreover, the investment and finance risks are completely borne by the private sector. Naturally, during the operation and maintenance period, the project is not under the control the public authority or government entity.

5.2 Build, Own, Operate (BOO)

- Definition: This type is considered a method of complete privatization, where the private sector is completely charged with the responsibility of building, operation and management, in addition to full ownership of the project assets.

Operation and management related to this type of partnership are not set for a limited time and the private sector is not obliged to transfer the assets to the government. This type is used in new projects that have not been established yet.

This type, just as BOOT, is characterized by transferring the risks of building, operation and management to the private sector; moreover, the investment and finance risks are completely borne by the private sector, hence, it does not burden the government with investment responsibilities and consequently motivates national and foreign investments.



Framework No. 1

Requirements of PPT Successful contracts

Through reviewing a number of studies, we came to realize that the requirements of PPT successful contracts are as follows:

- Strong political support on the national level that enhances such an activity, together with a realistic concept of partnership based on the strong and weak points of the partnership parties.
- Analysis of the project feasibility before contracting: a good project framework (based on clear outputs) compared to public sector or certain deliverables, to ensure the ability of the government to provide the requirements needed for supplying the service.
- Detailed risk analysis for the project for both the technical and commercial aspects as well as the political risks.
- A well-built contracting process, transparency and competitiveness.
- Capability of the public sector (the government) to accept innovative solutions from the participating private sector companies.
- A detailed contract: That can accommodate certain amendments in the project requirements throughout the contract period.
- Effective and professional oversight of the private sector contractor from the client's side for the whole operation period, in the spirit of activation for the comprehensive partnership.
- Choice of suitable projects, so that they are not too small and can be duplicated, with a clear intentions from the private sector to participate.
- Good preparation: A clear study of the work area (feasibility study) with a clear description of the outputs, a dedicated work team having sufficient capabilities and experience for a successful contract.
- A suitable consultancy support: legal, technical and financial from consultants with expertise.
- A sound method for assessing value for money based on clear patterns, models and standard methods of operation.
- Effective follow up of business during the operation period (15 – 20 years or more)
- Insistence on activating the partnership of private, public sectors and the concerned parties (government, investors, lenders and beneficiaries).

02



Chapter 02

The legal framework regulating public private partnership in Dubai

This chapter deals with the legal framework that regulates the public private partnership in Dubai Emirate. It demonstrates key features of law No (22) of Year 2015 on the public private partnership in Dubai Emirate. The law shows that Dubai depends on the most recent international practices in that regard. In addition, the chapter reviews those legal articles that regulate partnership. Moreover, this chapter includes a number of inquiries, which may be raised concerning the partnership system with the aim of reaching the final target; such partnership is to be transparent to ensure efficiency, sustainable economic growth and to protect rights of the public private partnership

This Chapter Covers:

First: Key features of law No (22) of year 2015 on the public private partnership in Dubai

Second: Law No. (22) of 2015 Regulating PPP in the Emirate of Dubai .

Third: Inquiries concerning Law (22) of Year 2015 Concerning Regulating PPP in Dubai



Key features of law No (22) of year 2015 on the public private partnership in Dubai

The public private partnership constitutes a basic lever for achieving sustainable development projects. This kind of partnership contributes to attracting national, regional and foreign investments. Applying principles and mechanisms of good governance and transparency in achieving projects within the framework of the public private partnership is an important locomotive to render such projects successful because those projects for sustainable development target across a wide section of society. The applicable law considered such matter through laying down a group of rules and procedures pertinent to phases of the public private partnership in Dubai.

Both the Supreme Legislation Committee and Department of Finance depended – when laying down the law for partnership – on fundamental principles and standards approved by the United Nations Commission on International Trade Law, whose principles and standards are stated in the legislative guide on the public private partnership. In addition, a number of international and regional experiences were studied in that regard together with local expertise at some government entities in the Emirate, which previously launched this kind of projects. Inspection of law No (22) of year, 2015 shows characteristics of such law as follows:

- 1- Ensuring achievement of transparency, justice and long-term sustainability of the public private partnership projects as well as removing all restrictions that hinder the private sector partnership in the Emirate through:
 - 1.1 Identifying those government entities that are a party in partnership contracts – which are covered by the public budget - and the Supreme Fiscal Committee may add any other government entity not covered by the public budget. The same committee may, to seize all available opportunities to ensure sustainable development in the Emirate, add all projects which are the subject of the public private partnership contract regardless of type, form and business nature for which partnership contracts will be made by those government entities subject to the aforementioned law.



- 1.2 The aforesaid law No (22) sets a condition that partnership shall be for projects with a financial, technical, economic and social feasibility for the Emirate- as proven by submitted studies- to play an effective role in increasing economic growth rates.
- 1.3 The law provides for plurality of partnership styles and gives the Supreme Fiscal Committee absolute power to adopt either usual partnership style or any other style after obtaining recommendation of the same by the concerned government entity.
- 1.4 Setting standards for those projects, which are subject of the partnership, the standards of which shall ensure achieving long-term sustainable development for this type. A project shall achieve a public interest. It shall have a technical, financial and economic feasibility with accurate identification of volume of risks, capital investment volume and to what extent such investment has a priority in the Emirate. In addition, the additional value of the project to the macro-economy of the Emirate shall be determined.
- 1.5 A project – which is the subject of partnership – shall, in order to achieve justice, provide equal opportunities to all beneficiaries of rendered services without breach of the partnership contract or agreed upon remuneration or allowances.
- 2- Government entities involved in partnership contracts shall be given enough flexibility with regard to financial, economic and social feasibility as well as distribution of risks because such bodies have more knowledge about such projects. Thus, such flexibility may be achieved through:
 - 2.1 Partnership projects may be suggested by any party of the contract, either by the government entities or the private partner because all suggested projects will be assessed according to a unified and fair mechanism that achieves public interest for the Emirate.
 - 2.2 Such competent authority charged with approving partnership projects in the Emirate shall present clear determination of financial limits for those projects, such determination shall be made after accurate studies to ensure total flexibility concerning adopted procedures for the partnership and to encourage the private sector in the Emirate.



- In addition, financial powers may be, in some cases, given to such government entity owning the project.
- 2.3 Accurate distribution of responsibilities of partnership projects between bodies charged with laying down general policies. Giving suggestions to update relevant legislations. Providing assistance to government entities. Participating in providing appropriate environment for investment. Removing all obstacles that may hinder partnership projects (the department of finance) in addition to a power given to (the Supreme Fiscal Committee) and concerned government entities charged with such projects. Moreover, (the Financial Audit Department) applies a control mechanism through reports to be submitted during all phases of partnership projects.
 - 2.4 The law provides that a committee entitled “the partnership committee” shall be formed by the concerned government entity upon a decision by the director general of such government entity. Such committee shall include a representative of the department of finance. This committee will perform all tasks of partnership projects possessed by such government entity. It may seek the help of external expertise in this field to ensure the optimum utilization possible and for exchange of expertise.
 - 2.5 The law gives such government entity owning partnership projects total discretion and flexibility to suggest partnership contracts with the necessity of confirming general standards stipulated in those contracts to support the private sector participation. Without limitation, contract term, identifying bases for distribution of risks associated with a project, regulating rules and procedures for redemption of a project, specifications of agreed upon finished product and those financial and technical liabilities between the government entity and the private partner.
 - 3- When drafting law No (22) for the public private partnership, the government of Dubai took into account all those standards for achieving competitiveness, transparency and efficiency when choosing private partners. This can be achieved through:



- 3.1 A partner selection process shall be subject to the principles of publicity, transparency, freedom of competition, equal opportunities and justice in invitation for the tender. A partner shall meet approved standards, regulations and financial and technical conditions as well as having ability and efficiency in the field of the proposed project.
- 3.2 The invitation for partnership projects and details thereof announced shall be clearly in different mass media, long enough before the bids submission date. In addition, those legally established regulations and standards for bids assessment should be announced.
- 3.3 Invitation for a tender shall include all details about the relevant project – including without limitation – financial, administrative and technical requirements for this partnership, types of projects, approved partnership method, bids submission conditions, required bonds and other requirements.
- 3.5 Tender books – which are prepared by the owning government entities – shall include full information about projects, technical conditions, specifications for each project, specifications of finished products, all other conditions and necessary dates. In additions, partners shall be given enough time to study projects and submit bids, together with other conditions and liabilities (all of which are defined in article (18) of the aforementioned law).
- 3.6 There shall be a specific mechanism to study submitted bids according to a technical and financial feasibility study. Unaccepted bids shall be excluded upon a justified decision by government entities. In addition, the aforementioned law accurately defines those cases when a bid may be annulled to ensure transparency. Moreover, the law provides that a sole bid may be accepted for public interest and that only one bid may be submitted through a consortium, according to specified conditions to ensure transparency, as long as the latter accepts to submit the same.
- 3.7 Approving a mechanism to assess proposals by a partnership committee in a manner that ensures fair assessment according to bases and procedures defined in the tender book of the project. Bidders or legal representatives thereof have full right to attend envelopes opening sessions.



- 4- The government of Dubai believes that after a private partner selection through open competitive procedures, to ensure that the awarded partner has all required specifications for the project, partnership contracts for partnership projects shall conform to international, regional and domestic standards and this can be achieved through:
 - 4.1 Clear identification of contractual parties, which are: Such government entity that owns the project and private partner – through the company for the project established for this purpose in case it is agreed to establish the same by both parties. The government entity may participate in the project through a limited liability company to enhance the confidence of the private partner. A private partner may, in special cases, be relieved from establishing this company provided that necessary consents in that regard shall be obtained.
 - 4.2 To determine necessary contract term to complete and handover a partnership project ready for operation. In addition, the lease period shall be determined and upon expiry of the same title will be conveyed to the government entity. Nature, scope of work and liabilities defined at the relevant partnership contract shall be taken into account.
 - 4.3 A contract shall have a number of enclosures comprising those technical specifications and time schedules prepared by the government entity as well as other enclosures comprising those technical details and time schedules prepared by the private partner.
 - 4.4 Stressing commencing fulfilment of financial liabilities by the government entity. Fulfilment of this liability shall be associated with such date the contractual services becomes available by the private partner. Payment terms shall be defended to be usually periodic according to specified performance levels.
 - 4.5 Both government entities and private partners shall respect technical specifications and time schedules and the relevant government entity shall undertake to deliver the project site clear and free of all technical or legal obstacles.
 - 4.6 A private partner shall be committed with a percent of employment in favor of national citizens at all administrative levels of the project so national citizens will gain this kind of expertise.



- 4.7 The right to change or modify specifications or services, with consequential financial liabilities, within a limit ensuring continuation of contract and financial balance in the project.
- 4.8 A contract shall provide for periodic assessment of prices of services provided by a private partner to take into account market prices in Dubai Emirate.
- 4.8 Government entities shall have the right to control operational efficiency to ensure compliance with the agreed upon quality standards during all phases of a project.
- 4.9 There shall be clear and scheduled dates for financial liabilities payment and those dates may be modified, upon mutual agreement between the government entity and private partner, with studying effect of such step on the partnership contract and demonstrating reasons of modification.
- 4.11 Any whatsoever profits made will be passed to the second party (private partner) unless the government entity has a role in finance, in which case, profits shall be distributed according to such mechanism for profits distribution resulted from those credit facilities that the government participated in.
- 4.12 The government entity shall take into account circumstances of the private partner which may not reach limit of a force majeure event.
- 4.13 Regulates early termination cases and consequential indemnities.
- 4.14 Determines required insurance levels.
- 4.15 A contract shall determine those procedures that shall be adopted for alternative dispute resolution including arbitration so recourse to judiciary will be the last procedure.
- 5- Government of Dubai vision toward project term, renewal and termination:
 - 5.1 A partnership contract term is determined by government of Dubai as more than thirty years. The government for this type of projects sets a standard term. The government gave adequate flexibility in that regard, as the partnership committee may extend a contract term beyond thirty years if approved by the Supreme Fiscal Committee – for public interest – and upon a recommendation.



- 5.2 The government of Dubai may terminate a partnership project contract if the contractual private partner is unable to execute its liabilities because of insolvency or gross breach.
- 5.3 Moreover, the law provides that in the event of an essential or material breach being committed by the private partner to the extent that the latter becomes unable to fulfil its liabilities, the owning government entity may manage a partnership project by itself or through a party, it appoint for this purpose.
- 5.4 The government of Dubai declares terms and conditions of a partnership contract may – if necessary for public interest – be amended upon mutual agreement with the private partner.
- 5.5 It is expressly declared that indemnities may be disbursed to a private partner -according to specific regulations - in emergency cases.
- 6- Control and disputes settlement
 - 6.1 In order to preserve performance levels and generally accepted quality standards, the government of Dubai adopted – by virtue of a law- a double control mechanism: the first is about the owning government entity as having enough knowledge and expertise about those projects. The second is about the department of financial control that controls the public fund in the Emirate. This shall be achieved through a coordinative and cohesive framework to facilitate procedures and encourage investors.
 - 6.2 The government of Dubai approved its right to reach alternative resolution to disputes -upon mutual agreement with the contractual private partner – according to appropriate mechanisms to nature of partnership projects including arbitration at the Emirate. In addition, it approved a clear mechanism for filing grievances within a period in line with the international business practices guide to protect rights of contractual parties



Law No. (22) of 2015 Regulating PPP in the Emirate of Dubai

We, Mohammed bin Rashid Al Maktoum, Ruler of Dubai,

After perusal of:

Law No. (5) of 1995 Establishing the Department of Finance;
Law No. (7) of 1995 Concerning the Financial Regulations of Government Departments in the Emirate of Dubai and its Implementing Bylaw;
Law No. (6) of 1997 Concerning Contracts of Government Departments in the Emirate of Dubai and its amendments;
Law No. (35) of 2009 Concerning Management of the Public Funds of the Government of Dubai and its amendments;
Law No. (8) of 2010 Concerning the Financial Audit Department and its amendments;
Law No. (6) of 2011 Regulating Participation of the Private Sector in Electricity and Water Production in the Emirate of Dubai; and
Decree No. (24) of 2007 Forming the Supreme Fiscal Committee in the Emirate of Dubai and its amendments,

Do hereby issue this Law.

Title of the Law Article (1)

This Law will be cited as “Law No. (22) of 2015 Regulating Partnership between the Public Sector and the Private Sector in the Emirate of Dubai”.

Definitions Article (2)

The following words and expressions, wherever mentioned in this Law, will have the meaning indicated opposite each of them unless the context implies otherwise:



Emirate:	The Emirate of Dubai.
Government:	The Government of Dubai.
SFC:	The Supreme Fiscal Committee in the Emirate of Dubai.
DOF:	The Department of Finance.
Government Entity:	Any of the Government departments, public agencies or corporations, councils, authorities, including free zone authorities, or any other entity affiliated to the Government.
Competent Authority:	The entity responsible for approving a Partnership Project in accordance with this Law.
Director General:	The director general of a Government Entity, including the executive director/ chief executive officer or the secretary general of any Government Entity, or any other person in a similar position.
Project:	Any facility, service, activity, or product supervised, provided, or produced by a Government Entity.
Public Sector:	This includes Government Entities.
Private Sector:	This includes private establishments and companies.
Partnership:	A contractual relationship between the Public Sector and the Private Sector which arises in accordance with this Law and the resolutions issued in pursuance hereof, and in accordance with a Partnership Contract. This relationship aims at implementing a Project in whole or in part to ensure high quality of services, increase the revenue of a Government Entity, or achieve any other objective through utilising the competencies and the financial, technical, or other capabilities of the Private Sector.
Partnership Contract:	A definite-term contract concluded by a Government Entity and a Project Company whereby the Project Company undertakes to implement a Project in accordance with this Law, the resolutions issued in pursuance hereof, and the terms of the Partnership Con-



- tract in return for a lump sum or in return for all or part of the revenue of the Project.
- Project Company:** A sole proprietorship or a local or foreign company licensed to operate in the Emirate, which implements a Partnership Contract and meets the conditions determined in the resolutions issued in implementation hereof.
- Partner:** A legal person or a consortium of legal persons from the Private Sector who is a party to a Partnership Contract.
- Tender:** A series of procedures announced in accordance with this Law and the resolutions issued in pursuance hereof which a Government Entity must comply with to select the best bid from a financial or technical perspective, and conclude a Partnership Contract with the winning bidder.
- Partnership Committee:** A committee formed at a Government Entity in accordance with this Law.

Objectives of the Law Article (3)

This Law aims to:

1. regulate Partnership between the Public Sector and the Private Sector;
2. encourage the Private Sector to participate in development Projects and to increase investment in various relevant fields, thus promoting economic and social development in the Emirate;
3. enable the Government to implement its strategic Projects in an efficient and effective manner;
4. utilize the financial, administrative, regulatory, technical, and technological potential and experience of the Private Sector, thus enabling community members to avail of high quality services at the lowest cost;



5. increase productivity, improve the quality of public services, and adopt efficient management practices to develop such services;
6. transfer knowledge and skill from the Private Sector to the Public Sector, and train and qualify UAE national employees of Government Entities to manage and operate Projects;
7. implement Projects which provide significant added value to public property, and alleviate the financing burden on the general budget of the Government in relation to the construction, operating, or maintenance costs of Projects;
8. reduce the financial risk that may be assumed by the Government as a result of the implementation of high-risk Projects;
9. shift in managing certain infrastructure and public services Projects from direct implementation, operation, and management to other forms of government involvement such as policy approval and quality control of public services in accordance with governance requirements;
10. boost the competitive edge of Projects in local, regional, and international markets; and
11. promote governance principles for managing economic activities and apply financial resource management procedures.

Scope of Application Article (4)

This Law will apply to:

1. Government Entities that are subject to the general budget of the Government. The SFC may extend the application of this Law to any Government Entity which is not subject to the general budget of the Government; and
2. any Project, regardless of its type, form, or activities, which is governed by a Partnership Contract between the Public Sector and the Private Sector in the Emirate concluded by any of the entities mentioned in paragraph (1) of this Article after the effective date of this Law. This will not include:
 - a. Electricity and water production Partnership Projects governed by the above-mentioned Law No. (6) of 2011;



- b. Works Contracts, supply Contracts, and services Contracts governed by the above-mentioned Law No. (6) of 1997; and
- c. Any other Contracts determined pursuant to the resolutions issued by the SFC in this respect.

Terms of Partnership

Article (5)

- a. A Partnership between the Public Sector and the Private Sector will be formed pursuant to a Partnership Contract and in accordance with the provisions of this Law.
- b. To conclude a Partnership Contract in accordance with this Law, a Project must have economic, financial, technical, and social feasibility.
- c. A Partnership Contract under which a Government Entity incurs expenses may only be concluded if appropriations are allocated in the budget of the Government Entity to cover these expenses.

Project Selection

Article (6)

When selecting Partnership Projects, the following must be taken into account:

- 1. The extent to which the Project serves the interest of the Government and the public interest;
- 2. The economic feasibility of the Project and its positive influence on approved development plans of the Emirate;
- 3. The risks, especially environmental risks, that may arise as a result of implementing the Project through a Partnership;
- 4. The volume of capital investment and the technical expertise that may effectively improve the performance of public facilities and ensure service quality;
- 5. International best practices in implementing Projects through Partnerships; and
- 6. The priority and operational impact of the Project, and the extent to which it meets the needs of the Emirate.



Methods of Forming Partnerships

Article (7)

A Partnership may be formed in any of the following methods:

- 1. A Partner implements, finances, owns, reaps commercial benefits from, and operates a Project for the term agreed upon in the Partnership Contract, then assigns the Project and fully transfers its ownership to a Government Entity upon expiry of the term determined in the Partnership Contract;
- 2. A Partner implements, finances, reaps commercial benefits from, and operates a Project for the term agreed upon in the Partnership Contract, then assigns the benefit of the Project to a Government Entity upon expiry of the term determined in the Partnership Contract;
- 3. A Partner implements a Project then transfers its ownership to a Government Entity while preserving his right to operate the Project and reap commercial benefits from it for the term agreed upon in the Partnership Contract;
- 4. A Government Entity transfers the benefit of the Project to a Partner thus allowing him to operate it and reap commercial benefits from it for the term agreed upon in the Partnership Contract; or
- 5. Any other method approved by the SFC upon the recommendation of the Government Entity and the DOF, including maintenance, expansion, or rehabilitation of an existing Project.

Competent Authority

Article (8)

- a. A Partnership Project will be approved by:
 - 1. The Director General or his authorised representative, where the Partnership Contract generates revenue or budget savings;
 - 2. The Director General or his authorised representative, where the total cost to be incurred by a Government Entity in respect of the Partnership Contract does not exceed two hundred million Dirhams (AED 200,000,000.00);



3. the DOF, where the total cost to be incurred by a Government Entity in respect of the Partnership Contract exceeds two hundred million Dirhams (AED 200,000,000.00), up to five hundred million Dirhams (AED 500,000,000.00); and
 4. the SFC, where the total cost to be incurred by a Government Entity in respect of the Partnership Contract exceeds five hundred million Dirhams (AED 500,000,000.00).
- b. Based on the recommendation of the Government Entity, feasibility studies, service quality assurance reviews, facility asset quality and maintenance reviews, and the rules and terms stipulated in this Law and the resolutions issued in pursuance hereof, the DOF and the SFC will issue their written approval of the Project Partnership in accordance with paragraphs (a)(3) and (a)(4) of this Article.
 - c. No Government Entity may proceed to contract with a Partner unless the Partnership Project is approved by the Competent Authority in accordance with paragraph (a) of this Article.
 - d. The DOF and the SFC may delegate any of their powers under paragraphs (a)(3) and (a)(4) of this Article to the Director General of the Government Entity party to the Partnership Contract, provided that such delegation is specific and in writing.

Functions of the DOF

Article (9)

For the purposes of this Law, the DOF will have the duties and powers to:

1. develop the general policy regulating Partnership Projects between the Public Sector and the Private Sector, and submit the same to the SFC for approval;
2. propose updates and developments to the legislation regulating Partnerships based on the relevant best practices, the outcomes of Partnership Projects previously implemented by Government Entities, and the comments and proposals of these entities, taking into consideration the interests of the Public Sector and the Private Sector;



3. provide support and assistance to Government Entities in the preparation and development of Partnership initiatives;
4. contribute to creating a favourable environment to invest in Partnership Projects, and promote these Projects within and outside of the Emirate in coordination with competent entities in the Emirate;
5. prepare a general manual containing the rules and procedures that must be followed where a Government Entity wishes to conclude a Partnership Contract;
6. in coordination with concerned Government Entities, overcome all the difficulties that a Project Company may face;
7. propose necessary measures for developing Partnerships as a method of managing Projects and providing Government services; and
8. perform any other duties that are required for the achievement of the objectives of this Law.

Functions of Government Entities

Article (10)

For the purposes of this Law, a Government Entity will:

1. prepare the studies required for determining the rationale behind implementing the proposed Project. These studies must feature the financial, economic, technical, and social feasibility and the beneficiaries of the Partnership, appropriate criteria for selecting a Partner, a Project implementation programme, and an implementation risk analysis;
2. determine the human, financial, and technical resources required for the Project, financing methods, contributions of both parties to the Project, dividend distribution, service charges, exemption from these charges, intellectual property rights, and other relevant matters;
3. Coordinate with the Government Entities concerned with the Project to determine its impact on their own plans, and on the strategic plans of the Government in general;



4. Study and evaluate all financial aspects of the Partnership Contract and have them approved by the DOF;
5. Propose the standards that must be met by the entity that will be contracted with, and propose preliminary Partnership Contracts and their addenda;
6. Coordinate with the DOF to determine the appropriate method of Partnership for the Project or service in accordance with the Partnership methods stipulated in this Law;
7. Select qualified consultancy companies to conduct studies related to the Project;
8. Form a work team in conjunction with the Private Sector to agree on work methods; to gather, exchange, and update information; and to cooperate regarding technical developments and work requirements;
9. Supervise the proper performance by the Project Company of its obligations under the Partnership Contract, and take immediate and appropriate measures to remedy any breach or omission in the performance of such obligations in a manner that ensures that the Project continues to achieve its objectives;
10. Coordinate with Competent Authorities to overcome any obstacles that may prevent the implementation of the Project;
11. Report to the Financial Audit Department any financial breaches committed by a Project Company; and
12. Prepare quarterly reports on work progress throughout the performance of the Partnership Contract, and any obstacles hindering such performance; propose appropriate solutions to these obstacles; and submit the reports to the DOF.

Formation of the Partnership Committee

Article (11)

- a. An internal committee named the “Partnership Committee” will be formed at each Government Entity. Members of this committee will be nominated pursuant to a resolution of the Director General. These committees will



be responsible for performing all the duties stipulated in this Law and the resolutions issued in pursuance hereof. The resolutions forming such committees will determine their terms of reference and the procedures for holding their meetings.

- b. For the purposes of performing its duties, a Partnership Committee may seek assistance from the experts and specialists it deems appropriate.
- c. Where the total cost to be incurred by a Government Entity in respect of a Partnership Contract exceeds two hundred million Dirhams (AED 200,000,000.00), members of the Partnership Committee must include a representative from the DOF nominated by its Director General.

Proposing Partnership Projects

Article (12)

A Partnership Project may be proposed by a Government Entity or by the Private Sector.

Auditing Partnership Projects

Article (13)

The Financial Audit Department will audit the performance of a Partnership Contract in accordance with its establishing law, this Law, the resolutions issued in pursuance hereof, the terms of the Partnership Contract, and the legislation in force in the Emirate.

Criteria for Selecting a Partner

Article (14)

- a. The process of selecting a Project Partner will be subject to the principles of openness, transparency, fair competition, equal opportunity, equality, announcement of competition, and achieving the public interest. This process must be conducted in accordance with the rules and procedures stipulated in this Law and the resolutions issued in pursuance hereof.



- b. A Partner must meet approved financial and technical standards, rules, and requirements, and must have the capabilities and competencies required for working in his field of specialisation.
- c. Notwithstanding the provisions of paragraph (a) of this Article, a Government Entity may directly contract with a Project Company where the Project is solely created by such company.

Prequalification of Companies

Article (15)

Subject to paragraph (c) of Article (14) of this Law, a Government Entity must, prior to initiating the tendering process, follow the company prequalification procedures to shortlist the companies eligible for entering into Partnership with that Government Entity. This includes:

1. Clearly announcing the Project and its details in various media sufficient time in advance of initiating the tendering process; and
2. Complying with the rules and criteria stipulated in this Law and the resolutions issued in pursuance hereof.

Preliminary Meetings

Article (16)

- a. A Government Entity may hold preliminary meetings with prequalified Partners to discuss matters related to the preliminary specifications and conditions of a Project, and other relevant matters.
- b. For confidentiality purposes, a prequalified Partner may request a Government Entity not to publish or disclose the data relating to his economic or financial forecasts which are relevant to a Partnership Project.
- c. For purposes of ensuring equality and equal opportunity, prequalified Partners will be treated in accordance with the rules and principles stated in Article (14) of this Law.
- d. Prior to the tendering process, a Government Entity may, based on valid reasons and approval of the Competent Authority, vary certain Project



specifications and terms of the Partnership without affecting prequalification criteria. Such variation must be clearly and expressly announced in various media sufficient time prior to the tendering process.

Terms and Guarantees

Article (17)

An invitation to Tender for a Partnership must contain all the details relating to the Project including the financial, administrative, and technical requirements of the Partnership, type of Project, method of Partnership, terms of participating in the Tender, the required financial guarantees to be provided by the Project Company where applicable, and the conditions, procedures, and cases where such security and guarantees may be confiscated or returned.

Tender Documents

Article (18)

A Government Entity will prepare the Tender documents of the Partnership Project. Tender documents must contain:

1. Information concerning the Project that is sufficient to allow bidders to prepare and submit their bids;
2. Project specifications and the technical and financial requirements that must be met in bids;
3. Specifications of the final product and required service level, including performance indicators, safety and security, environment protection, and other standards;
4. Fundamental and supplementary terms of the Partnership Contract;
5. Documents, forms, and time frames related to the Partnership;
6. Amount of the bid bond and method of calculating the performance bond;
7. Grounds on which submitted bids will be assessed; and
8. Deadline for receiving bids.



Tendering Process

Article (19)

Upon approval of the Project by the Competent Authority, a Government Entity will, in accordance with the principles, rules, and procedures determined in the resolutions issued in implementation of this Law, invite prequalified Partners to collect the Tender documents of the Partnership Project. Bidders must be provided sufficient time to submit their bids in accordance with the Tender documents of the Project.

Accepting Bids

Article (20)

To be accepted, a bid competing for the Partnership must meet all the technical and financial requirements and specifications stipulated in the Tender documents of the Project. Any bid that does not meet these requirements and specifications will be disqualified.

Consortiums of Companies

Article (21)

- a. Unless the Tender documents stipulate that separate bids must be submitted, a bid may be submitted by a consortium of prequalified companies in the name of such consortium.
- b. Unless the Tender documents stipulate otherwise or the DOF approves otherwise, no member of such consortium may, directly or through another consortium, submit a separate bid, and no bids may be submitted by a company in which a member of this consortium owns the majority of capital or by a company which is controlled by that member.

Assessment of Bids

Article (22)

The Partnership Committee will review and assess the technical, financial, and legal aspects of bids, determine accepted and disqualified bids, and assess



their conformity to the announced terms and specifications. Each bid will be awarded an assessment score in accordance with the rules and procedures determined in the Tender documents of the Project.

Bid Opening

Article (23)

The Partnership Committee will invite bidders or their legal representatives to a session in which bids are opened. The Project will be awarded to bidder who submits the best bid from a technical and financial perspective after applying the relative weight of each of the financial and technical elements indicated in the Tender documents of the Project.

Cancellation of Tenders

Article (24)

- a. A Tender for a Partnership may be cancelled by the Partnership Committee in the following cases:
 1. Where a sole bid is submitted, or remains after disqualifying unacceptable bids;
 2. Where all or most of the bids contain reservations that contradict with the required terms and specifications, which renders these bids difficult to assess technically or financially;
 3. Where the lowest bid unjustifiably exceeds the initial estimate of the Government Entity, or, for revenue-generating Contracts, where the value of the highest bid is less than such estimate; or
 4. Where the public interest requires cancelling the Tender.
- b. The Tender cancellation decision must be reasoned, and no bidder may claim any compensation as a result of the cancellation.
- c. Notwithstanding the provisions of paragraph (a) of this Article, a Partnership Committee may, in special cases where the public interest so requires, accept a sole bid or a bid whose value exceeds, or is below, the estimated value of the Tender.



Establishment of the Project Company

Article (25)

- a. The Government Entity responsible for the Project may establish a Project Company jointly with the Private Sector. Such company must take the form of a limited liability company.
- b. Where a Government Entity does not wish to participate in the Project Company, the bidder to whom the Partnership Contract is awarded must establish a Project Company whose sole purpose is to implement the Project of the Partnership Contract. The resolutions issued in pursuance of this Law will determine the requirements that must be met by the Project Company.
- c. Notwithstanding paragraph (b) of this Article, a Government Entity may, upon the approval of the DOF, authorize a bidder who is awarded the Partnership Contract to implement the Partnership Project without having to establish a Project Company where the winning bidder is, under the then current situation, capable of implementing the Project using his own financial and technical resources, and of providing sufficient financial guarantees. In this case, the Partner will be treated as a Project Company.

Contents of a Partnership Contract

Article (26)

A Partnership Contract must contain the fundamental provisions governing the Partnership, and the mutual obligations of the parties which mainly include:

1. The type and scope of the works and services that must be performed by the Project Company;
2. The ownership of assets and intellectual property rights pertaining to the Project, obligations of parties pertaining to the handover of the Project site, and provisions pertaining to the transfer of ownership upon expiry of the term determined in the Partnership Contract;
3. The responsibility for obtaining licenses, permits, and approvals;



4. The mutual financial and technical obligations of both contracting parties, and financing methods;
5. The rules governing the sale price of the product or charges of the service on which the Project is based, and the principles and rules of determining and changing such price or charges;
6. The quality assurance methods; financial, administrative, and technical audit and supervision tools required for operating, utilizing, and maintaining the Project; and the performance indicators of the Project Company;
7. The rules regulating the right of a Government Entity to revoke or amend a Partnership Contract, compliance by the Project Company with these amendments, and grounds and methods of compensation in the event of such amendment;
8. The types and amounts of insurance covering the Partnership Project and its operational and utilization risks, the performance guarantees provided to the Government Entity, and the provisions and procedures related to refunding these guarantees;
9. The bases for the distribution of Project risks in cases of force majeure, emergency situations, or material hardships, and the grounds for assessment of the relevant compensation;
10. The term of contract, cases of early partial or complete termination, and rights and obligations of the parties;
11. The cases where a Government Entity may unilaterally terminate the contract;
12. The penalties that may be imposed on a Project Company if it fails to meet its contractual obligations;
13. The rules and procedures for recovering the Project upon expiry, unilateral termination, or early or partial termination of contract;
14. The procedures for ensuring continuity of the Project and works subject matter of the Partnership Contract upon expiry or revocation of the contract, or upon failure by the Project Company to meet its contractual obligations;



15. The provisions related to using the services of the employees of Government Entities at the Project Company, and allocation of a percentage of UAE nationals in such companies;
16. Measures that must be taken by the Project Company to preserve the environment;
17. Specifications of the end product, the service level that the Project Company must comply with, including performance indicators, safety, security, environmental, and any other standards, and electronic systems and programmes that must be used by the Project Company; and
18. Any other obligations determined by the SFC, the DOF, or the Government Entity in accordance with the resolutions issued by such entities in this respect.

Term of a Partnership Contract

Article (27)

- a. The term of a Partnership Contract will be agreed upon by the Government Entity and the Project Company. The term may not exceed thirty (30) years commencing on the date on which the contract is executed or any other date determined by the Partnership Committee.
- b. Notwithstanding paragraph (a) of this Article, the SFC may, for the exigencies of public interest and upon the recommendation of the Partnership Committee, authorise the conclusion of Partnership Contracts for terms in excess of thirty (30) years.

Service Charges

Article (28)

No Project Company may operate a Project or collect any charges, fees, tariffs, prices, or any other amounts of money whatsoever in return for the services agreed upon in the Partnership Contract, unless the Government Entity issues a certificate of acceptance of the completed works or services in accordance with the performance level agreed upon in the Partnership Contract.



Equality amongst Beneficiaries

Article (29)

- a. A Project Company must not discriminate amongst beneficiaries of the services provided by the Project, and must comply with the legislation regulating the service, and with the relevant terms of the Partnership Contract.
- b. A Project Company may, after obtaining approval from the Partnership Committee and the DOF where the public interest so requires, adopt preferential treatment and terms for certain categories of beneficiaries. This must be in accordance with the general rules previously agreed upon by the Government Entity and the Project Company.

Amendments to a Partnership Contract

Article (30)

The Partnership Committee may, after obtaining approval from the Director General or his authorized representative where public interest so requires, amend a Partnership Contract within the limits agreed upon in this contract. This amendment will be made in writing pursuant to a contract addendum concluded for this purpose.

Emergencies

Article (31)

A Partnership Contract may, in emergencies, be amended in accordance with the rules and principles stipulated therein. The resolutions issued in implementation of this Law will determine the rules governing emergencies, the payment of compensation to Partners, and the methods and rules of amending the Partnership Contract.



Obligations of a Project Company

Article (32)

In addition to the obligations stipulated in this Law, the resolutions issued in pursuance hereof, and the terms of the Partnership Contract, a Project Company must:

1. Not dissolve or liquidate itself, change its legal form, decrease its capital, or be assigned to a third party, unless it first obtains the relevant approval of the Partnership Committee;
2. Protect, maintain, and preserve the assets of the Project and use them only for their intended purpose;
3. Not sell the Project establishments, assets, and moveable and immoveable property it owns under the Partnership Contract. This will not apply to sale conducted in implementation of phase out and phase in programmes in accordance with the terms of the Partnership Contract, and after first obtaining the relevant approval from the Partnership Committee;
4. Submit all the documentation, information, and data requested by the Government Entity, the DOF, or the Financial Audit Department; cooperate with their employees; and provide them with access to its premises for inspection purposes at any time;
5. Transfer knowledge and expertise to the Government Entity, and train and qualify the employees of such entity as agreed upon by the parties in this respect;
6. Submit periodic reports to the Government Entity on the implementation of Project works, including construction, supplies, development, operation, maintenance, and management, and any other works requested by the Government Entity;
7. Meet environmental, health, and safety requirements for Project workers and beneficiaries; and
8. Not contract with any sub-contractors unless it first obtains the relevant written approval from the Government Entity. This must not affect the obligations of the Project Company prescribed by this Law and the resolutions issued in pursuance hereof, and the terms of the Partnership Contract.



Breach of Obligations

Article (33)

Where a Project Company commits a material or gross breach in the performance of its obligations, or fails to meet the service levels prescribed by this Law and the resolutions issued in pursuance hereof, or by a Partnership Contract, a Government Entity may, without prejudice to its right to claim compensation and impose the penalties prescribed by the Partnership Contract, implement that Partnership Contract by itself or through any other party it deems appropriate, after notifying the Project Company of the breach or omission in the performance of its obligations and failure by the Project Company to remedy such breach or omission within the time frame prescribed in the notification.

Diligence of a Project Company

Article (34)

Without prejudice to the functions of the Financial Audit Department, a Government Entity will follow up the implementation and supplies of the Project, and the provision of services under the Partnership Contract, and will ensure that required service levels are met. For this purpose, it may, in accordance with the terms and provisions of the Partnership Contract and the legislation in force in the Emirate, appoint representatives to monitor the implementation of the Project. A Government Entity must, in accordance with the procedures, rules, and time frames determined in the resolutions issued in implementation hereof, submit to the Partnership Committee periodic reports on work progress.

Governing Law

Article (35)

- a. A Partnership Contract and all its terms, rules, and obligations will be governed by the provisions of this Law and the resolutions issued in pursuance hereof. Where the Partnership Contract is silent, the legislation in force in the Emirate, including the above-mentioned Law No. (6) of 1997, will apply.



- b. A Partnership Contract may not stipulate that disputes arising therefrom be referred to arbitration outside of the Emirate, or that any dispute regarding the arbitration or its related procedures be subject to any laws or rules other than those in force in the Emirate. Any provision to the contrary will be deemed void and non-binding.

Financing a Project Company **Article (36)**

A Government Entity may, in coordination with the DOF, authorise a Project Company to enter into contracts with financial institutions to finance the works and activities of the Project Company subject to the legislation in force in the Emirate. In this case, the Project Company will be solely responsible for all the obligations arising from such contract.

Grievances **Article (37)**

- a. Any affected party may submit a written grievance to the DOF against any decision or procedure taken by a Government Entity against him under this Law, the resolutions issued in pursuance hereof, or the Partnership Contract, within thirty (30) days from the date on which the contested decision or procedure is taken. The grievance must be accompanied by supporting documentation.
- b. The DOF must review the grievance referred to in paragraph (a) of this Article within thirty (30) days from the date on which it is submitted to it, and must render the relevant appropriate decision.

Issuing Implementing Resolutions **Article (38)**

The Chairman of the SFC will issue the resolutions required for the implementation of the provisions of this Law.



Repeals **Article (39)**

Any provision in any other legislation will be repealed to the extent that it contradicts the provisions of this Law.

Publication and Commencement **Article (40)**

This Law will be published in the Official Gazette and will come into force sixty (60) days after the date of its publication.

Mohammed bin Rashid Al Maktoum
Ruler of Dubai

Issued in Dubai on 10 August 2015
Corresponding to 25 Shawwal 1436 A.H.



Third: Inquiries concerning Law (22) of Year 2015 Concerning Regulating PPP in Dubai

1. How does Dubai look upon partnerships?

- Create a partnership motivating environment (A legal framework, providing incentives and guarantees for the private sector partner).
- A long-term, sustainable partnership based on mutual interests, focusing on outcomes and outputs.

2. What are the objectives of the Government of Dubai partnership with the private sector?

- Realize an advanced rank in participating in development partnership projects implemented in Dubai within the coming period.
- Open new investment arenas locally, regionally and internationally.

3. What are the listed projects exempted from the new partnership Law No. (22) of Year 2015?

Listed Projects:

- Projects of government authorities covered by Dubai's general budget.
- Some projects that are not covered by the general budget. Their approval by the Supreme Fiscal Committee is a must.

The following projects are exempted from the application of this law:

1. Partnership projects concerning electricity and water production, covered by the stipulations of Law No. (6) of Year 2011.
2. Material and service work and supply contracts covered by Law No. (6) of 1997
3. Any other contracts designated by the Supreme Fiscal Committee

4. What are the conditions for listing proposed projects under Dubai Partnership Law?

The proposed projects are listed for PPP according to five conditions:

First: That the partnership contract be aligned with the Partnership Regulation Law No. (22) of Year 2015



Second: A detailed feasibility study proving the feasibility of the proposed project is to be presented, after being approved by the concerned parties.

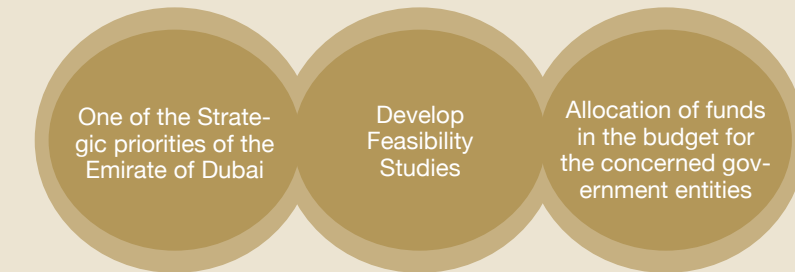
Third: Allocation of funds in the budget for the government authority concerned with the project as long as there are future commitments

Fourth: The project is not among the projects exempted of the application of Law No. (22) of Year 2015 for regulating partnerships.

Fifth: To follow the partnership methods followed and designated in Law No. (22) of Year 2015 for regulating partnerships.

Figure No. (1-2)

Conditions for listing projects for partnership in Dubai



5. What are the criteria set by the Government of Dubai for selecting partnership projects?

The Government of Dubai identified five criteria a project must meet in order to be listed for partnership:

First: Priority of Dubai

- The projects proposed for partnership cannot be through government resources or the expertise of the Government of Dubai alone.



- The designated timeframe for the private partner to implement the proposed projects must be faster than the government's.
- The absence of regulatory or legislative barrier hindering forming a partnership with the private sector company.
- Presence of innovation in the projects tendered for PPP
- Government of Dubai has experience in this area of partnerships
- Put the proposed projects for partnership on the priority list of the government authority
- The proposed projects are to realize an increase in Dubai economic development rates.

Second: Economic Feasibility

- The projects nominated for partnership are to pass all requirements of economic feasibility studies, with all their relevant elements.

Third: Risk Scale:

- Availability of a competitive environment between prospective partners leads to decreasing cost.
- Easiness of measuring and pricing outputs or final outcomes

Fourth: International practices

- The ability of the partner to increase the quality of the service level, compared to the quality the Government of Dubai can provide based on the Government's financial resources
- The proposed project can be supported based on the detailed analysis of the needs and strong arguments confirming the suitability of partnership concept to implementing the project; however, official approvals are to be obtained before tendering the project for partnership
- The assets/services are those that the partner can provide. There has to be an actual/anticipated competitive market for these assets/services.

Fifth: Size of Capital Investment

- The size of the required investment is to be above a certain level, according to a decision issued by the relevant authority, as the complexity of these projects and the expenses of their execution via costly implementation procedures can only be justified by projects of a large scale.



6. What are the means of partnership approved by the Government of Dubai in Law No. (22) of Year 2015? Are they exclusive, or there is flexibility in adding other means of partnership?

The Government of Dubai identified four means of partnership with the private sector exclusively, as follows:

The First One: (BOOT) The partner builds and finances the project, owns, commercially benefits and operates the project for the duration fixed in the contract, then assigns and transfers its complete ownership to the Government Entity when the duration stipulated in the contract ends.

The second one: (BOT) The partner builds and finances the project to benefit commercially from it and operates the project for the duration stipulated in the contract then transfers the right to benefit from it to the Government Entity when the duration stipulated in the contract ends.

The third one: the partner builds the project, transfers its ownership to the Government Entity, while keeping the right to benefit from it commercially, and operates it for the duration stipulated in the contract.

The Fourth one: Transfer the right to benefit from the Government Entity to the partner in order that the partner benefits from the project commercially and operates it for the duration stipulated in the contract.

In order to maintain flexibility, the Government approved any other internationally recognized means of partnership as per the recommendations of the concerned Government Entity. Department of Finance proposed project and approving it from the Supreme Fiscal Committee to act accordingly, including maintenance, expansion or rehabilitation of current projects to maintain the sustainability of social capital in the Emirate of Dubai.

7. What are the criteria according to which PPP projects are approved in Dubai?

The PPP law in the Emirate of Dubai recognizes two criteria for approving projects proposed for partnership. These criteria are as follows:

The first criterion: Conditions that are to be met to include the projects in the partnership projects, as per Article (6) of Law No. (22) of Year 2015 concerning Public and private sector partnerships (PPP).



	Status of the Project proposed for PPP as regards financial cost	Approval Authority	Other Requirements
1	The partnership project brings a revenue or financial savings	Director of the government authority concerned with the project or their deputy	
2	The financial cost the Government Entity concerned with the partnership has to bear does not exceed AED 200 MIO	Director of the government authority concerned with the project or their deputy	Approval from the director of the Government Entity or his deputy that the proposed project is unfeasible, and to be submitted to the Department of Finance
3	The financial cost the Government Entity concerned with the partnership has to bear exceeds AED 200 MIO with a maximum of AED 500 Mio	Department of Finance	1. Recommendation of the Government Entity 2. Presentation of the outcome of a feasibility study concerning the project proposed for partnership to the Department of Finance 3. Submit recommendations concerning the project from the Department of Finance to the Supreme Fiscal Committee Policy
4	The financial cost the Government Entity concerned with the partnership has to bear exceeds AED 500 MIO	Supreme Fiscal Committee (Written Approval)	1. Recommendation of the Government Entity 2. Presentation of the outcome of a feasibility study concerning the project proposed for partnership to the Department of Finance 3. Submit recommendations concerning the project from the Department of Finance to the Supreme Fiscal Committee

General Condition: In the four cases of the proposed PPP, the concerned Government Entity cannot start with the awarding and contracting procedures unless the concerned party approves.



The second criterion: is the criterion of approval of the financial limits concerning the financial cost that the Government Entity concerned with the project can bear, which are as follows:

8. What is the PPP cycle in the Emirate of Dubai according to the Law No. (22) of Year 2015 concerning the regulation of partnership between the public and private sectors?

The PPP cycle in the Emirate of Dubai consists of 5 phases as follows:

1st phase: Propose partnership projects

2nd Phase: Study and approve partnership projects

3rd Phase: Tendering and Awarding procedures of the partnership projects

4th Phase: Contracting

5th Phase: Oversight of partnership project orders

9. Is there a possibility that the Government Entity concerned with the project partners with the private sector company in establishing the project company? Can the private sector company implement the partnership project without having to establish a company for the project?

Yes, Article (25) of Law No. (22) of Year 2015 allowed the above. The Government Entity concerned with the project can participate with the private sector company in the project company, in the form of a limited liability company, as article (A) stipulated, "The Government Entity concerned with the project is to partner with the private sector in establishing a company for the project, in the form of a limited liability company.

Also, the same article allowed the private sector company to implement the partnership contract without the need to establish a company for the project. The partner is seen as the company, subject to the approval of the Department of Finance, as per the recommendation of the concerned Government Entity in the following cases:

1. The awarded bidder has the capability to implement the proposed project due to their financial and technical capabilities, in addition to:
2. The awarded bidder providing sufficient financial guarantees



As item (C) of Article (25) of the aforementioned Law No. (22) of Year 2015 (albeit Item B of this article) stipulates that the Government Entity – subject to the approval of the Department of Finance – may allow the awarded bidder of the partnership contract to implement the project. It will be according to its status and their available financial and technical capabilities and providing sufficient financial guarantees, in which case, the partner seen as the project company.

10. Does the Partnership Law No. (22) of Year 2015 present the private sector partner with material guarantees?

Yes, represented in the following:

1. Amending the partnership contract in case of unforeseen circumstances
2. Committing to giving the necessary licenses, permits and approvals according to the agreed timeframes
3. Basics and mechanisms for fair compensations in case of amending the conditions of the contract
4. Fair basis for risk distribution based on partnership and common benefit
5. Allow the private sector partner to give privileges to the beneficiaries
6. Coordinate with the financing entities in case the private sector partner needs finance.
7. Presence of a Complaint Committee throughout the lifetime of the partnership
8. The possibility to bid by a consortium composed of more than one qualified company
9. Sufficient time for announcing the project and its details clearly in the different media, long enough before the due date.
10. The opportunity to meet with the Government Entity in the form of meetings and preparatory discussions with the qualified partners to go through the matters concerning the project specifications, its preliminary conditions and other relevant issues.
11. Selection of the project partner as per the principles of publicity, transparency, competitiveness, equal opportunities, justice, announcing the competition and meeting the requirements of public interest.



11. Is the Government Entity concerned with the project entitled to contract directly with the project company?

Yes, the Government Entity is entitled to contract directly with the project company according to Item (C) of Article (14) of Law No. 22 of Year 2015 stated above. Concerning the principles of selecting a partner in case the project is an innovative one, as it stipulated, “Albeit what Item (A) of this article stipulates, the Government Entity is entitled to contract directly with the project company if the project is the innovation of this company”.

An innovative project: an innovative partnership project concerning an unprecedented innovative idea in the Emirate (the country) that approved based on a comprehensive feasibility study submitted by the project owner to the Government Entity, having an economic or social outcome that aligned with the strategy of the Emirate.

12. What are the commitments of the project Company as defined by Law No. (22) of Year 2015 concerning regulating PPP in the Emirate of Dubai? What is the position of the Government in case of violating it?

The law of partnership in Dubai imposes many commitments on the Project Company, the most prominent of which are as follows:

1. Not to dissolve/liquidate the Project Company or change its legal form, decrease its capital, transfer it to others, unless a prior approval is obtained from the Partnership Committee of it.
2. Keeping the project’s assets and fixtures, maintaining, caring for them and using them for the purpose for which they were developed.
3. Not to sell facilities, assets it might own, as per the terms of the partnership contract, transferrable, non-transferrable funds that flow back into the project, with the exception of sales for the sake of implementing the replacement/renewal program according to the conditions indicated in the partnership contract after obtaining the prior approval of the Partnership Committee.
4. Present all documents, information and data required by the government authority or department, the Financial Audit Department, cooperate with their employees, and allow them to enter its sites to inspect them at any time.



5. Committing to transfer knowledge and expertise to the Government Entity, train and qualify the employees of this Entity according to what agreed upon in this regard.
6. Present periodical reports to the Government Entity concerning the project implementation works as regards establishment, preparation, development, operation, maintenance, management and any other things the Government Entity might require.
7. Provide the environment and health requirements and the safe requirements of the project employees and stakeholders.
8. Not to contract with subcontractors unless a written approval obtained from the Government Entity. This is not to affect the commitments of the Project Company stipulated by this law and the decisions issued based on it and the terms of the partnership contract.

As regards the position of the Government of Dubai as regards the violation of commitments by the Project Company, they are entitled to:

1. Receive a compensation and impose the penalties stipulated in the partnership contract.
2. The Government Entity is entitled to oversee the Partnership Project themselves.
3. The Government Entity chooses another partner to continue in the Partnership Project.

13. What are the parties responsible for managing the Partnership in the Emirate of Dubai?

Law No. (22) of Year 2015 defined four partners that are responsible for managing the Partnership in the Emirate of Dubai, what they are and the limit of their authority:

The First Party: The Supreme Fiscal Committee

- Adding any Government Entity to the partnership, in spite of not listing it in the general budget of the Government of Dubai.
- Adding projects to the work contracts or providing services covered by Law No. (6) of Year 1997.



- Approve any means of partnership that not explicitly stated in Article (7) of the Partnership Law.
- Approve projects in case the total cost the Government Entity has to bear according to the Partnership Contract exceeds AED 500 Mio (The approval must handwritten based on a study submitted by the Government Entity).
- The possibility of the Committee's authorizing the Government Entity
- Approve the PPP general policy in Dubai
- Approval of receiving a bid even if it is a sole bid, or its value exceeds or is less than the estimated value, in order to achieve public interest.
- Approval of partnership contracts the term of which exceeds 30 years based on the recommendation of the Partnership Committee.

The Second Party: Department of Finance

- Allocation of funds in the general budget for the Government Entity owning the project as long as it approved and entails future commitments.
- Approve partnership projects if the total cost that the government Entity has to bear according to the partnership contract ranges between AED 200 and 500 MIO (The approval must be handwritten based on a study submitted by the Government Entity).
- The possibility of the Committee's authorizing the Government Entity
- Develop the public policy concerning the regulation of PPP
- Submit proposals concerning developing and updating the legislations regulating partnership.
- Offer all possible support and help for developing the Government Entity initiatives.
- Provided the suitable environment for partnership projects and promoting them
- Develop a handbook for partnership in the Emirate of Dubai.
- Approve the results of the financial studies submitted by Government Entities as regards partnership projects.
- Nominate a member as a representative of the Department in the Gov-



ernment Entity partnership committee if the total cost borne by the Government Entity exceeds AED 200 Mio.

- Receive periodical reports on the progress of the partnership project contract execution by the concerned Government Entities.
- Issue approval in certain cases of accepting sole bids by consortiums
- Approval of the Government Entity recommendation concerning the private partner's execution of the partnership contract without establishing a company for the project.
- Authorize the recommendation of Government Entities securing rights and preferential terms for the sake of certain categories of beneficiaries.
- Approval of bank financing of the project company without any financial commitment on their side
- Receive complaints of stakeholders concerning any decision/procedure issued by the Government Entity or emerging from the partnership contract, so that a decision is issued within 30 days.

The Third Party: Government Entity Concerned with the Partnership Project

- Approve partnership projects that realize a revenue or financial savings
- Approve projects if the financial cost it has to bear within its budget does not exceed AED 200 Mio
- Develop the needed studies for the partnership projects proposed by it
- Submit the outcome of the financial study to the Department of Finance concerning the proposed partnership projects
- Form a partnership committee to perform the functions stipulated in the partnership law
- Develop reports concerning the progress of implementing the partnership contract, obstacles and means of overcoming them.
- Inform the Financial Audit Department of all the violations that may be committed by the project company
- Sign a direct contract with the project company if the project is the innovation of the company



- Announce the project and its details clearly in the different media long enough before proceeding with the bidding
- Hold preparatory meetings with the qualified partners, on condition of equal opportunities and fairness. Confidentiality may be required
- Amend some of the project specifications and the preliminary conditions; however, this is not to affect the qualification criteria and announcing these amendments clearly and explicitly in the media.
- Committing when inviting companies to submit their bids to submit all details concerning the project, including the guarantee amount, its conditions and guarantees.
- Develop the RFP of the project covered by the partnership contract
- Inviting qualified partners to obtain the RFP.
- Ban accepting any bids that do not conform to the terms and conditions of the RFP.
- Accept bids from consortiums
- Ban accepting consortiums that submit sole bids, either directly or indirectly through another consortium
- The Partnership Committee of the Government Entity studies and evaluated the submitted bids according to a fixed mechanism. The bidders or their legal representatives are to attend the bid opening.
- Cancel the bid in the cases stipulated by law, stating the reason for cancellation
- Partnership with the private sector in the project company through a limited liability company
- Agree that the private sector company executes the partnership contract without establishing a company for the project.
- Develop the partnership contract in a way to guarantee all the rights related to all Government Entities concerning the partnership projects
- Committing to the term of the contract – 30 years – as of the date of signing the contract, the date fixed by the Partnership Committee, or obtaining the approval of the Supreme Fiscal Committee if it wishes to extend the contract term.



- Issue written certificates for the project company that the work and available service quality is acceptable, in order to start collecting fees.
- Authorize securing rights and preferential terms from the private sector in favor of certain categories of beneficiaries.
- Possibility of amending the partnership contract within certain limits and guidelines, also in emergencies.
- Following up the works on its own or through a third party it chooses, to continue implementing the partnership contract in case the project company commits a big, substantial violation or inability to realize the required quality levels
- Follow up the phases of establishing the project, preparing it and allowing the services covered by the partnership contract
- The Government Entity, with coordination with the Department of Finance, may permit the project company to contract with banks to finance their works and activities, so that the project company bears alone all the resulting commitments.

The Fourth Party: Financial Audit Department

The Financial Audit Department is responsible for oversight and audit on all entities subject to oversight as per the stipulations of Law No. (8) of Year 2010 and its amendments as per the Financial Audit Department, aiming to validate their legality, suitability, correct calculations, as well as uncovering financial violations and taking necessary actions towards rectifying them. The department practices financial oversight and monitors performance.

Monitoring performance means an independent, objective, reliable scrutiny to ensure that the commitments, systems, processes, programs, activities and organizations in the Government of Dubai are working according to the principles of economics, efficiency and effectiveness and that there is room for improvement.

The Department also oversees information and smart systems to ensure the effectiveness and efficiency of the technological oversight environment.



Also, the Financial Audit Department performs its job of oversight on the entities that are subject to oversight by scrutinizing projects. Through an objective scrutiny process, Audit Department reviewing all phases of the project from the time the feasibility studies began until the projects executed, operated or sold. In addition to assessing the status of the projects and finding out to what degree the defined criteria of project success observed and determining the available opportunities for improving the project execution and management.

The objectives of audit are as follows:

- Evaluate the quality and efficiency of tendering, executing and managing projects
- Evaluate the project achieved outputs against the planned outputs and the project objective
- Evaluate the quality, type and criteria of the project documents
- Evaluate the efficiency of the tools used in managing projects

03



Chapter 03

The Partnership Cycle between public and private sector companies in Dubai

This chapter deals with the partnership cycle between public and private sector companies and the rules and procedures that are too followed if a Government Entity wishes to sign a contract with a private sector company in the Emirate of Dubai:

The partnership cycle consists of the following phases:

Phase 1 : Proposal of Partnership Projects in the Emirate of Dubai

Phase 2 : Studying and Approving Partnership Projects

Phase 3 : Partnership Project Tendering and Contracting

Phase 4 : Contracting

Phase 5 : Monitoring the Partnership Projects Performance



Phase 1: Proposal of Partnership Projects in the Emirate of Dubai

- First:** Legal stipulations related to this phase
- Second:** The Proposed projects are subject to the provisions of the Partnership Law
- Third:** Develop and Propose Partnership Projects
- Fourth:** Formation and Tasks of Partnership Committees of the Government Entities
- Fifth:** Partnership Project Consultants (Tendering Consultants)



Phase 1: Proposal of Partnership Projects in the Emirate of Dubai

First: Legal stipulations related to this phase

The aforementioned Law No. (22) of Year 2015 stated the possibility of proposing partnership projects by the concerned Government Entity or the private sector, as article (12) stipulated the following: “Projects that are fit for partnership can be proposed by either the Government Entity or the Private Sector company”.

In addition, Article (4) of the same law stipulated the following: “The provisions of the law apply to:

1. Government Entities under the Government’s general budget. The Supreme Fiscal Committee may add to this law any other government entity that is not under the general budget.
2. All projects subject to the PPP projects in the Emirate of Dubai, no matter what type, form or nature of activity it is. Partnership contracts can be made in their regard by entities designated in item (1) of this article, after applying the provisions of this law. The following are exempted:
 - A) Partnership projects concerning electricity and water production, covered by the provisions of the aforementioned law No. (6) of Year 2011.
 - B) Work contracts and supply of material and service contracts covered by the aforementioned Law No. (6) of Year 1997
 - C) Any other contracts determined by the Supreme Fiscal Committee as per the decisions issued by them in this regard

Second: The Proposed projects are subject to the provisions of the Partnership Law

All projects have to meet the following 3 conditions in order for that project to be considered a partnership project:

1. That it is listed on the priority list of Dubai Strategic Plan
2. Develop a detailed feasibility study (integrated) for the project, proving its feasibility



3. Allocation of funds in the general budget for the Government Entity concerned with the project

Third: Develop and Propose Partnership Projects

1. Proposal by the Concerned Government Entity

The Director General of the concerned Government Entity submits proposals concerning partnership projects to the concerned authority (Department of Finance – Supreme Fiscal Committee) according to the financial limits of the project cost. He/she is to submit the outcome of the project's financial study indicating the future financial commitments to the Department of Finance that studies what has been submitted to it and reports to the Supreme Fiscal Committee to issue a decision, either accepting or declining the project.

2. Proposal by the Private Sector Company:

Any natural or legal person can present an idea to the concerned Government Entity concerning requesting to execute a project according to partnership system. This request is to include the following:

- A) A preliminary feasibility study showing the elements of the project, preliminary estimates of its costs and benefits according to the provisions of the partnership law.
- B) Information concerning the presenter of the idea, their experience, administrative, technical and financial capabilities to execute the project or part of it.

The Government Entity studies the proposed idea and communicates with any other Government Entity that the idea may suit their specialization to coordinate with them to complete the requirements of the feasibility study submitted by the owner of the idea. The concerned Government Entity is to make their decision within the timeframe they set and the decision is either one of the following:

- Accepting the idea and considering it an innovative project
- Accepting the idea and listing it as one of the projects proposed for partnership
- Declining the idea



The decision is to include the following:

- Determining the type of idea and approving it whether as an innovative or ordinary project.
- Name of the proposed project and the service it renders
- Cost of the approved feasibility study
- Concerned Government Entity(s)
- Estimated cost of the proposed project
- Rights of the presenter of the idea that has been approved, especially if approved as an innovative project

Upon informing the presenter of the idea that their idea is accepted, they are to present a comprehensive feasibility study concerning the project in a period determined by the Government Entity and hence approving the proposed idea as one of the partnership projects according to the followed procedures.

It is worth noting that in some cases, the Government Entities may give some rights and privileges to the presenter of the idea that has been accepted as a pay back of the feasibility study cost. They may also give them a preference in accepting their bid that meets all requirements in the RFP, in the form of a certain percentage of the best bid value.

Fourth: Formation and Tasks of Partnership Committees of the Government Entities

The concerned Government Entity forms a committee for the evaluation of bids and selecting the best bid. This committee is called “Partnership Committee”. Regulating partnerships and their requirements in the Partnership Committee ensures a fair and professional evaluation of bids in all cases. The Partnership Committee of the concerned Government Entity plays a pivotal role in the partnership projects. Article (11) of Law No. (22) of year 2015 concerning PPP stipulated the following:

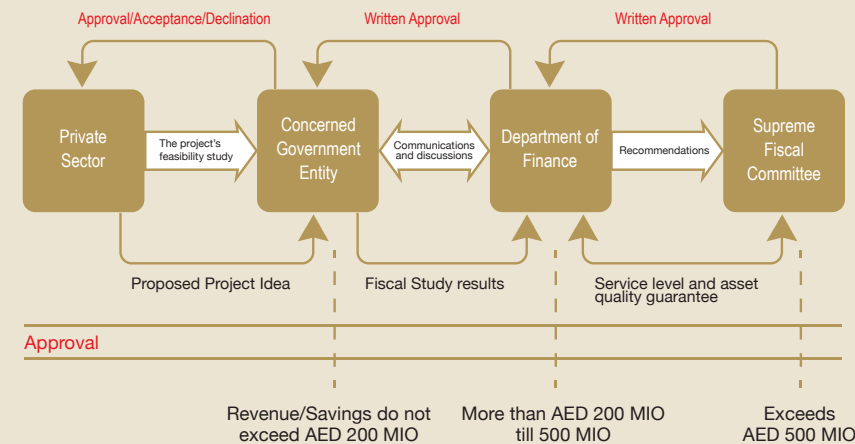
- A) The Government Entity forms an internal committee called “Partnership Committee”. Its members appointed as per a decision from the Director General. This Committee charged with performing all the tasks stipulated in this law and decisions issued according to it. The decision of forming this committee decides work mechanism and how to hold its meetings.



- B) In order to perform its designated tasks, the Partnership Committee is entitled to seek the help of whom they deem suitable of specialized persons with expertise.
- C) The Partnership Committee is to include in its membership a representative of the Department, to appoint by its Director General, in case the total cost to be borne by the Government Entity in the partnership contract exceeds AED 200,000,000 (two hundred million Emirati dinars).

Figure No. (3-1)

Dubai Partnership Project Proposal Mechanism



The tasks of the Partnership Committee can be as follows:

1. Possibility of partnership with the concerned Government Entity in the following:
 - A) Develop preliminary studies that deal with the technical, economic and financial aspects of the partnership project, including the interest of investors, possibility of attracting the needed finance and submitting report including a recommendation to the concerned authority (Department of Finance – Supreme Fiscal Committee).
 - B) Launch the procedures of selecting the private sector partner via announcing a public invitation for those wishing to participate in executing the proposed partnership project.
 - C) Determine the qualification criteria and provide nominees from the private sector with the required information and instructions.
 - D) Receive the qualification requests and report to the head of the committee or the concerned authorities, as the case may be, with the names
 - E) Inform the selected partners of the result of the qualifications.
 - F) Conduct an interview with the qualified nominees and finance parties in order to receive an integrated conception to decide the technical requirements and the practical means and financial structures for the realization of the partnership project.
 - G) Develop the RFP and its attachments, informing the qualified bidders after being approved by the head of the committee or the concerned authorities, as the case may be
 - H) Receive the bidders' offers and asking for the needed inquiries, completing data and the required documents.
2. Evaluate the technical bids that meet the conditions and their financial offers.
3. Submit a report classifying bidders and giving the Committee's recommendation concerning the best bid to the head of the committee or the concerned authority as the case may be, and the possibility of granting rights and privileges to innovative ideas that approved as partnership projects.



4. Negotiating with the bidder with the best offer in order to maximize the bid technically and financially, according to an authorization from the head of the committee or the concerned authorities, as the case may be.
5. Inform qualified bidders of the result of the selection process

Some international practices recommend forming a work team in the Government Entity focused on the partnership, the responsibilities of which are:

1. Facilitate decision-making on the level of the concerned Government Entity and seeking to provide technical inputs concerning the sector, which needed for implementing the project.
2. Assisting in building corporate capabilities in the Government Entity, which are considered a necessity for managing and implementing projects after signing the partnership contract and its coming into force (as the concerned Government Entity will be responsible for carrying out its commitments according to the partnership contract and overseeing the performance of the project company).
3. Coordinate with the public fund management body to study the possibility of participating in the finance. Study the possibility of extending subsidy, guarantees and aids from the general budget, as well as study the possibility of giving tax exemptions or incentives to the project company and making sure of realizing the value for money concept, reviewing the public sector benchmarking index and any other tasks they charged with as the case may be.
4. Follow up the necessary daily activities so that the projects reach the contract signing and financial closure phase.
5. Performing quality control, time management concerning all outputs provided by the tendering consultants for obtaining the concerned authorities' approval of them later.
6. Participate in developing service performance criteria and overseeing the implementation of the partnership contract
7. Validate the alignment of the project with the requirements and objectives of the public service all through the project implementation period.



Fifth: Partnership Project Consultants (Tendering Consultants)

The completion of any successful partnership project depends primarily on organization and preparation for this process by the Government Entity and its ability to solicit consultancy services. The choice of consultants has on the perspective investors' perception of the tendered project, whether concerning how much interest they put in it or their preparedness to offer the expected price.

Item (B) of Article (11) of the aforementioned Law No. (22) of Year 2015 stipulated that:

“The Partnership Committee is entitled to solicit the support of experts and specialists it deems suitable, in order to perform their job”.

The importance of tendering consultants arises from the fact that the partnership projects are complex projects that require specific skills and expertise related to the nature of each project. The Government entity may not have such experience; hence, the specialized consultants secure the skills and experience required for the success of the partnership. In addition, the close cooperation between consultants on the one hand and the partnership committee and the work team on the other hand play an important role in developing the skills of the committee members and any work team. Moreover, soliciting consultant's saves from committing costly mistakes that can avoided, due to their knowledge of the best local and international practices and their implementation of similar partnership projects.

In addition, contracting with consultants of good reputation asserts the credibility of the partnership, for renowned consultants are not willing to tie their names to projects that cannot executed. This tends to assure the investors as regards the soundness of the project, due to the independence of these consultants. We can discuss some elements related to tendering consultants as follows:

1. Timing of appointing the consultancy team:

This appointment done if the concerned Government Entity decided to add the proposed project to the partnership project program, after forming the partnership committee. It is better to appoint the main consultant



of the project before selecting the rest of the consultants, due to the main consultant's role in supporting the government entity in determining the skills required in the rest of the consultants and wording the RFPs directed at consultancies, based on their experience in executing similar projects.

2. Project Consultancy Team Members

The partnership project requires a number of diversified elements. This requires a wide range of specializations when preparing for a project during the tendering process, hence each project requires a different combination of consultants; however, there are some fixed skills in the projects that secured by financial, legal and technical consultancies. The consultancy team consists of a transaction advisor, who is also known as the financial consultant and also legal and technical consultants who all cooperate within one framework, under the supervision of the partnership committee. The members of the consultancy team proposed for the [project are as follows:

A) The project's main consultant (Main Consultant)

The main consultant plays a pivotal role in the tendering process of the partnership projects till signing the contract successfully. He represents a central accountability point as regards the achievement of work by consultants in a good way and a timely manner. The main contractor also plays the role of mediator between the partnership committee and private sector investors who are concerned with the project.

The main advantage of the main consultant lies in their expertise in all matters related to the different tendering phases and their important experience in partnership projects in the concerned sector, in the range of which the proposed project lies. One of the preparatory tasks the Main Contractor may charge with is studying the potential forms of partnership for implementing the partnership project and recommending the best form in light of the imposed restrictions and the objectives sought by the Government Entity.



The Main Consultant may help in designing the tendering process, defining the required tasks and linking them to a time schedule. He may also help the partnership committee in the selection of consultancies, from recommending consultancies that have the necessary expertise, determining the issues that need to be studied accordingly define the scope of work and help in evaluating the submitted bids by consultancies.

The basic task of the Main Consultant is to work on attracting the public sector to the partnership project and design it in a way that enhances its finance prospects and successful implementation. These tasks require skills related to structuring financial deals, develop financial models. Study and evaluate risks and negotiating. In addition, the Main Consultant must be aware of the commercial rationale, market analysis, and means of attraction of private sector finance. The main role of the Main Consultant is to study the impact of any variables in the project on the confidence and interest of the private sector as well as playing a leading role in selecting the private sector partner, negotiations and financial closure.

B) Legal Consultant

The role of the legal consultant begins by studying how far the details of the partnership project conform to the laws in force, hence the project's susceptibility for execution from the legal point of view, pointing out the suitable solutions that may overcome any present obstacles. They also help with wording the required documents and revising them from the legal stand. The main role of the legal consultant is to word the partnership contract and the subsequent contracts and make sure that these contracts reflect the commercial deal resulting from negotiating with the private partner. The legal consultant plays an important role in concluding the contract by making sure that the precedent conditions are met for the partnership contract to come into force. This requires expertise in the local legal frame and the best international practices in making partnership contracts and negotiations.



C) Technical Consultant

The main role of the technical consultant lies in determining the outputs desired from the partnership project, developing their technical specifications, and how to link them to the private partner compensation. They also evaluate the potential technical solutions in the designing phase of the common project and propose alternatives. The technical consultant is responsible for studying and analyzing the technical bids submitted by bidders.

D) Other consultants

The formation of the consultation team depends on the nature of the partnership project and the human resources found with the concerned Government Entity. In addition to the aforementioned consultants, Item (B) of Article (11) of Law No. 22 of Year 2015 regarding PPP stipulates to contract with other consultants specialized in certain fields as needed. These consultants may include environmental consultant, public relation consultant, and human resources consultant.



Frame No. (2)

International Practices as regards the commitments of Government Entities in case of appointing tendering consultants

There are a number of rules that need the Government Entities took into account by when appointing tendering consultants as follows:

1. Selecting tendering consultants for PPP projects governed by the principles of publicity, transparency, fairness, free competition and equal opportunities.
2. A contract made with the tendering consultants to execute consultancy works for one or more projects of those executed in partnership, through public or limited tenders. It is permissible – if the case so necessitates for public interest and can't wait for the procedures of public and limited tenders, upon the approval of the Department of Finance – to contract with a bidder directly.
3. Announcing public tenders via publishing them in local and international newspapers or any other means guaranteeing publicity.
4. The Government Entity develops quality records for the tendering consultants, to which it publicly invites the national and international tendering consultants who are technically competent, reputable, and have international expertise in PPP to register in these records, according to their technical, financial, legal, environmental, or social specialization or any other specialization according to the project. The public invitation to register in the aforementioned records is to include the conditions that need to be present in the record.
5. The tender procedures for selecting tendering consultants may set a certain date for receiving questionnaires of the bidders and answering them by the government entities. The response to the questionnaires is to be made available to all bidders and the Government Entity is to invite the bidders to one-on-one meetings based on transparency and equality.
6. The tendering process for selecting a tendering consultant is to be based on separate, sufficient technical fundamentals suitable for the nature of the contract. The tender book for selecting the tendering consultants developed by a committee comprised of the government entity and the Department of Finance employees. The committee formed according to the decision of the director general of the government entity. The tender book issued either in Arabic or English or both as the case may be. The tender book is to state the language in which the bidders are to submit their bids and use in their correspondence. In case of Multi-language, the tender book must specify the language to supersede in case of contradiction with another language.



The tender book must include specifically the following data:

- Invitation letter sent to the tendering consultants who are to submit their technical and financial bids.
 - Determine the sector under which the project that is to be tendered on PPP basis falls
 - The commitments of tendering consultants since contracting till finalizing their work in the project.
 - The scope of work of the tendering consultants and the governing conditions, indicating the timeframe of the project works.
 - Define the minimum number of the tendering consultant's work team, their scientific degrees, basic expertise and their previous achievements.
 - Define the documents and financial statements that are to be completed by the tendering consultants as part of their financial bids.
 - Statement of the number of projects that are to be executed with the tendering consultants.
 - Tendering procedures and timeframe for receiving questionnaires, responding to them and the due date for receiving bids.
7. The financial models must include the following:
- A) Indicate the total fees of the tendering consultant for the project according to the work system, benchmarking and the timeframe for their work in the project.
 - B) A table indicating the works and documents required by the tendering consultants and their submission dates, as well as the financial compensation for completing these works and submitting these documents.
 - C) The maximum limit of refunding of travel and transport expenses required for executing the consultancy work of the project if needed.
 - D) The other conditions related to the nature of the role of the tendering consultant and the nature of the project stated in the tender book concerning the tendering consultant.
8. The bids submitted in public and limited tenders from which the tendering consultant selected and decided by a committee formed for this aim, according to a decision by the government entity directorate general. This committee must have a member from the Department of Finance and the committee, when selecting the tendering consultants, to charge sub-committees that are formed of its members or otherwise to study the technical and financial aspects of the submitted bids and how far they conform to the stipulated conditions.
9. The bids received from the tendering consultants according to the due date indicated in the tender book. The conditions for selecting the tendering consultant are according to the indicated procedures. The bidders are required to submit two bids, one financial and one technical.



10. The submitted bids by the tendering consultants are to be valid and binding all through the duration indicated in the tender book for selecting the tendering consultant. Before the due date for the financial bid, the government entity is entitled to request extending the validity of the bids, with no objection from the bidders.
11. The tender book states the method of selecting the tendering consultant, and the evaluation process used in selecting them. The tendering consultant selection committee receives and evaluates the technical bids and determine which of them are technically accepted according to the stipulations of the tender book. The tendering consultant select committee decision to eliminate one of the bidders must be justified and the bidders are to be informed of the result of the technical evaluation.
12. The selection committee meets and the order is placed in case of technical evaluation according to (Matching/ not matching) criteria for the technically acceptable bid having the least price calculated according to the method designated in the tender book for the selection of tendering consultants. In case of conducting the technical selection through point system, the order placed with the bid that is more economically feasible after applying relative weight for the technical bid and commercial bid according to the method of calculating the commercial value defined in the tender book.



Phase 2: Studying and Approving Partnership Projects

First: Legal stipulations related to this phase

Second: Studying the partnership project

Third: Approving partnership projects

Fourth: Explaining some related terms



Phase 2: Studying and Approving Partnership Projects

First: Legal stipulations related to this phase

Law No. (22) of Year 2015 concerning regulating PPP in the Emirate of Dubai, stipulated in Article (6) a number of important criteria that must be taken into account by government entities when selecting projects subject to partnership. The same article stipulated that “When selecting projects subject to partnership, the following criteria are to be taken into account:

1. How far the project is in the interest of the government and beneficial in general to the members of the community.
2. The economic feasibility of the project, and how far it has a positive impact on the approved development plans of the Emirate of Dubai.
3. Size of the risks that can result from executing the partnership project, especially as regards the environment.
4. Amount of the capital investment and technical expertise that shall effectively contribute to improving the performance of public utilities and guarantee service quality.
5. Best international practices in the area of PPP project execution.
6. Priority of the project, and its operational impact and how far it satisfies Dubai needs.

Second: Studying the partnership project

1. Objectives and content of the study

The main objective of the project study is to get acquainted with all aspects pertaining to it for:

- Determining whether the partnership project will bridge the gap as required.
- Studying how feasible the project is for implementation from the technical, legal, environmental, social and financial aspects.
- Developing the best design for the project

The study is to shed light on the expected strategic and operational ben-



efits from the partnership project, and how far it conforms to the policy developed for the sector by the government. It shall describe in details the aspired service/commodity of the project, and its nature and how far the private sector is capable of securing it based on international practices.

In addition, the study needs to analyze the project's readiness for implementation in all aspects. From the technical and operational aspect, the required outputs are analyzed and determined. As well as the operation criteria, applied technologies and maintenance, in addition to studying the work site. From the legal aspect, the project's readiness for implementation evaluated via analyzing its legal, regulatory and contractual frameworks. In addition, the project's environmental and social impacts represent some of the main factors affecting its readiness for implementation, hence the environmental repercussions of the partnership project need to be studied and the social impact on individuals and the concerned residential areas determined, as per the laws in force.

The most important and basic part on which the partnership project study relies is the readiness of the project for execution financially. This part includes a number of basics concerning how far investors are interested, the possibility of obtaining bank finance and the ability of the government to bear the financial commitments related to the project, if any. The financial study needs to assess the expected revenues and costs, including Capex, Opex and maintenance cost throughout the duration of the project. A list of cash flow developed after assessing costs and revenues. This list aims to calculate the net current value of cash flow, the project internal revenue rate all through the project, hence measuring the soundness of the partnership project and its financial sustainability.

In addition, the study contains the best partnership pattern of the project, via comparing the different available patterns for private sector partnership and determining the most suitable project structure, after conducting a thorough analysis of the available options and alternatives on all aspects, whether technical, legal, environmental, social or financial. Since taking a share of risks is a cornerstone in partnership projects, hence this study is to determine the best distribution of finan-



cial, technical and operational risks between the two partners based on a thorough analysis of these risks and evaluating them, how to mitigate them and how they are distributed.

2. Project study factors

The partnership project study and preparation contains a number of main elements that must undergo thorough study:

2.1 Justification by the Government Entity of the need of the partnership project

This part aims to show the capability of the concerned government entity to define the current gap in the rendered public service. Analyzing its type and size in details and study how far the proposed project is suitable for bridging this gap. Reaching the best specifications of the project to meet these needs, taking into consideration that this gap may be present in the quality of the rendered service, or the amount required of the rendered service (beneficiary capacity) or the unavailability of the service.

Hence, it is necessary that the government entity points this gap out when proposing the partnership project, in the file presented to the concerned authorities for approval. At that phase, the project consultants aid the partnership committee and the work team in developing this study by conducting a thorough analysis of the needs according to the following:

A) The partnership project falls within the work scope of the proposed Government Entity

The vision of the government entity of the concerned sector is studied, as well as the services that need be offered as per the policy of the sector and objectives mandated for the work of the Government Entity. Also, the proposed project's alignment with these priorities is analyzed, and how far it contributes to the implementation of the sector's policy, via looking into the following:

- Size of the project and its impact on the government's general budget or the budget of the government entity



- The expected outcome of rendering this service
- The expected time schedule for initializing the service
- Level of demand of service, and how much need the citizens of it.

B) Ensuring the readiness to tender the project

It is necessary to make sure that the work team of the Government Entity is capable of going further with them if the concerned authorities approved it. There is a need to evaluate the degree of readiness on two levels. The first related to the qualification of the team (the Government Entity) that conducts the project launching procedures till awarding the contract, ensuring the completion of contracting with all the required consultants and that the partnership committee members and the Government Entity are well informed of the sector and are willing to dedicate the necessary time to the project. The second level is to be evaluated later, as it is related to the post-tendering phase, when the readiness of the Government Entity to dedicate a work team to follow up the execution of the project is confirmed. The financial readiness needs also to be confirmed, so a coordination is made with the Department of Finance to ensure the capability of the general budget to tolerate the financial obligations that will result from the project, if any.

C) Project definers that are suitable for bridging the gap

After ensuring the compatibility of the project with the Government Entity's strategic objectives, and the readiness for launching the project, follow it up and fulfilling its financial commitments. The outputs of the proposed project need to define as well as the minimum requirements and the related KPIs, developing a preliminary list with the assets needed for the project and the type of partnership expected to approve.



2.2 Analyzing the technical and engineering aspects of the project

This study includes analyzing the technical aspects of the partnership project to secure the required needs that were determined in the aforementioned study and determine the operation criteria and the utilized technology and maintenance. This study also includes going through the guidelines of potential engineering designs for the project, how far they are good to go. While comparing them to the construction criteria approved by the government and that the concerned laws taken into account. On the other hand, the work site needs to study technically by conducting analysis of the topography, analysis of the nature of the soil and its internal components, via a technical study of the geography.

2.3 Legal Study

It is a study based on analyzing the legislative, regulatory and contractual frameworks for the partnership project, aiming to study the potential legal structure of the project, based on the international practices concerning similar projects and recommendation of the most suited legal structure for the Government Entity and compatibility with the valid laws and regulations. This study is the core responsibility of the legal consultant who thoroughly studies the related legislations and their impact on the project and any other regulatory requirements pertaining to the project, in addition to the required licenses, how to obtain them and their impact on the time schedule of the project. In case the legal consultant finds any discrepancy between the valid laws and the international practices, this may affect attracting investors; hence, the legal consultant shall suggest legislative amendments that will make the project on equal basis with similar international project.

The legal study also includes taking the requirements of the partnership law into account as regards the stipulations that need to be present in the partnership contract. The legal consultant shall make



the guidelines of the partnership contract, scrutinize the phases of selecting the private sector partner and the establishment of the project company, and developing any legislations related to this phase, to proactively deal with any obstacles that may hinder or delay the selection procedures and launch of work. Also, considering them when evaluating the readiness of a project for implementation.

2.4 Evaluation of the Environmental Impact

The study of evaluation of environmental impact should include a lot of basic information, for example: policy framework and the legal and administrative frameworks of the project, description of the project's ambient environment, description of the potential environmental impact of the project and analysis of the project's alternatives, if any. Perhaps the most important aspect of this study is that concerning the environmental management plan, which is the mitigation measures, the observation and monitoring methods, the administrative procedures taken during establishing or operating the project, aiming to eliminate the bad effect or mitigate its acuteness to be in acceptable levels locally, if any.

It expected that the study is limited to evaluating the environmental effect in this early phase of studying the partnership project and designed based on studying the preliminary environmental inspection of the project. The environmental impact evaluation study is to carried out if required by the concerned parties, after the approval of the concerned authorities to implement the partnership. It is also possible to refer the responsibility of following up the evaluation of the environmental impact throughout the project execution period to the project company, as this study usually requires ample time to be able to compare the project impact on the environment and take necessary action to mitigate its negative effects, if any. The environmental requirements are not limited to abiding by the environmental legislations and obtaining approvals of the environment



authorities, but it may exceed this to the necessity of compliance with the international criteria in some cases, as per the request of the financiers or guarantor.

2.5 Economic (Social) Study

This study includes determining the social impact of the partnership project on the concerned individuals and surrounding residential areas, as well as evaluation of any resulting compensations. The study also analyses the impact of the project on the ongoing development work in the region.

According to the criteria of studying, evaluating public projects to realize economic efficiency. Allocating economic resources from the community's point of view, not only between the different commodities and economic activities, but also between the different areas and regions. Through rationalizing investment decisions, in a way that allows decision makers and economic policy makers to make the right choice from the available options, which eventually realizes the utmost economic welfare to the members of the community. (The strong connection between the national feasibility study and the economic welfare is evident here).

Realizing economic efficiency through allocating resources requires taking into account the indirect effects of executing and operating the proposed project. Namely the external benefits and external cost when evaluating and selecting projects, in addition to the importance of depending on the real prices (that reflect the relative availability and scarcity of production elements) of resources when making decisions concerning their allocation and comparison between the available projects. These matters cannot taken into account except through a social and economic feasibility study, as it completely ignored in the specialized feasibility study. The economic and social feasibility study aims at realizing social and economic rationale in investment decisions in general and the decisions related to public projects and choosing the suitable policies



in particular. Such study will give the opportunity to choose the investment and non-investment programs and policies which realize the utmost contribution of private sector employees and the utmost efficiency for the public sector and government, hence the utmost welfare for members of the community.

2.6 Financial Study

This study includes a number of factors that begins with evaluating the anticipated costs and revenues from the partnership project, so that the financial model is designed accordingly and determining the financial soundness of the project based on a number of assumptions, as follows:

2.6.1 Assessment of the expected cost value

The study of the anticipated cost includes an assessment of the total investment cost and operation cost, while focusing on the maintenance cost due to its importance in this sort of projects, as follows:

- A) Investment cost includes for example, the cost of design and raw materials, building and construction, machines, furniture and equipment. The investment cost also includes the cost of labor and administration in the construction phase, including the financial, legal and technical services and project management, in addition to any costs pertaining to compliance with the legislative and regulatory basics and mitigating risks related to the construction phase.
- B) As regards operation cost, it related to the operation phase of the partnership project lifecycle and aims to guarantee the regulation of work in securing the service. It includes the cost of labor (including wages and salaries, employee remunerations, due pensions, social welfare subscriptions, training and development of employees, annual leaves, travel and any costs resulting from layoff) and the



raw materials, consumables, direct management cost and insurance. Also, the costs pertaining to risk mitigation concerning the operation phase and compliance with the legislative and regulatory rules need to be calculated.

- C) As regards maintenance cost, a cost spent all through the project lifecycle to maintain the assets at the required state to deliver outputs with the required specifications. These costs include the following elements: raw materials, tools and equipment, labor concerning maintenance and any costs pertaining to risk mitigation concerning the project maintenance.

2.6.2 Anticipated Project Revenues

According to the nature of the project, a distinction is to be made between two possible forms of partnership depending on the nature of the project: the first is known as Government Pays, which focuses on the project company's providing the service to users free of charge, against compensation paid by the Government Entity to the project company. The other alternative is known as "User Pays", as the service is provided against fees paid by the users.

In both approaches, the Government Entity pays the compensation to the Project Company and when the Government Entity charges the project company to collect the fees, it does so for their own account, hence this collected money cannot be subject to seizure, deduction or clearing, as it is property of the Government.

Revenues are dealt with differently according to the concerned party; for the Government Entity, the project revenue comes from the fees collected from users, which depends on the imposed tariff and level of service demand. It is worth saying that the Government Entity is responsible for setting the tariff – independently from the project company. As regards service demand level, it may be hard to assess accu-



rately, especially if this service is a new one, hence no historic data is available to indicate the usage pattern for users and it may be hard to obtain assessments. Hence, it might require engaging specialized consultants to conduct field tests and market study. The anticipated project revenues depend on the approved assessments concerning the ability of the project to issue invoices and collection and how far the fees were aligned to the ability of users to pay.

Concerning the project company, the revenues consist of the compensations it receives from the Government Entity against performing the job, which charged with as per the partnership contract. This compensation usually depends on two components: one stable covering establishing the service project “Availability Based Fee” where the Government Entity pays fixed amounts periodically to the project Company, and a variable amount according to the commodity output “Output Based Fee” or service demand. Hence the project company compensation somewhat depends on the project revenue according to the Output Based Fee. The importance of this variable in the project company compensation relatively reflects how the demand risk is distributed between the Government Entity and the Project Company. For instance, if the project company compensation depends only on establishing the project and delivering the service, i.e. on the Availability Based Fee, the Government Entity bears alone the whole demand risk.

The expected project company compensation covering the duration of the contract must guarantee the restoration of the total necessary costs to achieve the required input specifications. This is what the cash flow list aims to validate, based on the current net value of cash flow, hence determining the readiness of the partnership project for execution for the sake of attracting finance and investors’ interest.



2.6.3 Cash flow list

The cash flow list aims to measure the financial soundness of the partnership project (validity and credit eligibility), its financial sustainability and resources of finance. The list is based on calculating the net present value “NPV” and the internal revenue rate “IRR” throughout its duration, based on the expected total cost and project company compensation.

A proposed structure for the project is designed, showing the relation between the Government Entity and the special purpose company established by the partner for carrying out the project, the lenders, shareholders, suppliers, sub-contractors and other stakeholders.

This proposed structure is to include the structure of finance, adequate returns to shareholders, debt finance cost and its main conditions. Developing the best capital structure for the project is considered a basic element in this analysis, as it directly affects the finance opportunities of the project.

Exaggeration in assessing the revenues and lenience in assessing costs are the most popular aspects of negligence when developing the list, hence there is a need to rely on realistic assumptions in developing the main fundamentals of the list. These affect the cash flow on different levels according to their nature and they need to be explained in details due to their important effect on deductions as regards financial sustainability of the partnership project.

The assumptions followed in developing the list go along with the way of distributing risks between the project company and the Government Entity. Hence a risk matrix is developed, indicating the risks implied in the partnership project and its susceptibility and evaluating its effect financially, as well as means of mitigating them and distributing them on the party/parties most capable of managing them.



The list reflects the risk distribution approach through two means: either by amending the discount rate or indicating the effect of these risks on all aspects of the cost. This latter approach may be preferable due to its focus on the cost of each risk, and it indicates the financial impact of each risk. Moreover, this method guarantees more accuracy, as some risks affect certain phases of the project duration and it may escalate or diminish as time goes by. This is likely to offer a realistic projection of the project as regards size, cost, security, finance ability and sustainability.

As regards the more important assumption, it concerns finance, its structure between debt and capital and its cost – i.e. reduction rate – used in calculating the present net value of cash flow. The reduction amount is calculated based on the revenue of suitable government bonds (selected at the evaluation time based on the project duration), added to it a suitable risk margin determined by the project consultants.

The finance structure is considered a key element, as it is directly reflected on the financing ability and the possibility of finance, as well as the interest of investors to participate in the partnership project capital, while calculating the current net value of cash flow. So the current net value of cash flow is calculated and so is the internal revenue rate that must exceed the hurdle rate. Further, the net current value of the project must not fall below zero when taking into account the approved reduction rate by investors.

Calculating some financial rates helps in evaluating the readiness of financial corporations to finance the partnership project. For example, the annual rate of covering the debt service that evaluates the ability of the project company to serve the debt from its annual cash flow, distributed on serving the project debt all through the year. Another example is the coverage rate of the loan lifecycle, which is the number



of years required to cover the loan, based on calculating the complete loan period, meaning the expected operational cash flow divided on the current debt on the calculation date.

It is important that the cash flow list be flexible enough to accommodate amending the main variables, through analyzing the sensitivity, as the impact of these variables on the current net value of the project is measured and also the internal revenues.

The main variables that may impact sensitivity study are:

- Project period
- Inflation rate
- Establishment cost
- Total operational cost
- Service demand level
- Finance terms

Accordingly, due to the scenarios based on different assumptions of the basic variables, the financial outcomes resulting from the financial study - whether on the internal revenue level, net current value of cash flow, or by calculating some financial rates- indicate how far the partnership project attracts finance from financial corporations. It also measures the desire of potential investors to participate in the capital. The study helps in evaluating how far guarantees and financial support are needed to enhance the creditworthiness of the partnership project. It may be beneficial in this phase to test the market reaction towards approved assumptions in developing the financial study. This can be an evaluation of the project's realism and its determinants. This is done via workshops, lectures, field presentations and requesting evaluation remarks from potential investors. The main consultant of the project conducts this test in collaboration with the work team under the supervision of the partnership committee.



2.7 Studying the impact of Government finances

This part of the study aims to evaluate the reflections of the partnership project on the government finances, so this study is based on comparing any revenues of the project that go into the treasure against the cost to be borne by the government throughout the project's lifecycle, by means of the following:

2.7.1 Government revenues from the partnership project

The treasury makes revenues from the partnership project in case the project is related to basic public utilities, such as electricity, water, transportation and so on, through imposing fees on users against making use of the service provided by the partnership project. Imposing these fees is not the rule in all cases, as there are projects that do not provide a direct service a user benefits from, such as constructing a bridge, hence some projects may not bring any revenues to the treasury. In case of the other projects that bring revenues to the treasury, these revenues are not necessarily sufficient to cover the cost borne by the government, as the government may subsidize the tariff imposed on the users in case it sees that the users – or part of them – cannot bear it.

2.7.2 Concerning the Government cost in the partnership project

The Government cost in partnership projects is basically represented in the compensation the project company receives against their performing the job they are charged with. The project company is not allowed to deduct its compensation from the collected fees, in case the government allows it to collect fees, as it does so in the name of the government and for its account and the government pays the project company its compensation according to the terms of the partnership contract. Hence the collected money from the project company is not subject to seizure, deduction or clearing as it is considered public money. As regards the other costs that



the government may shoulder, it may be through the government subsidizing the project. This subsidy may be through granting a minimum demand, hence revenues. It may also be a capital subsidy; thus the government supports by financing the project through easy loans it may obtain from donors.

Studying the project impact on the Government's finances depends on calculating the expected net value for the amounts borne by the Government after taking the revenues, if any, and the cost into account. Also, the time schedule of these payments must be analyzed and compared with any other dues on the treasury, whether resulting from other partnership projects or any other source.

These payments must be within the budget of the Government Entity and be among the financial priorities of the Government. If it turns out that the Government Entity is not capable of bearing this financial commitment, the Government Entity or the Partnership Committee may amend the specifications of the outputs, without affecting the desired benefits from the project, aiming to attempt to decrease the project cost from the general budget.

The Government Entity or the Partnership Committee must make sure that all information indicated in the project study is accurate and verified as much as possible and it may to this end requires the project consultants to issue the following:

- A statement showing the reality of information collected and its source.
- Additional information concerning loans on which the financial study is based and how realistic and suitable they are.
- Clarify methods of evaluating the different costs, including financial risk assessment.
- Confirmation of the project consultants that the financial study inputs are accurate and verified.



2.8 Project Final Report

The work team presents a report giving the outcome of the feasibility study and its specific recommendation concerning the proposed project to the concerned authority, to enable studying it and relying on it in making the suitable decision as regards whether to go on with the project or not, according to the stipulations of Article (8) of Law No. (22) of Year 2015 concerning PPP.

The work team depends in their recommendations concerning the output of the project study on the following criteria:

- The susceptibility of the partnership project for implementation from the technical and practical aspects.
- How far the project is aligned with the legislative, regulatory and contractual frameworks.
- The environmental and social impacts of the project and how they can be mitigated
- The susceptibility of the project to attract finance from financing corporations
- How far the potential investors are interested in and willing to participate in the project capital.
- Outcome of the project reflected on the government finances

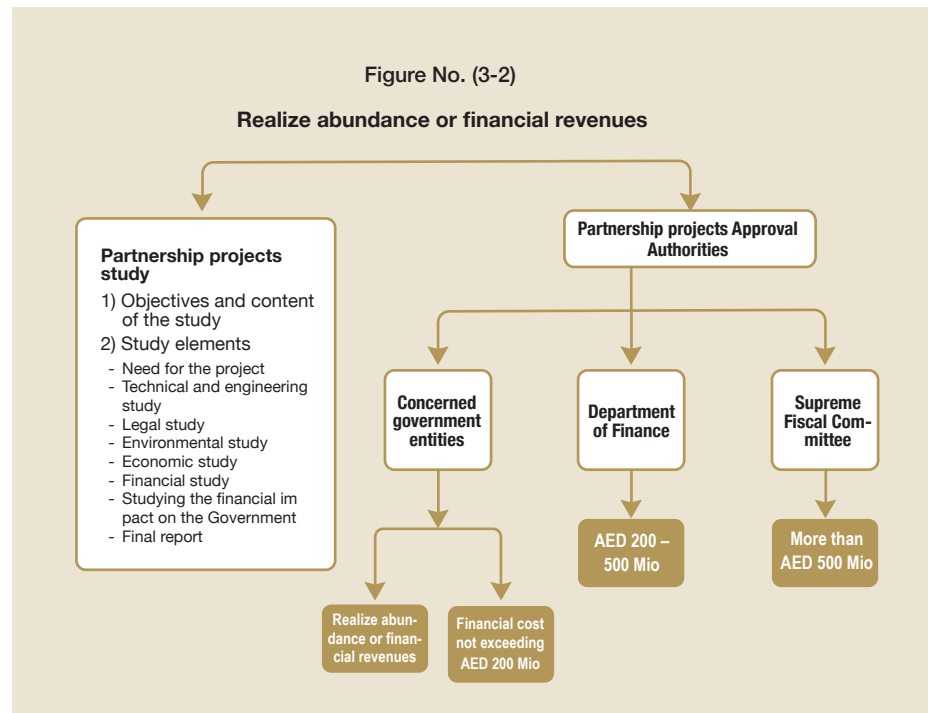
In case there are changes in the project, market, the overall economy or force majeure that prevent the implementation of the project, the partnership project may – with the help of the consultant team update the project study or amend it to go along with the changes.

If these changes emerge after the concerned authorities approve implementing the project and before initializing the procedures for choosing the private partner, thus resulting in a significant amendment of any of the financial study hypotheses, especially concerning the distribution of risks or financing conditions, then the team has to inform the concerned authorities of the details of the proposed amendments and its impact on the susceptibility of the project for implementation on different levels. The concerned authority is enti-



pled to make the right decision concerning these amendments and report – if necessary - to the Supreme Fiscal Committee to make the right decision.

If the concerned authorities agree to proceed with implementing the partnership project, the following phase begins.





Third: Approve Partnership Projects

Article (8) of Law No. (22) of Year 2015 concerning regulating PPP defined the mechanism of approval by the concerned authorities. This mechanism is related to the financial limits of the partnership projects as follows:

- 1) If the partnership project realizes abundance, financial revenues, or the total cost borne by the government Entity in the partnership contract does not exceed AED 200 Mio, the Government Entity owning the project is committed to inform the Department of Finance. It also needs to confirm that the partnership project proposed by them is proposed as one unit and it is not split, as per a letter signed by the Government Entity's Director General.
- 2) If the proposed partnership project is any of the following:
 - The cost the Government Entity bears ranges from AED 200 Mio to AED 500 Mio (Approval of the Department of Finance).
 - If the total cost the Government Entity bears exceed AED 500 Mio (after obtaining the approval of the Supreme Fiscal Committee), the Government Entity owning the project is to present the outcome of the financial feasibility study to the Department of Finance including:
 - for construction How far the project is able to redeem the cost and the expected internal revenue rate of the project
 - The expected total cost of the project including the proposed capital in addition to the operational costs and the proposed maintenance for one-year operation.
 - The table of the project's risk distribution
 - Define the economic benefits expected from the project
 - Propose the incentives and exemptions needed for the project to succeed
 - Define a time schedule for the implementation of the project, including the proposed period and investment period
 - Sources of finance



The following is to be taken into account when calculating the expected total cost of the project:

- The market value of the right to benefit from the project land, if any.
- Value of the assets provided by the Government Entity or covering the right to benefit
- The estimated costs for implementing the project, including the capital costs including establishment costs, design, construction, finance and preparations.
- The estimated costs for operating the project for a year
- Any other costs that suit the nature of the project

Also, the feasibility study must take into consideration the recommendation concerning the proposed time frame for implementing the partnership project according to its need, especially the construction period, which together with the investment period comprise the partnership contract term. The following is to be taken into account when defining the period in the study:

- The economic or social benefits the government targets from the project according to its strategic plan
 - Capital expenses proposed for implementing the project
 - Cost of proposed finance of the project, potential revenues and return on capital and internal returns of the project.
 - Expected cash flow of the project
 - The needed time schedule to achieve a suitable return to make the partnership project attractive to experienced, reputable companies to compete in
 - The suitable time schedule for the contracting Government Entity to retrieve the assets provided by the partner and transferring them to Dubai, without going against the special nature of each project and its used assets.
3. Role of the Department of Finance concerning approving the projects, the cost of which for the Government Entity ranges from AED 200 to 500 Mio and also those exceeding AED 500 Million.



The Department of Finance is informed of the outcome of the financial study submitted to it and coordinate with the concerned Government Entity in all phases of study evaluation. They are entitled to request qualifications or any additional information, which will then be followed by giving recommendations of approval, whether to the Government Entity or the Supreme Fiscal Committee, as the case may be, however, the recommendation of agreement or approval is to include the following:

- Method of tendering the project proposed for partnership
- The suitable type of partnership
- Statement of the Government Entity/Entities to which purposes the project is aligned, in order to participate in developing the tendering documents, approve the outcome and participate in evaluating offers, so as to place the order, sign the partnership contract and follow up the execution and operation till transferring the issue to the government.
- The proposed time schedule for the procedures and phases of tendering the project
- The proposed time frame for the project
- Proposed exemptions/privileges and any additional advantage
- The service proposed to be provided and its economic, social, or facilitating importance, or any of these, or if it is a development or enhancement of a current service, decreasing its cost, or improving its efficiency.
- Any request for allocating a land for the project, if needed
- Any other criteria the Department deems necessary to recommend to the Committee.

Approval of the aforementioned cases mean that the concerned Government Entity may proceed with the tendering phase of the projects. If the recommendation is to decline the project, the Department of Finance must coordinate with the concerned Government Entity.



Fourth: Explaining some relevant terms

1. Investment Costs

Investment costs consist of three main elements, initial investment, working capital and asset value at the end of the production lifecycle of the project.

A) Initial Investment

It is the value spent to realize a project and prepare it for operation. In general, initial investment is divided as follows:

- **Tangible Fixed Investment:**

It includes all cost elements spent on assets and long term physical facilities, as the assessment of the long term investment cost is done prior to the implementation and operation of the project, which may witness unforeseen changes. In which case, a certain percentage of the fixed costs (an estimated amount) is allocated for emergencies that take place during implementation period. On the other hand, since the price of the elements of the fixed investment cost may change during the implementation period, usually a reserve amount is allocated covering the increase in prices. This reserve is called Price Change Reserve.

- **Intangible Fixed Investment**

It represents a kind of long term investment costs that are spent on intangible investment items and some cost items that have a selling value and others that don't. However, what they all have in common is that they are intangible items, such as the cost of the preliminary feasibility study, the know-how and the royalty fees, trade-name purchase cost, and interests on long term loans that are paid during the establishment and development phase.

B) Working Capital

The investment costs of any proposed project include a number of short-term capital assets which is usually called Working Capital, that is sufficient to cover short-term commitments for the first operation cycle. Despite there being a number of different concepts concerning working



capital, the concept of working capital within the feasibility study of projects include the short-term assets that are assessed for meeting the requirements of the first operational cycle of the project.

Working capital includes a number of elements, among which are the following:

- Value of raw material reserve, intermediate products and spare parts that cover the needs of the first operation cycle.
- The cash assets that are allocated for facing any financial burdens that must be met during the first operation period, such as industrial, administrative, sales and operational costs, including work, raw material and energy costs.

2. Operating costs:

These are the costs related to a certain capacity (determined via the technical feasibility study). Commonly, a distinction is made between two main types of operating costs: Fixed costs and variable costs.

As regards fixed costs, they may be called Periodical Costs, as these costs in their overall form are related to the size of activity or production, hence the project bears it, regardless of the activity size, such as rent of buildings and exhibitions (in some cases rent of tools and equipment), monthly wages and salaries. As regards variable operation costs, they are the costs that directly relate to the activity volume, hence it increases with its increase and decreases with its decrease, such as the cost of production supplies, raw materials and cost of water and electricity.

3. Net cash flow list

Net cash flow for the proposed projects is the difference between the in cash flow and the out cash flow, whether during the construction and development phase, or during the expected production lifecycle. Based on this concept, the net cash flow is not necessarily equal to the net profit. Within the feasibility study of the private sector project, the preference of depending on the net cash flow increases in making investment decisions, compared to the net profit. Hence, depending on the net cash flow in measuring the outcome



of the expected works will automatically take into consideration the timing of the inflow and outflow of cash, thus avoiding the problems of allocating burdens and revenues on the years in which they are due. Also, depending on the net cash flow will eliminate a lot of problems and obstacles using the net profit is faced with, such as the problems of assessing the compulsory allocations and reserves, or assessing the market losses expected in the reserve. We can discuss the components of the net cash flow as follows:

3.1 Out Flow:

From the proposed project point of view, the out cash flow includes the following elements:

- Out flow concerning investment costs:

These out flows include all tangible and intangible elements of the investment cost, in addition to the working capital for the first operation cycle.

- Out cash flow concerning the operating cost

The elements of this cost is considered a sacrifice borne by the proposed project in exchange of receiving annual benefits throughout the production lifecycle and such costs contributes directly or indirectly to the establishment of the project and its sales and it includes the administrative, operative and marketing costs.

- Loan Repayment

In many cases the investment projects are financed via bank loans and bonds. This results in cash out flow represented in loan repayments and their interest. If the repayments of the loans represent a cash out flow, it is not included in the annual operation cost, hence it is not included in the net profit. If the finance of the proposed project is done via bonds, the nominal value of the bonds will be considered a cash out flow at the due date.

- Direct Taxes

Direct taxes on incomes and wealth are considered one of the cash outflow components that must be included in the elements of the



net cash flow. However, calculating the value of these items require initially calculating the net profit for the sake of the tax, as the calculation of its items is governed by the stipulations of the tax legislation concerning required deductions down to the tax base. In light of the common practice in this area, the taxable net profit is represented in the annual revenue, after deducting the operation costs, paid interest, capital consumption repayments from it. The following equation represents this:

Net profit = annual revenue – (operation costs, interests, consumption repayments).

Annual taxes = Taxable net profit x tax rate

3.2 Cash-in flow

Cash-in flow is considered one of the main components of the net cash flow of the proposed project. This cash flow includes the following items:

- **Ongoing annual revenues:** This element includes the anticipated annual sales value of the proposed project during its foreseen production lifecycle, whether it is commodity sales or services, whether it is a main activity, secondary or transient.
- **Working Capital value at the end of the expected production lifecycle**
This element includes the value of the remaining reserve of raw materials, production supplies and spare parts. When calculating cash flow, these elements are supposed to have been liquidated by sale, hence they are considered part of the cash-in flow.
- **Salvage Value:** This element includes the value of the depreciable and non-depreciable assets at the end of the expected production lifecycle, as non-depreciable assets such as lands, the value of which may rise drastically at the end of the project's lifecycle, are included as an element of cash-in flow, after deducting its due tax.
- After knowing and estimating the value of each of the cash-in and cash-out flow during the construction and operation of the proposed



project. The net annual cash flow is calculated through the following equation:

Annual net cash flow = cash-in flow – cash-out flow

The result of the aforementioned equation may be positive, i.e. the project is financially feasible, where the cash-in flow is higher than the cash-out flow. On the other hand, if the equation result is negative, this means that the project is financially rejected.

4. Net Present Value (NPV)

The NPV of the investment project indicated the difference between the present value of the cash-in flow in the project and the present value of the cash-out flow. If the NPV is positive, i.e. the present value of the cash-in flow is greater than the present value of the cash-out flow, the investment project is profitable. On the other hand, the investment project is considered unprofitable if the NPV is negative, i.e. the present value of the cash-in flow is less than the present value of the cash-out flow. In case there are more than one investment project, it is preferable to choose the project that gives the highest NPV. The NPV is calculated through deducting the cash-in flow related to investments (in and out) at a rate representing the assessment of the management of the financial cost and this rate represents the minimum investment revenue.

5. Internal Rate of Return

The internal rate of return is one of the most important criteria used in comparing the different investment projects and it is currently used by the World Bank in all sorts of financial and economic analysis of the project. It is also used by most financial institutions when they accept or reject projects presented to them for finance. This criterion is represented in the rate at which the present value of cash-in flow is equal to the present value of the cash-out flow of the investment project, in other words, it is the deduction rate at which the NPV of the investment project equals zero.

It is noticeable that in spite of the fact that the financial cost is not included in the procedures of calculating the internal revenue rate, these two rates are compared to each other. If the internal rate of return is higher than the



financial cost rate the project is considered profitable. On the other hand, the project is considered unprofitable if the internal rate of return is less than the financial cost rate. In case there is more than one competitive projects, the project that gives the highest internal rate of return is favored. To determine the value of the internal return, the following equation is usually applied:

$$= \text{Lowest deduction rate} + \frac{(\text{Highest deduction rate} - \text{lowest deduction rate}) \text{ net present value of cash-in flow than the lowest deduction rate}}{\text{Net present value of cash flow than the lowest deduction rate} - \text{Net present value of cash flow than the highest deduction rate}}$$

6. Public Sector Comparator (PSC)

The role of the feasibility study lies mainly in showing value for money for any partnership project, which means the pure benefit realized for the contracting Government Entity during the project duration, in exchange for using the assets of the project or providing public service by the private sector partner according to the partnership contract. This includes cost, price quality, service improvement, risk transfer, or all these criteria together.

Cost and revenue analysis is crucial for any government entity in making decisions concerning the susceptibility of any project for application, whether or not a partnership project. In case of partnerships, this analysis shows value for money in using partnerships, compared to the option of Government takeover or even the public sector not providing the service and keeping it on the Government's side. Moreover, the cost analysis is considered a good basis to be used by the Public Sector Comparator (PSC) for evaluating the bids submitted by the private sector.

PSC guarantees more accurate assessments for the project cost, which is a hypothetical cost altered in light of the risks in offering the public services concerning the relevant Government Entity. This is expressed as Net Present Value (NPV) based on the required public services (and output specifications),



taking into account the risk factors accompanying partnerships.

Accordingly, the PSC takes into account the following aspects when assessed:

- The basic PSC: The basic cost (direct and indirect) according to the government takeover, as the required services are directly offered from the public sector according to the performance requirements defined by the concerned authority.
- Competitive neutralism: making all amendments concerning incentives and any other elements needed for the proposed partnership project before developing the Public Sector Comparator.
- Another important aspect that needs to be taken into account when the Government Entity compares the partnership offers with the basic PSC is the risk factor, which can be divided as follows:
- Ongoing government risks: Which is the cost of the risks the Government has to bear according to the partnership project.
- Transferred risks: Is the cost of the risks (from the Government's perspective) that need to be borne by the private sector according to the partnership project.

There isn't a fixed form of Public Sector Comparator that is suitable for all partnership projects, but the private sources of partnerships can be relied on, helping in developing the commercial case of the partnership and one of the recommended sources is Public Sector Comparator – The best Canadian Practice Guide, which deals with developing a Public Sector Comparator concerning partnerships. The above shows that the Public Sector Comparator realizes the following objectives:

- A tool for the availability of information, data and indices concerning the partnership project to find out whether the partnership is financially executable and offers value for money, hence it should be internally developed before tendering the project.
- The Public Sector Comparator works as a good criterion in evaluating the bids, i.e. if the bids offer the expected and desired value for money by the government entity concerned with the project.



7. Matrix Risk Control (MRC)

It's a matrix aiming to enable government entities concerned with partnership projects with the private sector to evaluate, distribute and manage all the main risks involved in the proposed project. Risk analysis is considered a main factor and component for the integral feasibility in the PPP. Also, defining and evaluating risks is a vital part in determining value for money. This matrix will help the government entities concerned with partnership projects to achieve three main objectives as follows:

- Developing the risk matrix as a guideline when conducting a feasibility study for a proposed partnership
- Apply a standard approach for risk evaluation
- Help to develop a government strategy for risk management before beginning negotiations with the private sector partner to rationalize the risk distribution.

The Matrix will help in defining each risk that has main threats and risk potentials, as well as economic impact in case it happens and the available alternatives to mitigate risks and decrease their impact. Also, distribution of the responsibility of dealing with risks, in addition to stating the factors that may affect the service provided by the partnership project as regards demand, occurrence of technical or human errors, or any other regulatory obstacles. It is important to study risks based on each project separately, as the risk matrix differ according to each project and so does risk distribution.



Framework No. (3)

Financing Partnership Approaches

In most cases, the Government allows its entities to think of different models of partnership, based on the report of these government entities concerning the feasibility of any project. The possible partnership patterns are as follows:

1. Fees-based Finance

It is realizing a revenue for the government services listed in the partnership projects. This revenue is used for financing the initial investment, via either the private sector or the government entity and the remaining income after covering the initial investment is divided continually between the public sector and private sector, as agreed in the partnership contract. The greatest dilemma in such matter is the regulation complexity, as the private sector wants to make sure that the structure based on fees is compliant with the laws and regulations of the public fund management body. They also need to be sure that the fees are in accordance to the applicable regulations and that they will be main factors in evaluating the potential private sector partner concerning the partnership contract based on fees, as per the government competition and procurement system and its executive regulations, as well as the applicable financial rules and instructions.

There is another important element, which is that the users may not accept paying high fees to obtain direct government service, as they expect to pay the same fees they used to pay for the normal service, or even less. Since this model is based on fees that users pay for obtaining the service, its success depends on how much they use these direct services. These fees can be subsidized by the sponsoring party through the savings in costs realized via offering services through the partnership contract. In spite of the importance of this approach as a means of finance, it may not be sufficient for financing the project.

2. Partnership in Cost Saving

This model depends on introducing basic changes on the operations or processing of the partnership project, which will eventually lead to decreasing the government Entity's manpower and unused facilities completely. The cost savings resulting from these changes are used in financing the initial investment by the private sector and in developing the project. The concerned Government Entity receives a part of the savings achieved by the system. The essence of this model is the re-design of the partnership project using more efficient approaches.

- Finding the cost fundamentals of the government integrated services
- Combining traditional government transactions



- Eliminating double procedures in offering the service
- Eliminating manual procedures by offering direct services whenever possible
- Effective design of operations for optimum use of resources and eliminating unnecessary steps
- Integrate activities and processes when possible
- This model encourages the private partner to take such opportunities that guarantees them their initial investment through participating in cost savings resulting from the project, without trouble or obstacles related to regulations. The success of such model highly depends on the desire of the government Entity to execute and support the required changes in work procedures and employment needs for the new processes, facing the problem of total utilization of manpower, the Government Entity can re-train this manpower and distribute them to other areas of their activities, if possible.
- Also, the success of the model is related to success in integrating the different government processes together. This requires cooperation and acceptance from all beneficiaries, taking into consideration that the public interest is much more important than a certain administration's imposing its authority on its processes.

3. Partnership in the Revenue

This model better works in the areas where services are enhanced so as to bring in more revenues. The resulting revenue is used in financing the project cost. This revenue is divided between the Government Entity and the private sector company. As long as the project remains capable of growing financially, the private sector partner receives a part of the cost. Each party receives a portion of the new revenue. The main factor in this model is making the private partner responsible for generating the new revenues. This may provide a strong incentive for the private partner to invest and bring in more revenues. Legislative regulations are considered important in this model. Also, dividing the increase in revenues resulting from enhancing the partnership project must be negotiated with the public fund management body before signing the partnership, to ensure accepting the financial arrangements of the project, according to the Government Competition and Procurement System and its executive regulations and the valid financial rules and instructions. Participating in the revenues is decided based on efforts and reliability, expected risks and resources.

4. Complete Service Offering

The concept of complete service offering is reflected in establishing a company between the private and public sectors using an entity with a new specific purpose (such as a joint venture) responsible for presenting the full service from the proposal phase till service offering. In this model, the concerned Government Entity is involved in an agreement with the private partner to



bear a certain responsibility of offering public services to users. A part of the Government Entity employees may be used for operations. The agreement is in the form of a joint venture between the sponsor and the private partner. The new company is responsible for operating the partnership project and bears the relevant risks. It has to improve the process for reducing costs, as well as be innovative in generating new sources of revenue.

The Government Entity remains responsible for developing unified criteria and instructions for PPP and the specifications of the offered service. It also has royalties in the joint venture, accordingly it plays a role in how the company is run, but the mechanism of service offering – how it is operated and run – is left to the private partner, to motivate efficiency and innovation.

The main success factor in all the above models lies in adopting outcome orientation, as both parties focus on developing a commercial operation that the private sector benefits from and at the same time serves public interest through a real partnership, as both parties need to work together in handling the legislative matters, resources, finance and government employment. Some areas depend greatly on the nature of government work and the circumstances of the project. However, this should not be grounds for not thinking of partnership. Business case is the tool used in determining if the partnership provides the best value for money for offering the service, or the transitional way of requisition and purchase.



Phase 3: Partnership Project Tendering and Contracting

- First:** Tendering approaches
- Second:** Prequalification
- Third:** Competitive Dialogue
- Fourth:** The Project's RFP
- Fifth:** Bids (Preparation, receipt and opening)
- Sixth:** Bid evaluation
- Seventh:** Order Placing
- Eighth:** Complaints



Phase 3: Partnership Project Tendering and Contracting

This phase is considered the most important phase of partnership. It includes a number of preliminary procedures prior to contracting, aiming to choose the private sector partner according to the principles of publicity, transparency, free competition and equal opportunities, as stipulated in Article (14) regarding (Partner Selection Principles) of Law No. (22) of Year 2015 concerning regulating partnerships between the public and private sectors in the Emirate of Dubai, as follows:

- A. "Partner selection process in the project must be governed by the principles of publicity, transparency, free competition, equal opportunities, justice, publicizing the competition and securing public interest. It must be prepared according to the stipulated principles and procedures in this law and the decisions issued according to it.
- B. The partner must have the approved criteria, regulations and technical and financial conditions, as well as the ability and efficiency in their area of competence and specialization."

Also, Article No. (15) Concerning "Qualifying Companies" of the law stipulates that:

"Before the Government Entity issues its bid, it is required to make the necessary arrangements towards qualifying the companies with which it can go into partnerships, taking the following into consideration:

1. Announcing the project and its details clearly in the different media, enough time before the bid.
2. The guidelines and criteria stipulated in this law and the decisions issued according to it."

The bidding approach is the cornerstone in choosing the private sector partner and it plays a pivotal role in the success or failure of the partnership project. The importance of the bidding process is not limited to the partnership projects alone, but also covers any projects conducted by the government via traditional bidding. The international practices show that there are more than one method of bidding concerning partnership projects.



First: Bidding Approaches

1. Bidding Approaches:

In line with the Government Procurement Agreement issued by the World Trade Organization, the European Union issued the fundamentals of bidding in three approaches:

1.1 Open procedure

Through which the requirements of bidding are discussed with the participants after qualifying them, hence the RFP is issued. Later some clarifications can be issued, but dealing with the participants stops at submitting the offers and no negotiation takes place after that. The winning bidder signs the partnership contract based on the submitted offer. This approach is used in bidding for concession contracts.

1.2 Negotiated Procedure

This approach is used in issuing complex projects, where bidders submit different solutions for the required service. It is not easy to determine the method of assessing bids beforehand, which requires discussing bids with participants after submitting their proposals. These clarifications do not entail radical changes on the fundamentals of the submitted offer. It proposes that the detailed negotiations include all bidders, so this method in bidding is based on basics set in the Government Procurement Agreement issued by WTO allowing negotiations. But the scope of clarifications expanded with applying this method, so that the Government Entity chooses the favored bidder, after 3 bidders have submitted their preliminary bids, followed by negotiations that leads to two bidders submitting a better and final bid. This may be followed by a final cycle where the final and last bid is submitted, hence detailed and lengthy negotiations would have taken place with the favored bidders before placing the order.

1.3 Competitive Dialogue

This approach is characterized by the dialogue that takes place with the participants who were qualified. This bilateral dialogue aims to



discuss the form of the partnership contract and the technical outputs of the partnership project. The RFP is developed based on this dialogue and the Government Entity may conduct this dialogue with the bidders after issuing the RFP, to deal with any problems that may arise in the partnership contract, which may lead to amending the requirements of the project, before submitting the bids. The negotiation limit is set after submitting bids, so that the dialogue in this phase is based on information and clarifications that the Government Entity might require.

Due to the complexity that characterizes the partnership projects, the partnership contract in the Emirate of Dubai depend on the competitive dialogue, as the RFP requirements are discussed with the pre-qualified bidders, hence the RFP is issued.



Framework No. (4)

International Practices concerning Activating Bidding Mechanism

1. The Government Entity may not publish any announcement for showing interest, invite bidders to prequalification, prepare questionnaires or prequalification documents or invite bidders to submit bids for placing orders and contracting, unless the concerned authorities approve and as per its recommendations.
2. The Government Entity creates an email for the correspondence concerning the tendered partnership project with the private sector, run by it, and notifies the Government Entity and all other concerned entities electronically with a copy of the project's correspondence.
3. Before the government Entity starts its procedures to tender the project to investors, it must promise to coordinate with the tendering consultants and give them an information report concerning the tendered project within the limits accepted by the concerned authority, either in Arabic or English or both. This report is to include the following:
 - A) A general description of the project, including its technical and legal frames and also the services or products it will supply.
 - B) The nature of the investor's role in implementing the project
 - C) The services or facilities offered by the Government Entity to implement the project, if any.
 - D) Basic commitments included in the partnership contract with the private sector to implement the project.

The information report is to be submitted to the competent authority and it may not be published or made available to concerned investors or requesting prequalification unless the competent authorities agree. This agreement is to include a statement concerning whether the nature of the project requires inviting investors to show interest.

4. If the nature of the project necessitates calling investors to show interest as a procedure that precedes the prequalification, the Government Entity must announce this at least in a wide spreading daily newspaper in Arabic and English and if necessary in a foreign newspaper or publication outside the State and on the website of the Government Entity.
5. The size of demand on showing interest in the project is studied by the Government Entity and the other entities that the concerned authority may renew and according to the results of this study, the Government Entity after the approval of the concerned authority announce the invitation for prequalification for interested bidders to execute the project.



Second: Prequalification

Prequalification is defined as the procedure conducted by the Government Entity to validate the capability of the partners who want to invest in partnership projects before allowing them to submit their technical and financial bids.

The best practices stipulate that the tendering process of the partnership project starts with a prequalification phase. This phase aims to make the tendering process more efficient for both sides, through ensuring the participation of qualified bidders only in submitting final bids. The prequalification conditions are to be reasonable and effective, moreover, it should not impose unnecessary limitations that may decrease the competition, taking into consideration that it is better that the number of bidders not be less than 3.

Prequalification guarantees the following:

- Ensuring that the partner possesses technical and financial qualifications that enables them to implement the project efficiently and effectively and to fulfill all their contractual obligations.
- Avoid wasting time in the phase of submitting final bids, which is a lengthy process by nature, through eliminating unqualified parties.
- Filter participants so as to get a reasonable number of final bids, reducing costs and efforts spent in the evaluation process.

1. Prequalification document Preparation Process

The Government Entity – aided by a work team including consultants – prepares the prequalification document. This document is to give candidates the required information and instructions regarding prequalification. It also clearly identifies the evaluation criteria and the progress of the process. It must clearly indicate any special requirements. It is also to require them to introduce themselves via submitting suitable information, so that the private partner can prove their ability to conduct the project and meet its requirements in case of contacting with them.



2. Prequalification document content

Taking into consideration the nature of each partnership project, the prequalification documents include the following conditions:

- A) Instructions for applicants concerning prequalification, so as to indicate the methods of developing and submitting the applications
- The application form including what is compulsory as regards the form of the application, to facilitate the evaluation process.
 - Late submittal of the prequalification application
 - The regulatory and legal framework of the participants
 - Contact policy
 - Additional information
 - Announcing the current legal procedures that may affect forming consortiums
 - Reasons for disqualification
 - Contact info of the concerned government Entity
 - Information required from the participants
 - Consortium capabilities and strengths
 - Proposed consortium structure with identifying the roles of the participants clearly
 - Participants skills and experience in similar projects
 - Burden of the current job of the consortium members
 - Strength of commitments between the sub-contracted consortium members and creditors if any.
 - Market and financial capability
 - Structure of shares and ownership
 - Ability to execute according to the planned form
 - Respect the project time schedule
 - Ability to borrow and increase capital and give guarantees
 - Ability to manage projects



- Ability to manage risks
 - How far the main requisites of the project and its complexities are clear
 - Previous relations with the government
 - How to apply systems to guarantee quality
- B) Describe the proposed partnership project, including its location, nature, main elements and the proposed land area for executing it, if any
- C) State the special experiences required in the private sector partner to be prequalified
- D) Prequalification criteria
- E) Deadline for receiving prequalification documents, stating date and time
- F) Place and method of submitting prequalification documents and submittal may be done electronically
- G) The allowed period for submitting prequalification documents, which should not be less than 15 days from date of announcement concerning prequalification

3. Invitation to Prequalification

After the approval of the concerned authority, determining the partnership type, and the method of tendering it according to the stipulations of Article No. (19) of Law No. (22) of 2015 regulating PPP, the Government Entity announces the invitation to the project in the official newspaper and two daily UAE newspapers at least, in Arabic and English and other local and international media, in which the ad is compatible with the nature of the partnership project. The ad should also be published on the website of the Government Entity. The prequalification invitation is to include the following:

- Statement from the Government Entity (s) concerned with the project
- Summary of the project and its objectives
- Required expertise for prequalification



- Contracting system and its period
- Fee for obtaining prequalification documents and it may be postponed
- The period set for submitting prequalification applications and where to submit them and also the email

4. Receiving Prequalification Applications

The Government Entity received the prequalification applications on the due date indicated in the document. It is to be opened after the final due date for submitting the prequalification applications. During a session that is also specified in the prequalification document, attended by the work team and representatives of the applicants, the content is to be recorded and also the missing documents, if any, then the list of prequalification applicants is to be published on the website of the Government Entity.

5. Prequalification Applications and Informing Nominees

In Phase 1: The applications are formally inspected: The prequalification documents required from each applicant are inspected and the documents are validated and how much they comply with the requirement of the prequalification document, and to eliminate any applicant who does not abide by them. In Phase 2, an evaluation list is developed between the main and secondary categories for all evaluation criteria. These categories are given relative weights according to their importance. According to this table, a score is given to every nominee and the nominees who pass the minimum score are prequalified. Evaluation criteria and relative weight are put for each of them, during developing the prequalification document. The evaluation criteria are to be based on the available information from participants, hence it should be clear in the prequalification document to help the nominees to focus in their application and stating additional, unnecessary information. The evaluation criteria differ from one project to another and they must be developed accurately for each project separately to attract a reasonable number of participants, so that if the criteria are rigorous, it may limit the number of qualified participants and vice versa.



Generally speaking, the prequalification applications are evaluated based on the criteria that represent the elements to be present in the application, especially the following:

- Previous work of the prequalification applicant in managing, executing and operating partnership projects.
- Their similar expertise as regards the size and type of partnership projects in the sector that the tendered project is part of
- The ability of the prequalification applicant to provide the technical and administrative requirements in order to develop the needed designs for the partnership project at the time of tendering.
- The ability of the prequalification applicant to provide the required equipment and preparations for implementing the project
- The financial status of the prequalification applicant and their ability to allocate the needed finances.

The Government Entity, in collaboration with the Partnership Committee, develops a reasoned report concerning the evaluation of prequalification applications and their results, based on the conditions indicated in the prequalification documents. The Government Entity submits this report – including a list of the qualified and non-qualified nominee names – to the competent authority that has the freedom of choice. It may proceed according to the recommendation of the Government Entity, as it is so it may require them to submit clarifications, or amend their decision. The Committee is to inform each nominee of the result concerning their prequalification, whether positive or negative.



Framework No. (5)

The Best International Practices concerning Activating Pre-qualification

1. The Partnership Committee formed by the Government Entity is responsible for the following:
 - A) Develop the prequalification document and define its criteria and list the required documents
 - B) Answering the inquiries of the prequalification applicants, making these responses available to all investors who request prequalification in the projects.
 - C) Receive the prequalification applications and registering them in the relevant book according to the date of submitting them.
 - D) Inspect the prequalification applications and ensuring they include the required data and documents
 - E) Request the data and documents from the prequalification applicants according to the prequalification document
 - F) Study the prequalification applications after completing them and determine which of them conform to the prequalification criteria and eliminate the non-compliant.
2. As soon as the Government Entity obtains approval from the concerned authority on the information report, prequalification document, and the wording of the prequalification application announcement, it shall announce the ad at least in one daily wide-spreading newspaper, in Arabic and English, and in another foreign newspaper or publication outside the UAE. The ad shall also be published on the website of the Government Entity and any other entity designated by the concerned authority. The ad must include a brief idea on the nature of the project, its duration, mail address, email of the project and the due date for receiving the prequalification application. When the Government Entity receives any request for obtaining the prequalification documents, it is to submit a copy of the information report concerning the project, as well as the prequalification documents for the prequalification applicant or their representative, or send an electronic copy to their email.
3. Investors who would like to compete in the execution of the project are to apply for the prequalification phase as an individual investor or a consortium of more than one investor. In case the prequalification application is submitted by a consortium, a representative of this consortium shall be designated who will – as per official authorization from the consortium members present them in the prequalification procedures and competing to win the project's contract.
4. The representative of the consortium must have experience and must own a share, the amount of which is to be defined beforehand in the prequalification documents, when evaluating prequalification applications submitted by consortiums, to study the qualifications and capabilities of each member of the consortium and whether or not they together meet the criteria and



requirements of prequalification. The prequalification application is to be studied according to the turn of each of the consortium's members according to the proposed tasks and according to the terms stated in the prequalification documents. Members of the consortium are not entitled to request prequalification as members of other consortiums unless approved by the Partnership Committee.

5. The Partnership Committee convenes in the presence of the tendering consultants' representatives. The Committee convenes as per an invitation from its chair. In order for the meeting to be deemed valid, at least three fourths of its members are to be present, taking into consideration that the technical, financial and legal expertise shall be represented in the meeting. Furthermore, the Committee shall issue its decision concerning the prequalification requirements with the majority of its members and it must be approved as per the stipulations of the law.
6. The Government Entity of the Partnership Committee may request the prequalification applicants to submit some clarifications and documents they deem necessary for studying the application submitted by them. The Committee request must indicate a deadline for receiving responses. The inquiries of the prequalification applicants are to be sent to the project or the Government Entity's email. The Committee may call a prequalification applicant representative to submit their application or submit the clarifications requested by the Committee, without affecting justice and equal opportunities between the prequalification applicants.
7. The Government Entity is to inform the prequalification applicants of the list of prequalified investors, in any way it deems suitable. This list is also to be announced on the website of the Government Entity and the concerned authority. The decision of the Prequalification Committee to reject some prequalification applications that do not comply with the prequalification criteria must be justified. After approving this decision from the competent authority, the Partnership Committee is to inform the rejected prequalification applicant of this decision via email or any other means that ensure they are informed of the decision.
8. The investor whose prequalification application has been turned down may object by submitting a justified report to the Government Entity within a week from date of informing them of the rejection, or their knowledge of the decision. The Committee is to develop a record for registering objections according to the date of receiving them and give the objecting party proof of that.
9. The Government Entity studies the submitted objection by the prequalification applicant and issues a decision concerning it within 15 days from date of their receipt of the objection. They are entitled to discuss with the Partnership Committee and request the original documents if necessary.
10. The Government Entity informs the objecting applicant of their decision – as regards the objection submitted by them – by an official letter, email or any other means that guarantees their knowledge of the Committee decision. The competent authority is to be sent a copy of this decision, which will be final and effective.



Third: Competitive Dialogue

Competitive Dialogue is a group of rules and procedures made by the Partnership Committee or the Government Entity when tendering the partnership in two phases, so as to receive the private sector proposals concerning the components of the project and its tendering terms.

The Partnership Committee/Government Entity discuss the technical specifications of the project, its financial structure and the form of the contract with the prequalified nominees before issuing the tender book. This dialogue shall facilitate defining the technical requirements of the project and features of the service the private partner is going to offer, so as to develop a tender book that accommodates the requirements of the project. This dialogue also motivates the prequalified nominees to reach innovative solutions for the project. The prequalified nominees may propose additional activities that complement the project and aim to reduce the cost to be borne by the Government Entity.

Article (16) of Law No. (22) of Year 2015, concerning the regulations of PPP stipulates the following:

- A) The Government Entity may hold preparatory meetings and events with the prequalified nominees to discuss matters concerning the specifications of the project and its preliminary terms and other relevant matters.
- B) The prequalified partner may require the Government Entity not to disclose or publish data concerning their economic or financial estimations regarding the partnership project, to maintain their confidentiality.
- C) The prequalified partners are dealt with according to the principles and basics indicated in Article (14) of this law, so as to maintain equal opportunities and complete fairness.
- D) Before bidding, the Government Entity may – based on justifications and the approval of the concerned authorities – amend some of the project's specifications and the terms of partnership, in a way that does not affect the prequalification criteria. These amendments are to be clearly and explicitly announced in the different media, enough time before processing the bid.

The dialogue is a procedure done by the Government Entity (Partnership Committee) with the prequalified nominees and financiers, to obtain the opinions and comments of the prequalified nominees concerning the points and issues that the Government Entity might need to focus on, to be able to develop a comprehensive concept of the partnership project.



Framework No. (6)

Best International practices concerning the Competitive Dialogue Effectiveness

1. The Government Entity – upon the approval of the concerned authority – may decide to issue the project in two phases and conduct a competitive dialogue as a first phase to obtain clarifications as regards the elements of the technical and financial bids submitted in this phase. At a later phase, the final bids are to be submitted.
2. In the cases where it is decided to issue the tender in two phases, the Government Entity develops the tender book and specifications in the first phase which shall include the following:
 - A) General information on the project and its specifications
 - B) Specifications of the end-user product, service level and KPIs.
 - C) Main terms of the partnership contract
 - D) The technical and financial evaluation system in general
 - E) Requested non-binding requirements, models and documents in both the technical and financial offers, indicating the broad lines for the technical and financial offers.
 - F) Method of submitting the non-binding technical and financial offers.
 - G) Two phase bidding procedures, dates of submitting clarifications requirements and dates of responding to them, the due date for submitting the non-binding technical and financial offers, and the preliminary dates for conducting the competitive dialogue with the bidders and issuing the final RFP.
3. After the Government Entity obtains the approval of the concerned authority of the RFP concerning the first phase, it is to issue this RFP and make it available to bidders through the project website. The Government Entity shall inform the bidders – with an official letter and via email – of the date when the RFP is available on the website. It is also to designate a password for each bidder to allow them to enter the project website and reach the tender book.
4. The Government Entity shall receive questionnaires from bidders and respond to them via email in the designated time.
5. As per the decision of the Director General of the Government Entity – upon the recommendations of the Department of Finance or the Supreme Fiscal Committee, a committee for managing the competitive dialogue is formed, chaired by the Partnership Committee Chairman. Such committee will include a representative of the Government Entity in addition to representatives of the public fund management body and tendering consultants, to



be chosen by the Committee Chairman to attend the competitive dialogue meetings. This committee is responsible for receiving the non-binding bids on the due date. Bidders produce evidence of submitting their bids. The Committee numbers the bids and records them, then the Committee studies them. The Committee is to inform all those who submitted non-binding offers – by means of an official letter and an email – of the dates, venue and duration of the competitive dialogue meetings.

6. The competitive dialogue meetings are held with the submitters of the non-binding bids, on a one-on-one basis, on equal grounds, i.e. number of meetings and their duration. All members of the Committee who attend these meetings are to maintain the confidentiality of the discussions and the information disclosed therein. They are to sign a declaration to this effect. The Competitive Dialogue Committee shall develop a memo with the committee's MOM to be submitted to the Director General of the Government Entity. The Committee members are prohibited from taking any communication devices to the meetings.
7. The Government Entity develops the final RFP to tender it in the second phase.



Fourth: Developing the RFP of the Project

1. The legal framework of the RFP of the Project

Article (18) of the aforementioned Law No. (22) of Year 2015 stipulated the following:

“The Government Entity develops an RFP for the partnership project. This RFP is to include the following:

1. Information concerning the project, sufficient for developing and submitting an offer.
2. Specifications of the project and the technical and financial requirements that are to be present in the submitted bid.
3. Description of the end-user service, required service level including KPIs, safety, security and environmental protection standards...etc.
4. Main and complementary conditions of the partnership contract
5. Documents, models and due dates concerning the partnership
6. Bid bond and method of calculating the final L/G.
7. Define the means and criteria of comparing submitted bids
8. Due date for receiving bids

2. Content of the RFP of the project

The RFP lays the foundation of selecting the private sector partner, as it establishes the rules that underpin the tendering process, hence it has to indicate the main basics of the project, its technical, financial and administrative elements and the means of submitting bids and their evaluation criteria and also a draft of the partnership contract to be signed. The Government Entity develops an RFP for each project, consisting of two parts. The first part has three sections as follows:

First Section:

- Project component and all its elements
- Technical and legal frameworks of the project
- Description of the services resulting from the project



Second Section:

- Project site visit procedures
- Conditions and methods of submitting bids and the required documents
- Technical, financial and price offer models
- Principles and methods of evaluation
- Awarded bidder announcement procedures
- Time schedule of each phase

Third Section:

- Establishing the project company and its legal structure
- Finance structure
- Minimum technical and financial requirements

The second part consists of the draft partnership contract and its attachments as stipulated in Article (25) of Law No. (22) of Year 2015 concerning PPP.

Developing the RFP is based on different information sources according to its different sections and parts, as the first part concerning the description of the project depend on the outcome of the study the Government Entity has conducted in the project study and design phase. The second part give the details of procedures and logistic instructions for submitting bids and means of evaluating them. This is a standard section that does not differ from one project to another with regards to the essence, but only differs in the time limit, bid evaluation criteria and their relative weights. The third part concerning the design and structure of the project financially, technically and administratively and determining the minimum requirements. The second part of the RFP consists of the draft partnership contract. They both are concerned with each project separately and mainly depend on the result of the dialogue which the Government Entity would have conducted with the prequalified bidders.

3. Acceptance of the RFP and informing prequalified nominees of it

Article (19) of Law No. (22) of Year 2015 concerning PPP stipulated the following:

“Upon the project approval by the concerned authority, the Government Entity is to invite the qualified bidders to obtain the RFP concerning the project to be tendered for partnership, according to the principles and basics and procedures defined by the issued decisions implementing this law. The invited bidders are to be given sufficient time to enable them to submit their offers, as per the RFP of the project.”

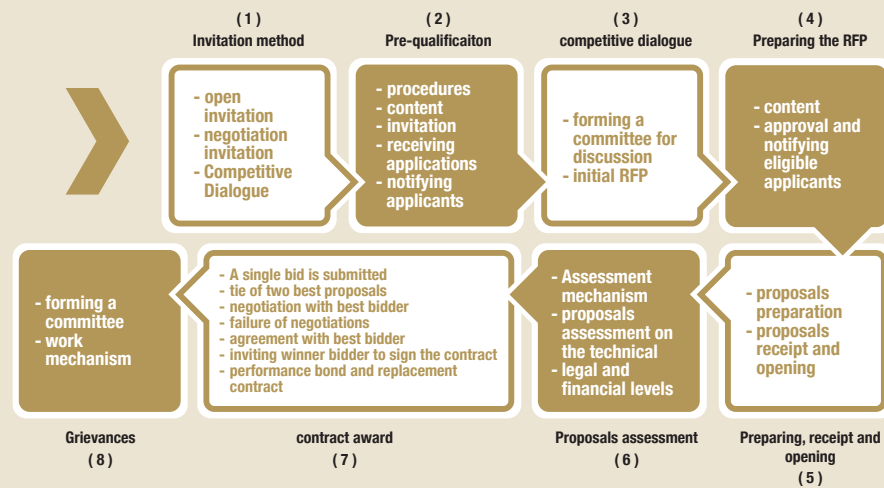


Consequently, the approval - by the competent authority - of the tender conditions and specifications implies approval of the partnership contract draft including the disputes resolution provisions thereon, such as arbitration. Thus, if any dispute arises between the private partner and the Government Entity, it is not necessary for the former to obtain, in the future, the consent of the competent bodies to the arbitration clause stipulated into the partnership contract. This is on the ground that approving the tender conditions and specifications implies commencing procedures to select a private partner and award the contract.

The Government Entity may impose a nonrefundable application fee to be paid by eligible bidders to obtain the project RFP, the mechanism of which enables the Government Entity to measure to what extent eligible bidders are interested and serious to submit proposals for partnership.

Figure No (3-3)

Invitation and award procedures for partnership projects



Framework No (7)

Best international practices concerning the tender conditions and specifications for a project

- 1- The Government Entity prepares the RFP in Arabic or English language or both after approval by the competent authority. The RFP shall determine such language in which bids and correspondence shall be made, and in the event of the same being made in more than one language, the dossier shall determine such prevailing language in case of conflict with other languages.
- 2- The tender conditions and specifications shall, in particular, include the following:
 - A- General information, about the project, which is necessary to prepare and submit bids.
 - B- The specifications for a project and such technical and financial conditions that shall be met at both technical and financial proposals.
 - C- Specifications for finished products and service level, performance indicators and main requirements, pertinent to safety, security, environment protection and otherwise, set by both the administrative body and control and organizational bodies for utilities and services – which are subject of contract.
 - D- Key conditions stated at the partnership contract and other complementary agreements indicating non-negotiable conditions.
 - E- Determining methods and bases used for differentiating between bids. If assessment is conducted on the basis of scores, bids assessment criteria and bases for differentiating between the same technically and financially shall be demonstrated together with such score for each criterion. In addition, the method through which such criteria are applied for bids assessment and the weight for the technical and financial sides shall be demonstrated.
 - E- Documents and forms which need to be completed and deadlines for proposals.
 - F- Bids validity.
 - G- Both the bid and the performance bond calculation method based on nature, execution phases and completion period of the project.
 - H- The Government Entity will build a website for the project, which website shall contain, in coordination with the competent authority, all information and different studies pertinent to the project and tender invitation documents. Access to this website will be through a password given by the Government Entity to all eligible investors.
- 3- The Government Entity determines, in coordination with the public fund management body, the price of the tender book of the project on the basis of a percent of those estimated costs for preparing all documents of the project. The Government Entity shall, when preparing the



tender book, prepare such tender invitation letter to invite eligible investors to submit their bids. The final tender book (and its price), the contract and enclosures thereof and the invitation memo shall be attached with such invitation letter and all such documents shall be filed to the competent authority for approval.

- 4- The Government Entity shall, after the tender conditions and specifications are approved by the competent authority, prepare an approved edition of such tender book with a number of copies not less than the number of eligible investors in addition to two copies to be kept: one at the Government Entity and the other at the public fund management body.
- 5- The Government Entity may, upon agreement with the competent authority, amend the tender book prior to the deadline for applying bids, provided that all eligible investors shall be given adequate time to take such amendments into account when preparing their bids. Such amendments shall be released, after being approved by the committee and competent authority, through an enclosure signed by the general manager of such Government Entity responsible for preparing the tender book.
- 6- In the event of the tender book being amended, the Government Entity shall, through official letters and email, notify those eligible investors that withdrew the tender book to receive, for free, the enclosure of the amendments.



Fifth: Proposals (Preparation, receipt and envelopes opening)

1-Proposals preparation:

Those eligible bidders, that withdrew the tender book, shall during this phase, prepare their technical and financial proposals and for this purpose, eligible bidders may access all documents available on the website and to organize field visits to the project site in compliance with those rules and periods stated in the tender book.

The website is a liaison for communication between bidders and the governmental body, through which the latter provides bidders with explanations and responses to raised questions. Communication with bidders shall be made with complete transparency and impartiality. All correspondence between bidders and the Government Entity shall be in writing. In addition, all explanations and answers –together with relevant questions – shall be distributed to all bidders without disclosing such bidder that raised those questions. This shall not apply at those questions pertinent to the technical proposal which shall be deemed as a property right to the asking bidder. Moreover, bidders may be asked to present observations about the partnership contract draft or any other documents such as the by-laws of the due to be established company for the project in case the partnership committee prepares and suggests the same.

2-Proposals envelopes receipt and opening:

Article (20) of the law No (22) of 2015 for PPP provides that:

((Submitted bids shall meet all conditions and specifications, either technical or financial, defined in the tender book in order to be accepted. Any bid failing to meet such conditions and specifications shall be excluded”).

Only applicants determined as eligible by the Government Entity and those who withdrew the tender conditions and specifications – either by themselves or through legal representatives- may submit proposals. The obtained tender book may not be assigned to any other body. Proposals are submitted at such defined time and place within a period with a certain deadline to allow applicants to submit their proposals at different dates, thus, bids are not received at a public session attended by all bidders. With the purpose of



enhancing transparency, the Government Entity may decide to receive and open proposals in a public session where representatives of bidders are invited to submit their proposals at a specific date and time. Therefore, the Government Entity shall receive proposals in the presence of representatives of bidders, and the Government Entity may, during this public session, ensure that all proposals fulfill all required documents, especially the bid bond. Should a proposal fail to fulfill all required documents, the Government Entity may reasonably decide to either exclude the same or give such bidder an additional grace period to fulfill the requirements. In the event of no public session being held to receive proposals, the Government Entity shall take all necessary arrangements to receive sealed envelopes containing proposals, which envelopes shall be safely kept till the scheduled date for envelopes opening.

In the event of only one bid being received, the partnership committee shall report such matter to the competent authority to take a reasonable decision on such sole bid. The committee may, in all cases and at any time prior to contract award, unilaterally cancel or postpone the invitation process for any reason without incurring any liabilities or costs toward bidders. Such right is given to the committee by virtue of the article No (24)- on tender cancellation cases- of the law No (22) of 2015 for the public private partnership which provides that:

A-((The partnership committee may cancel a tender for partnership in the event of:

- 1- In case only one bid remains accepted after excluding unaccepted proposals.
- 2- If all or most proposals have reservations about breaching those required conditions and specifications, thus, it is difficult to assess the same on the technical or financial level.
- 3- If the quotation of the least offer is unreasonably more than those initial estimates determined by the Government Entity or in case the quotation of the highest offer is less than such estimates with regard to contracts that make revenues.
- 4- In case the tender shall be cancelled for the public interest.

B-A decision to cancel a tender shall be justified. In the event of a tender being cancelled, no bidder may claim an indemnity against such an act.

C-Notwithstanding the paragraph (A) of this article, the partnership committee may, in exceptional cases, accept such sole proposal or such proposal whose quotation is less or more than the estimated value when necessary for public interest”.



Framework No (8)

International practices concerning proposals preparation, receipt and opening

1. The Government Entity shall serve the invitation letter on eligible investors – via an approved letter and email - to withdraw the tender book and pay applicable fee for the same against a receipt by the governmental body.
2. Bids shall be accepted from eligible investors only that withdrew the tender book and paid the applicable fee for the same. The Government Entity shall furnish the competent authority with a list of those investors that withdrew and paid the applicable fee for the tender book.
3. The Government Entity may, in coordination with the competent authority, schedule, as part of invitation procedures, time for receiving and answering inquiries raised by eligible investors. All such inquiries and answers shall be available to all eligible investors.
4. The Government Entity may, after invitation for the tender and before the scheduled date for bids submission as well as in coordination with the competent authority, call eligible investors to hold meetings to discuss inquiries raised by the same about documents of the project.
5. The Government Entity shall estimate the project price taking into account the following rules:
 - A.The project price is estimated as if the project will be executed by the governmental body.
 - B.The estimated price shall include total investment costs of the project and total costs of operation and maintenance during the contract term at the market price at time of estimation.
 - C. No financing burdens or inflation rates shall be added to the estimated price.

The estimated price shall be presented by the Government Entity to the public fund management body – in a sealed envelope in case the project proposed cost requires approval by the competent authority. In addition, a report on its works – signed by all its members and tendering consultants – shall be presented to include the estimated price, bases adopted by the body for determining both the estimated price and investment costs, as well as costs of operation and maintenance. The public fund management body will review this report and it may demand necessary explanations, discuss or return the same to such body that prepared it to take recommendations into account.

- 6-The public fund management body will, after reviewing the project estimated price, lay down, in coordination with the financial proposal consultant, the governmental comparative taking the following rules into account:
 - a. The project costs and financing obligations – if any- shall be added according to the proposed structure for finance.



- b. Analyze and estimate project related risks, especially legal, technical and financial risks and add the same to the estimated price.
- c. The difference in price during the period from the estimated price date till deadline for bids submission shall be taken into account through adding an inflation rate for this period.
- d. Any other obligations incurred by bidders shall be added as long as the same are necessary for the project execution.
- e. Return of tax paid by the company for the project shall be calculated, if any.
- f. Annual inflation rates expected throughout the project duration and applicable deduction rate to reach net current price for the project.

The public fund management body will, after submission of technical and financial proposals, produce recommendations about such report made by the Government Entity (the competent authority) to the Supreme Fiscal Committee with regard to projects that require approval of the committee. Then, such recommendations will be included in a sealed envelope signed by the public fund management body, which envelope will be opened only after opening the financial envelopes of those technically accepted bids.

- 7- Each eligible investor or its legal representative shall prepare only original copy of both the technical and financial proposals. All pages of documents included in both envelopes shall be signed. Pages that explicitly require signature shall be signed by the eligible investor or its legal representative. Such number of photocopies of both technical and financial proposals – defined at the tender conditions and specifications – shall be submitted by each eligible investor and such photocopies shall bear required signatures.
- 8- The envelope of the technical proposal shall include such bid bond defined at the tender conditions and specifications and all necessary technical documents that specify those necessary detailed specifications for achieving the required service level or quality of finished product. The bid bond shall be in the form of an unconditional and irrevocable bank letter of guarantee released by bidder from a national or a branch of a foreign bank registered at the central bank in favor of the Government Entity or the public fund management body. This letter shall be valid for ninety days at least beyond the bid validity or any amendment thereof. The relevant bank shall declare at such letter of guarantee paying, notwithstanding any objection by the relevant bidder, to the Government Entity or the public fund management body an amount equivalent to the submitted bid bond upon first call of the same by the Government Entity.
- 9- The envelope of the financial proposal shall include those financial forms and documents defined in the tender book. Prices shall be stated in the financial proposals in letters and figures. In case of conflict between prices in letters and in numbers, such price shown in letters shall prevail. A scratch, removal or correction shall not be valid unless signature of either eligible investor or its legal representative is affixed next to the same.



10- Envelopes of both technical and financial proposals shall be tightly sealed with each carrying name of bidder, name of the receiving Government Entity and data of the project. Each envelope shall contain data showing whether included proposal is technical or financial, whether the same is original or a photocopy and the scheduled date for the envelopes opening session.

11- Bids shall be delivered personally- in two sealed envelopes (one for technical proposal and the other for financial proposal) – at such place and time – defined in the tender book – for receiving bids. The committee charged with receiving bids will receive bids and study the same from the technical and financial aspects. Received bids shall be given a serial number and recorded at an official document prepared for receiving bids. Such document shall include status of each received bid. A receipt for each submitted bid shall be given by the committee to the bidder.

Submitted bids shall be kept at a safe place at the Government Entity- determined by the committee- to ensure preserving the same.

12- In the event of a bid being received by the competent committee, the bidder may not retract the same. No allegation of committing a mistake in a submitted bid will be accepted after the deadline for bids submission.

13- A bidder or its legal representative may appoint an authorized representative – under a duly notarized proxy – to attend the envelopes opening session and to represent such bidder before the Government Entity concerning invitation and award procedures. This individual appointed by a bidder will remain authorized to finish such procedures with the Government Entity unless the latter is notified – by the relevant bidder- that the appointed individual has been replaced by the virtue of the same instrument.

14- Bids submitted by eligible investors shall be valid and binding for such period defined at the tender conditions and specifications. The partnership committee may, if necessary and prior to financial envelopes opening, demand extending validity period of bids for not more than 30 days -without any objection by bidders, provided that such demand shall be approved by the governmental body.



Sixth: Proposals Assessment:

Article (22) of law No (22) of 2015 for PPP provides that:

((The partnership committee shall be charged with studying and assessing submitted proposals -from the technical, financial and legal aspects – to determine accepted and excluded proposals and to assess to what extent the same conform to announced conditions and specifications. Each proposal shall be given an assessment mark according to those bases and procedures specified in the RFP of the project.)

1- Proposals assessment mechanism:

Technical proposals assessment begins with a preparatory initial phase where the partnership committee ensures that submitted proposals are complete and meet the minimum limit of requirements.

The committee may perform such task – either during the public session for envelopes opening or during a closed session. The committee will, in parallel with such task, study technical proposals -which provide the technical, legal and financial solutions – to ensure the same meet the minimum limit of requirements defined at the tender conditions and specifications.

The committee may ask bidders to confirm their technical and financial liabilities as well as to submit clarifications concerning any ambiguous point at technical proposals or any attached document. In addition, the committee may ask bidders to complete any missing documents or information within a specific grace-period.

This procedure aims at avoiding excluding bidders for non-essential reasons such as little shortage in amount of a bid or issuing a bid with the same amount but in a different currency whilst those relevant bidders may be serious competitors having those necessary abilities and desire to execute the relevant project.

Inquiries and answers shall be written. A question shall be about a specific item at the relevant proposal. An inquiry may not imply making any amendment to the relevant proposal. Answers shall be accurately and thoroughly examined before being accepted as explanation. If an answer implies making an amendment to the relevant proposal, the former shall be disregarded.



After expiry of the specific grace-period for completing missing items and presenting explanations, any technical offer not conforming to such requirements stated at the tender book will be dismissed and associated financial proposals will be returned to relevant bidders without study. Technical proposals that are complete and fulfill the minimum limit of requirements defined at the tender conditions and specifications will be assessed and analyzed. The partnership committee will - in collaboration with a teamwork – assess and compare accepted technical proposals which shall provide technical, legal and financial solutions.

2- Proposals assessment from the technical sides:

Proposals will be assessed from the technical aspects according to the following dimensions:

- Providing technical safety including adopting technology conforming to those conditions defined in the tender book.
- Compliance with such environmental standards defined in the tender book.
- Submitting what proves quality of services and plants due to be established within the project and matching the same to the agreed upon performance standards and indicators.
- Taking into account reasonability between such basic data of a project elements provided by both technical and financial proposals.
- To what extent the proposed time schedule is appropriate for the project execution.

3- Proposals assessment from the legal aspects:

Assessment of legal aspects depends on extent of strength and stability the private company or (the company for the project) proposed to be established by bidders. This reflects on such structure proposed by bidders for this company and articles of association, extent of their commitment and representations by each member of the consortium. Assessment of legal proposals depends on those proposed amendments to drafts of both the partnership contract and by-law for the project for the company (in the event of the same being formulated by the partnership committee) and consequential increase in risks and distribution method.



4- Proposals assessment from the financial sides:

Financial proposals assessment is deemed as the most complicated, which process requires complete understanding of the project costs during its completion period and the proposed structure for the consortium and finance. The financial proposal assessment shall take the following dimensions into account:

- The project total cost with regard to constraints about ability to bear costs.
- To what extent the operational and capital expenditure is realistic including assessing whether costs for quality management systems are included in the financial form or not.
- Effectiveness of costs for services, plants and facilities expected to be provided by the project.
- Strength of financial proposals including sensitivity to changes in costs for operation, fluctuations in exchange rates, inflation rate, interest rates and cash inflows.
- Strength of the financing structure.
- Level and nature of property rights in the financing structure.
- Extent of compliance demonstrated by debt providers and owners of property rights; terms and conditions of this finance.
- Extent of incurred risks and to what extent those specific conditions are not met.
- Costs, level and nature of proposed insurance coverage.
- Nature and importance of each risk, risk probability and distribution method of the same.
- The partnership committee gives points based on those weights determined in advance for each section. The points for the technical assessment is calculated and the partnership committee determines the accepted technical proposals based on the adopted assessment method.

The partnership committee opens those financial proposals of the accepted technical proposals. A financial proposal shall be limited to such price that generally shows cost of the project, which price shall be audited in light of the submitted financial solution to ensure the same is in line with the submitted financial form.



Framework No. (9)

International practices for proposals assessment procedures:

- 1- The partnership committee chair receives and studies bids. The committee opens envelopes of both submitted technical and financial proposals of accepted technical proposals and a member or more of the committee is charged with extracting contents of both technical and financial bids – in the shortest time possible – to prepare special statements comprising basic documents and number of pages of each bid, as well as necessary notes. Such statement shall be considered and signed by all members during the meeting of the committee. In case assessment is made on the basis of points, such bid with the best economic feasibility shall be awarded the project after measuring weights of both the technical and financial proposals according to such methodology specified in the tender book through the following equation:

$$\frac{\text{Total marks of the bid under assessment}}{\text{Total marks of the technical assessment}} \times \text{weight of the technical proposal} + \frac{\text{current net value of least accepted bid}}{\text{current net value of assessed bid}} \times \text{commercial proposal weight}$$

Such bid with the highest result according to the aforementioned equation will be the winner. In case of applying the assessment system (Identical or non-identical), then a bidder with the least current value – according to such calculation method specified in the tender book – shall be awarded the project.

- 2- All proceedings of the committee -that receives and studies bids -shall be recorded in a special register. The committee may form a sub-committee comprising members from the same committee or other experienced members – to study the technical, financial and legal sides of submitted bids. The committee shall finish its works and procedures prior to expiry of bids validity.
- 3- The partnership committee shall receive and study bids as well as to ensure that technical proposals conform to those technical specifications and conditions defined in the tender. Bids are assessed by the committee according to such assessment system defined in the tender book. The committee may receive and study bids after opening technical or financial envelopes, as the case may be. In addition, the committee may request from bidders such clarifications and questionnaires it deems necessary.
- 4- In the event of any of the submitted technical proposals not being unanimously approved by the committee; this shall be recorded committee's MOM, after asking the opinion of the competent consultant for such bid and stating it in the same MOM. The partnership committee shall, in all cases, submit the MOM signed by all members, comprising its recommendations to the competent authority, so the later takes such decision it deems fit.
- 5- Bids not conforming to conditions and specifications – according to the assessment system



defined in the tender book -shall be excluded as per a decision by the director general of the government entity, upon such recommendations by the committee that receives and studies bids. The exclusion decision shall be thoroughly detailed and based on reasons and the same shall be served to the addresses stated in such bids excluded for technical reasons. A bidder whose technical proposal is excluded may file a grievance within thirty days from receiving the exclusion notice. Financial envelopes of those technically accepted bids may not be opened prior to deciding on all grievances submitted by excluded bidders.

- 6- Only bids whose technical proposals are accepted will be financially assessed. The partnership committee will, through any means deemed by the committee as fit, notify bidders whose technical proposals are accepted with the scheduled date for the financial envelopes opening session to attend the same.
 - 7- The partnership committee will meet at such specified place and time to open the financial envelopes. The committee begins the session by ensuring that financial envelopes are properly sealed and by registering presence of bidders or representatives thereof. Financial envelopes shall be opened by the committee according to the serial number placed on the same. The committee head will announce figures stated in each bid upon which the financial assessment will be conducted. The MOM will be signed by members of the committee together with all present bidders or representatives thereof.
 - 8- The project will be awarded to such bid with the least price – according to such calculation method defined in the tender book – in case of adopting the assessment system (identical or non-identical). However, if assessment is conducted via points, the project will be awarded to such bid with the best economic feasibility after measuring weights of both the technical and financial proposals according to such methodology specified in the tender book for each project.
 - 9- The awarded bidder shall- after approval by the partnership committee, the government entity and competent authority- be notified, through a letter, of being accepted and awarded the contract.
- The bid bond shall, upon first request after announcing opening financial envelopes or on such day following signing the partnership contract with such company established by the awarded bidder (whichever comes first), be refunded by the government entity to bidders whose technical proposals have not been accepted.
- 10- The bid bond will not be refunded to any bidder who retracts after submission of the same to the government entity or if the awarded bidder fails to submit the performance bond within such period specified in the letter of award. In such case, the transaction may be awarded to the following bidder in order, or the tender may be cancelled in coordination with the committee without prejudice to the right of the government entity to claim an indemnity from such awarded bidder.



- 11- A tender may be canceled if the project is no longer needed or in case such act is necessary for public interest, in which case cancellation shall be by virtue of a decision by the partnership committee chair. Cancellation shall be – in all cases – for reasons and the government entity shall notify all bidders on such addresses stated in their submitted bids, through any means it deems fit and within one week from the decision date, with the decision to cancel procedures of the tender, in which case, no bidder may claim an indemnity against the cancellation decision.



Seventh: Contract Award

Section (B) of article (14) of law No (22) of 2015 on the public private partnership provides that:

“B-A partner shall meet approved financial and technical standards, regulations and conditions. In addition, it shall have the ability and efficiency in its field and specialization”

If the committee takes no decision to negotiate with the submitter of the best offer or two best offers, the contract will be awarded to the best offer according to the assessment result. All assessed bidders shall be notified of the assessment result.

The partnership committee may decide whether to negotiate with the submitter of the best offer or with the two best offers – in case the same are close to each other –to make improvements to such offers from the technical and/or financial side. In case the partnership committee decides to hold negotiations, it shall do so following certain procedures. Successful negotiations shall result in awarding the contract, concluding the selection phase and commencing executing the partnership project. International practices recommend the following in that regard:

- 1- In case only one bid is submitted or if other submitted bids are ineligible to be considered: the partnership committee prepares its MOM in that regard, to be submitted to the general manager of the concerned government entity to put forward the same to the concerned authority and the latter makes such recommendation it deems fit. The authority may decide either to accept the only submitted bid, re-invite bidders, make any amendment it deems fit to the tender conditions and specifications or cancel the partnership project.
- 2- In case the two best bids are equal: in case there are two equal bids representing the best proposals according to conditions set by the partnership committee, such bid with the best technical proposal will be accepted in case the technical proposal has a weight in the equation for awarding the project. Otherwise, those two bidders may – upon a recommendation by the committee and approval of the concerned authority –be requested to submit new financial proposals within the limit of such proposals submitted by the them and a public session will be held – in presence of both bidders – to open envelopes and read figures stated in each of those two



proposals. Then, the partnership committee will prepare a report in that regard to be submitted to the concerned authority to make a decision. This shall not be without prejudice to the partnership committee's right to cancel the tender or re-invite bidders without any liability.

- 3- If a decision is taken to negotiate with the best bidder: the partnership committee invites the best bidder to negotiate the submitted bid including details and explanations thereof and its reservations concerning the tender conditions and specifications. The committee shall determine, in the invitation, both the agenda of negotiation and specified period of negotiation and the latter shall be conducted under the supervision of the concerned authority. The partnership committee may seek help and contract with domestic or foreign experts and consultants to finalize its works. Such negotiations may not – at all cases –discuss any contractual conditions defined in the invitation for the tender as non-negotiable or as essential conditions according to the tender conditions and specifications. No amendment shall be made to technical and financial conditions upon which the bid was assessed. Negotiations may not result in amendments to the project conditions that relieve the best bidder from its responsibilities stated in the standard conditions in the risks distribution table specified in the tender book. Those negotiations shall be recorded in MoM signed by both the bidder and the negotiating parties. Explanations and details submitted by the best bidder in that regard shall be deemed as an integral part of its bid.
- 4- Negotiations Failure: should negotiations fail to reach final agreement with the best bidder concerning the tender, the committee notifies such bidder of suspending negotiations and demand the bidder to determine its final position in writing, by submitting their best possible proposal. This will be reported to the concerned authority with a recommendation by the partnership committee, so that the former makes a decision regarding such proposal. In case this proposal is dismissed or if the required proposal is not submitted during the specified period, negotiations with such bidder will be terminated upon approval of the partnership committee. The committee will –after expiry of such period specified for receiving and deciding on grievance concerning the negotiation termination decision- invite other following bidder(s) – according to order – to negotiations to reach final agreement on contractual conditions. The partnership committee may not resume any terminated negotiations with any bidder. In addition, the committee may



not hold negotiations with two bidders or more at the same time. The committee may not drop a condition in favor of the following bidder as long as such condition was a subject of dispute with the previous bidder. The concerned authority may, in all cases, cancel the project or re-invite bidders.

5- In case of reaching an agreement with the best bidder: in case the committee reaches an agreement with the best bidder, the latter is invited – after the approval of the concerned authority – to sign a deed of commitment between the awarded bidder and the government entity. This would include conditions for specific and preparatory liabilities for the partnership contract to be valid. Both the committee and the best bidder previously agreed on such document, which is attached with the agreed upon documents of the contract. Those documents shall not be legally effective or binding to the government entity prior to fulfilling all contractual conditions. The government entity will refund the bid bond to bidders save as such bidder ranked as the second following the awarded bidder whose bid bond will be retained till signing the contract with the awarded bidder or the bid bond validity expiry without renewal of the same by the bidder.

6- When the awarded bidder is invited to sign the contract: both the awarded bidder and the government entity will directly proceed to take necessary procedures to fulfill conditions of the deed of commitment as a prelude to signing the partnership contract.

- In case the awarded bidder is a consortium, a company or more shall be established – as needed by the project and according to the applicable law as well as agreement stated in the deed of commitment. Each member of the consortium shall present all supportive documents of holding stocks at the company for the project.
- If the partnership project comes within specific exceptions, the consortium may sign the partnership contract and execute the project directly.
- The signed final contract shall include the final partnership contract, land lease contracts – if any – and the replacement contract which is a document regulating terms and conditions of replacing the partner with another with the same or better specifications or qualifications and upon the same conditions for awarding the project.
- If the partnership project is associated with more than one governmental body, a special enclosure comprising conditions of contracting may



be made, to be in line with the competences and liabilities of each government entity involved in the contract. Such special enclosure shall be signed by the relevant governmental body.

7- If the awarded bidder retracts the bid or does not show up for signature: if the awarded bidder retracts or fails to show up to sign the documents, the government entity shall report that to the competent authority together with such recommendation it deems fit. In such case, the competent authority may invite the following accepted bidder for negotiations and reaching final agreement on the same conditions reached with the awarded bidder. Retract or failure to attend to sign means:

- Not attending to sign the deed of commitment or the contract either.
- Declining to submit the performance bond.
- Declining to establish either the consortium or the project company.
- Refusal to subscribe to such stocks allotted to the awarded bidder upon establishing the public joint-stock company.

8- Performance bond by awarded bidder: the performance bond required to be submitted by the awarded bidder shall be in the form of an unconditional and irrevocable letter of guarantee in favor of the government entity issued by a bank registered at the Central Bank of UAE. Such letter of guarantee shall be submitted no later than such period specified in the letter of award.

9- Bases for determining the performance bond – in case the same is necessary – shall be as follows:

A- A specific amount defined in both the tender book and the partnership contract, which amount shall be submitted on such date specified in the letter of acceptance. The performance bond shall be valid till the effectiveness date stated in the partnership contract. If the effective date is extended, the validity of the performance bond shall be extended till the same date. This guarantee may not be released prior to receiving the performance bond letter – by the government entity – for the first year of the period for executing construction or development works.

B- The value of the annual performance bond shall – during executing construction or development works – be at such percent defined in the tender book and the partnership contract of the annual price for construction or development works stated in the financial proposal submitted by the awarded bidder.



C- During availability of services, operation or maintenance works, the annual performance bond shall be at such percent defined in the tender book and the partnership contract in proportion to the annual price for rendering services or for operation and maintenance works which is stated in the financial proposal submitted by the awarded bidder.

10-Performance bond validity: the requested performance bond shall be valid for one year at least. The performance bond shall, at least two weeks prior to expiry, be renewed or replaced annually with the same amount defined in the tender book and the partnership contract. The validity of the performance bond for the last year of executing construction or development works shall be extended till the certificate of acceptance is issued. Such performance bond may not be released prior to issuing the certificate of acceptance and receiving the performance bond for the first year of rendering services or operation and maintenance.

11- forfeiture of bid bond submitted by the awarded bidder: the government entity will, after approval of the competent authority, forfeit such bid bond submitted by the awarded bidder in the following cases:

- Retracting or amending a proposal after the deadline for proposals submission.
- Not receiving a response from the bidder within 15 days from inviting the same to negotiation.
- Not proceeding to establish the project company/consortium or financing procedures according to the agreed upon conditions.
- The awarded bidder fails to fulfil any condition stated in the agreed upon deed of commitment.
- The awarded bidder fails to sign the deed of commitment within (10 days) from being informed to sign the same.
- Refusal to present other agreed upon bid bonds.

The government entity may not, in all cases, take an act concerning the performance bond without the approval of the public fund management body and after the company for the project is notified by such means deemed fit.

12- Replacement Contract: The competent authority may, upon a recommendation by the governmental or financing body, replace the awarded bidder to



which the contract is awarded with another partner to complete the contract period in the event of:

- The contractual partner fails to fulfill its contractual liabilities and fails to remove such breach during the specified period.
- The contractual partner commits a material mistake.

Provided that such act shall have a negative effect on the project progress or leads to complete suspension of the project or declaring bankruptcy.

13- Contractual partner replacement request mechanism:

- If the request is submitted by the financing bodies: such body shall submit a request to the government entity identifying such partner deemed as fit to replace the contractual partner provided that no amendment shall be made to the signed partnership contract for executing the project.
- If the request is submitted by the governmental body: such body shall prepare a report comprising such proposed liabilities to ensure continuity of the project as a prelude to putting forward the same to the competent authority to take a reasonable decision. The government entity may give recommendations that include its vision and ability to amend some conditions to recruit a special partner. The government entity shall take into account those conditions set by the financing bodies.

Eighth: Grievances

1- Legal side of grievances:

Article No (37) of law No (22) of 2015 on the public private partnership provides that:

“A- Each interested party may, within (30) thirty days, file a written grievance to the department against any decision or procedure taken by the government entity against such party by virtue of this law, relevant decisions or the partnership contract. The grievance shall be supported with documents and instruments.

B- The department shall consider the referred to above grievance at the preceding paragraph (A) within (30) days from submission of the same to issue a reasonable decision.”



Framework No (10)

International practices concerning grievances pertinent to partnership projects

1- The public fund management body considers grievances filed by private partners or in connection with or related to the same during tenders offer and conclusion and execution of partnership contracts. The international practices recommend that a grievance committee be formed to perform its tasks according to the following methodology:

- A- The grievance committee shall, when necessary, hold sessions, upon invitation by its chairman, to consider filed grievances. Then, proceedings of the session shall be recorded at minutes that contain discussions, decisions and reasons upon which such decisions are made.
- B- The public fund management body shall assign (a department or section) to receive grievances and register the same, on the same day, at a register set up for this purpose. A grievance shall be in the Arabic language or such other language agreed upon at the partnership contract and it shall be signed by the concerned party or its representative. A grievance shall include the following data and supported with the following documents:
 - Petitioner name, surname, job and address
 - Notification date or date of learning such procedure, act or decision which is the subject of the grievance, as the case may be.
 - Subject and reasons upon which the grievance is based.
 - Supportive documents

The public fund management body shall give the petitioner a receipt for the filed grievance, which receipt shall contain name and capacity of petitioner, hour and date of grievance and name of such project which is the subject of the grievance.

- C- A grievance shall, upon receipt, be put forward to the concerned government entity or the competent authority to schedule a session to consider the same. The petitioner shall be advised, in such manner deemed as fit, of date of such session.
- D- The grievance committee considers filed grievances. It communicates with relevant bodies to get any explanations or inquiries it deems necessary. In addition, the committee may demand explanations and inquiries from the partnership committee or governmental bodies. The committee may, when necessary, submit a recommendation to the supreme legislative committee to prepare a comprehensive report on subject of the grievance and legal opinion concerning the same.
- E- The committee decides as regards receiving grievances within maximum thirty days from submission of the same. Decisions taken by the committee shall be final, effective and binding to the governmental body. The competent administration of the department of finance in connection with grievances shall, in such means it deems fit, notify the governmental body, the competent authority and petitioner with the issued decisions.



Phase 4: Contracting

First: Master partnership contract

Second: Elements of contracting phase

Third: A draft contract for the public private partnership



Phase 4: Contracting

The partnership contract is deemed as the essential contractual document and cornerstone of partnership projects, thus, it is the organizational framework according to which all points pertinent to the project are transacted from the initial negotiations till the project is entirely referred to the governmental body. In addition, the contract shall be the legal means that open the door to a direct relationship between the contracting authority and the company awarded in executing the project; therefore, documents of the contract shall be ready prior to inviting bidders for the project. The contract documents are defined as a number of contracts and enclosures thereof which are signed to execute a partnership project, constituting a complementary unit for executing and construing the partnership contract. The contract documents include the following:

- A- The partnership contract
- B- Land lease contracts – if any
- C- A deed of commitment signed between the awarded bidder and the government entity which includes conditions for specific and preparatory liabilities for validity of the partnership contract. The deed of commitment is previously agreed on.
- D- A replacement contract which is a document regulating terms and conditions of replacing the partner with another with the same or better specifications concerning the qualifications and conditions upon which the project was awarded.

The contract documents include those legal matters that determine scope and purpose of the project. and all details pertinent to execution, including rights and liabilities of parties, distribution of risks between the private sector and the government. They also cover applicable laws and dispute resolution as well as all different legal texts that govern seeking help of any third party by either contracting a party to complete some temporary or permanent operations or tasks pertinent to the project. Those dimensions make the contract documents the legal base for any contractual structure and the element to control projects management and continuous control to ensure efficiency of projects and achieving total objectives of the same, thus, specialized experts are required to properly formulate the contract documents.



Article No (26) of law No (22) of 2015 regulating the public private partnership in Dubai Emirate reviews content of the partnership contract, whilst article No (27) of the same law reviews contract term determining the project term as thirty years as of the date a contract is signed or any other date determined by the partnership committee. The Supreme Fiscal Committee may agree on partnership contracts exceeding such term if necessary for public interest and upon a recommendation by the partnership committee.

First: Master partnership contract

The private partner is chosen within the public private partnership via an open competitive mechanism which shall be achieved according to best domestic and international applications pertinent to executing partnership projects. An awarded partner shall be at the top of administrative, technical and operational levels of the project and it shall be fully responsible – on the commercial level – for providing a complementary package of facilities and services.

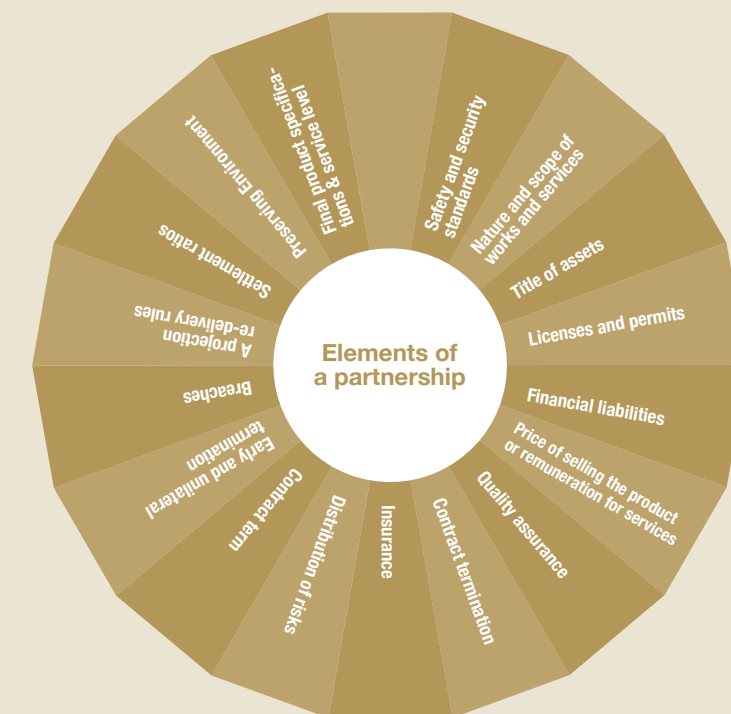
The government entity determines and decides the project framework and needs. This authority acts, during the operation phase, as the customer on behalf of the user. A customer may determine such line separating between public services provided by private partners and other public services provided by the government.

The public private partnerships are established in a detailed contract determining roles of either party through a commercial relationship that can last for 30 years or more, consequently, this contract shall include:

- 1- Nature and scope of works and services that shall be performed by the company for the project, as well as conditions of execution.
- 2- Title of the project money and assets, liabilities of parties concerning delivery and receiving project site and provisions for title conveyance by the end of the project.
- 3- Responsibility for obtaining licenses, permits and approvals.
- 4- Mutual financial liabilities and relation to financing method.
- 5- Prices of the product or remuneration for performance of those services provided by the project, as well as bases and rules of determining the same and bases and rules of modifying the same with increase or decrease and how to treat inflation rates if necessary.



Figure No (3-4)
Elements of a partnership contract in Dubai





- 6- Quality assurance means and tools of control, supervision and technical, administrative and financial follow-up to operate and maintain the project.
- 7- Regulating the right of the government entity to amend conditions of building, preparation maintenance, operation, optimum utilization and other liabilities required by the company for project- as well as regulating bases and mechanisms of compensation for this amendment.
- 8- Types and amounts of insurance on the project, risks related to operation and utilization of the project, execution of warranties issued in favor of the government entity and provisions and procedures of claiming such insurance.
- 9- Determining bases of distributing those risks related to amending laws, incidental events, force majeure and applicable compensation as the case may be.
- 10-Contractual term, investment term and period of completing building, preparation or development works.
- 11-Early or partial termination and consequential rights of parties. Cases that give the government entity the right to unilaterally terminate the contract and consequential financial obligations in this case.
- 12-Regulating rules for the re-delivery of the project upon contract expiry or in case of unilaterally, partial or early termination including such mechanism applied to convey assets and necessary technology to operate the project to the government. There is also the provision training to employees of the contractual government entity or the new investor and providing necessary technical support – including providing spare parts - to ensure continuous provision of services during the re-delivery of the project.
- 13-Cases in which the same contractual company is allowed to execute other partnership contracts on condition that the consent of the government entity is obtained.
- 14-A mechanism to consider any disputes arising between contractual parties.
- 15-Recourse to arbitration shall be upon mutual agreement between contractual parties.



Second: Elements pertinent to contracting phase

First element: Establishing a company for the project

A company which is established for the sole purpose of executing a partnership contract, such company gains rights and liabilities by virtue of those provisions stipulated in the partnership contract. The government may be a partner with the private sector for establishing a company for the project, in which case the government subscribes to such company with any or a certain percent. International practices recommend establishing a joint-stock company with a corporate identity independent from the parent company. This act has positive effects including facilitating getting finance on the ground that it is a new company with independent corporate identity, thus, facing no potential risks.

Article No (25) of law No (22) of 2015 on the public private partnership provides that:

- A- “The concerned government entity may be a partner with the private sector in establishing a company for the project, provided that such partnership shall be in the form of a limited liability company”.
- B- In case the government entity has no desire to participate in the company for the project, the awarded bidder shall establish a company entitled “the project company” whose sole purpose is to execute the project which is the subject of the partnership. Decisions issued by virtue of this law set those conditions that such company shall meet.
- C- Notwithstanding the preceding paragraph (B) herein, the government entity may, upon the approval of the department, allow the awarded bidder to execute the project, which is the subject of the partnership contract, without the need to establish a company in case the awarded bidder has the ability- with its current position and available technical and financial abilities -to execute the project and provide adequate financial warranties. The contractual partner, in which case, shall be dealt with as the project company”.

The purpose of the aforementioned article is to establish a project company to take a legal form to deal between the partnership project and governmental body. The legal validity of this company will expire upon expiry of the project term defined in the partnership contract.



Framework No (11)

International practices concerning establishing the partnership company

- 1- The winning bidder shall establish a company to be called “project company” according to the following:
 - A- The sole purpose of this company shall be executing the project subject of the agreement in accordance with the terms and conditions mentioned in the bid requirements and specifications document and the law.
 - B- The memorandum of association or articles of association of the project company shall not contradict with the provisions of the partnership contract concluded therewith or any further agreements.
 - C- The project company period shall not be less than the time period required for executing the partnership contract as specified in the requirements and specifications document.
 - D- The project company shall not breach any of the prequalification terms or the partnership contract terms.
 - E- The company founders shall be recognized of goodwill, and no judgments in dishonorable crimes or judgments of bankruptcy are rendered against them.
- 2- The project company shall not execute other partnership contracts except after obtaining a prior written approval from the government entity, and the agreement therefor the project company is established shall be limited to service provision only. Regarding other partnership contracts, the project company may execute other partnership contracts only after completion of the project therefor the company was established.
- 3- After concluding the partnership contract with the project company, the government entity shall notify the concerned monitoring body through sending a copy of the partnership contract and its technical appendices in order to monitor the project company when established and making the products and services, subject of the agreement, available and ensuring that the legally established quality standards are met.
- 4- If the partnership contract includes assigning the operation works to the project company, the government entity shall ensure that the product or service meet the required level. The project company shall allow the government entity representatives to increase any locations when they appear or on the dates to be specified thereby and provide all required facilities, and the government entity shall submit a periodic report on such reports to the competent authority.
- 5- The project company shall present, to the government entity, the company's founding agreements and any changes thereto and the project agreements to be concluded with third par-



ties with the purpose of executing services and works subject of the partnership contract within a period not exceeding fifteen days as of the date of such agreements or amendments thereto. The government entity may reconsider any item that violates the law provisions and contradicts the partnership contract.

6- Government may be involved in the partnership through two approaches:

First: Provide assistance and compensation for the private sector partner by the government entities

A- If the economic circumstances or cash flows of the partnership project do not help the private sector partner recover the investment, operation and financial costs and making a reasonable profit during the project period. Then, the government entity may, after obtaining the competent authority's approval, consider providing assistance for the private sector partner or the ultimate beneficiaries whether directly or indirectly and cover the gap in order to develop the project. The required amounts shall be included in the public spending plan.

B- Contribution may take financial or in-kind forms including:

- Right to use real estate properties (wholly or partially);
- Privilege of utilizing the real estate properties;
- Government guarantees and financial aids;
- Waiver projects investment and operation rights;

C- Rights of usufruct or waiver by cash when awarded, an external auditor shall audit it, and it shall be exclusively valid during the project period.

D- In all circumstances, the conditions and limits of the government entity's participation shall be, when proposals are submitted, mentioned and clarified in the partnership contract.

Second: Participation of the public sector in the project company shares as the international practices recommend that the government entities participate in the project company capital in the following cases:

A- If the conditions and limits of such contribution is mentioned in the prequalification request and clearly provided for in the partnership contract and the articles of association of the project company.

B- Agreement of both parties on this if contribution occurs during the partnership contract execution.

C- If the contribution does not exceed 49% of the project company shares.

D- Contribution in the capital does not result in granting the partner or the project company any privilege in the status and operation the project company or the partnership contract by the government entity.

E- The contracting government entity and its affiliates cannot participate in the shares of the private sector partner's company therewith the partnership contract is concluded.



F- The initial contribution of the government entity and any increase in the contribution shall be in cash. Subscription and payment shall be according to the terms applied to the private sector partner's contribution. Exception to this principle, the government entity's participation may be in-kind provided that the land or rights in land shall be allocated for the project's infrastructure and for providing public service managed by the project company during the project's life cycle. In this case, the land value shall be assessed by an independent auditing bureau and such assessment shall be mentioned in the RFP. Voting rights and other shareholders' rights shall be proportionate to the shares ownership in the paid capital.

7- Regarding the Financial Commitments:

A- Project company bears full responsibility and risks related to the financing required for the proper execution its obligations according to the provisions of the partnership contract and related agreements.

B- The project company shall provide to the government entity all required documents proving availability of sufficient funds to execute all commitments that shall be fulfilled by virtue of the prequalification request. Financing items include, in particular, the following:

- Project company capital share;
- The financing required from the project company in the form of loans, stocks and the guarantee of the existing and future notes receivables.

C- Guarantees or insurance required for getting the capital or credit.

D- Direct contracts with the creditors.

The contracting government entity may sign agreements with the project company creditors with a view to arranging some particular issues, facilitating access to the required financing to execute the project or provide the services in general.



Item 2 Partnership Projects Guarantees

There are many reasons driving the government entities to provide guarantees. Experiences proved that guarantees are important tools to address the market imperfections that would delay execution of a partnership project or the whole partnership program. By granting guarantees, many issues would arise, and such guarantees may create harmful incentives; therefore, the government shall dedicate efforts and resources to assess, design, execute and manage guarantees. It shall be noted that guarantees may play an important role in making a good project eligible for financing but it cannot convert a bad project to a good one.

1- Considerations of Granting Guarantees:

The government may grant guarantees for different reasons including political and financial ones, or due to project's risks or a mix of all such reasons. Regarding political considerations, guarantees may be granted for the purpose of the following:

- Building confidence in the partnership program and convincing investors to join the partnership projects.
- Shortening the period of negotiating partnership contracts with the private sector by covering some of the risks that require long discussions.
- Maintaining the partnership program's credibility and avoiding collapse of the partnership program due to fear of any project's failure.

Financial incentives driving the government to grant guarantees may include:

- Securing additional funding sources from the private sector through enhancing credit quality.
- Benefiting from new funding sources.
- Reducing the capital costs of the partnership project.
- Establishing the project without any direct spending on the government's part.

Regarding the partnership project's risks, the best international practices proved that some projects require:



- Guaranteeing the project's revenues due to the difficulty of making accurate predictions of the future demand or in the project therefrom the government benefit.
- Guaranteeing the building risks in the complicated projects such as those projects that result in discovering antiquities during digging, or the geological risks in the mega spending projects.
- Facilitating the funding emerging technology projects or projects that might be at the risk of technological obsolescence.
- Guaranteeing risks on the macroeconomic level such as the fluctuations in interest rates or devaluation of the local currency where the revenues are in the local currency and loans are in the foreign currency.
- Guaranteeing payment of the remaining amount of the assets to be returned to the government in case of early termination of the contract or expiration thereof.
- Guaranteeing the risks resulting from changing the governmental policies. The government always change laws or service quality standards, and it may confiscate assets without paying any compensation.

2- Types of Guarantees:

There are different types of guarantees. It always takes the form of separate undertakings provided by the government to the creditors of the project company or the private sector partner. Such undertaking may also be an integral part of the partnership contract provisions, and it may be provided in the form of a letter of intention.

2.1 Funding Guarantees: Funding guarantee is provided directly to the project company creditors, and it takes two forms: load guarantee, and re-funding guarantee.

- **Loan Guarantee:** The government guarantees to the project company creditors that it will repay their loan amounts if the project company fails to do so. The government may guarantee full or partial repayment of the installments along with the interest specified in the loan terms.



- **Re-financing Guarantee:** This guarantee is used when lenders cannot provide affordable financing for a period commensurate with the partnership contract period. In this guarantee, the government guarantees to the project company creditors that it will repay the debts when they fall due if the project company fails to repay them on the dates specified in the loan agreement. Also, if the project company is capable of repaying the financing amounts but with onerous terms, the government may guarantee paying the difference resulting from such onerous terms.

2.2 Guarantees of Partnership Contract Provisions' Flexibility The guarantee undertakings may be part and parcel of the partnership contract provisions. It may take various forms according to the following:

- **Guarantees of Service Use (Guarantee of Returns):** This type of guarantee is common in the partnership contracts in the transportation sector. The government guarantees to the project company a minimum use of service like the passage of a specified number of cars in case of toll roads; or guaranteeing a minimum amount of daily returns. If the daily return is below the amount agreed thereon, the government guarantees paying the difference. The direct beneficiary of such guarantee is the project company not its creditors. If the company costs are not managed properly, the project company may fail to repay its debts to the lenders.
- **Guarantee of the Minimum Amount of Service Fees:** In this guarantee, the government guarantees to the private sector partner paying the minimum service fees pledged thereby regardless of the project company performance. Usually, the project company lenders make sure that such guarantee exists in order to ensure that their debt or a part thereof will be paid even if the project company performance is weak, or if the partnership contract is terminated for any reason.
- **Guarantee of Changes in Laws and Regulations:** The private sector partner often requests such type of guarantee as the government



provides protection from any future regulatory policy; provided that the agreement shall not be changeable from one part.

- **Guarantee of Agreement Termination:** Most of the partnership contracts include such guarantee. It is based on the principle "No unjust enrichment". In this guarantee type, the government pays a certain amount of money directly to the project company when the government terminates the agreement due to the company's bankruptcy. Such amount shall cover the terminated agreement amount or the value of the assets to be returned to the government. There is another type of this guarantee where the government guarantees to the company project creditors payment of the debt amount or a part thereof when the agreement concluded with the project company is terminated.
- **Undertaking of Paying Debts:** If such undertaking exists, the government guarantees to the project company creditors that if the partnership contract is terminated, the government will bear the burden of debts.
- **Guarantee of the Remaining Partnership Project Assets Value:** This guarantee is used in the partnership contracts whose term is not enough for the project company to amortize all of its debts. In this case, the government pledges to pay the project company, when the agreement is terminated, a certain amount of money, usually representing the remaining assets value.

2.3 Guarantee the other Legal Persons Creditworthiness: The government may not be a party in the partnership project of one of its legal persons such as the public organizations and municipalities. In such case, the government may be required to guarantee the obligations and undertakings of such legal persons towards the project company. Guaranteeing some or all of the legal persons' undertakings would facilitate concluding partnership contracts, as it makes it easy for the project company to get the required funding from lenders.



3 Elements to be taken into consideration by the government in granting guarantees:

- 3.1 Serving the Public Interest: The government representatives shall prove that the stimulus behind the project is not electoral or to avoid immediate payment but it is to serve the public interest. They also shall look for other ways for the government's involvement without providing guarantees.
- 3.2 Analyzing the Private Sector's Attitude towards Providing Guarantees: When the government provides guarantees, it shall take the following points into consideration:
- Providing guarantees by the government would re-distribute risks between the government and the private sector in a way that would adversely affect the private sector's performance incentives.
 - The government's policy shall be clear in terms of providing guarantees in order not to give an impression that the government provides guarantees in all partnership projects, as this would make negotiation with investors more difficult in the future partnership contracts.
 - In guaranteeing their debts, the project creditors may ignore conducting a comprehensive financial assessment for the partnership project or grant the funding in a way not mitigating risks.

Mitigating such adverse effects of guarantees that may be provided by the government shall be through burdening the private sector with some of non-guaranteed risks, providing partial guarantees to the private sector, or matching provision of guarantees to certain elements to be achieved within the partnership project.

- 3.3 Full Compliance with the Agreement Guarantees: The government shall make the market feel that it will not provide any guarantees not provided for in the partnership contract regardless of its importance and not matter how important is the partnership project. If the project witnesses any defect not guaranteed by the government in the partnership contract, the government shall not amend the agreement terms and provide additional guarantees to the private sector partner under any political, social circumstances or any other consideration; as this would give the investors an impression that it may be repeated in any future partnership project.



- 3.4 Observance of Non-conflict of Interest on the Government's Part: Interests may conflict when the government, which has granted the partnership contract, is also a guarantor of the project borrowers. This matter will be scrutinized by the project financing parties and they may request application of good governance measures in order to identify the government's role in managing the partnership contract before they approve financing of any project.
- 3.5 Good Planning of the Major Guarantee Design: When the guarantee is provided, the government entity shall undertake the following:
- Ensure that the guarantee is effective for the project implementation period or when it is terminated.
 - Define the government's situation in terms of being a lender or investor if it pays any amounts by virtue of the guarantee.
 - Identify the method of sharing losses with other creditors in case of partial guarantee.
 - Identify the payment method, whether all at once or in installments.
- 3.6 Taking the Government Staff's Experience in the Financing Aspect into Consideration: Inclusion of guarantees in the partnership contracts requires mobilizing competent employees who are specialized in financing partnership projects and belong to the government entity in order to properly negotiate the terms and provisions of the guarantee with the beneficiaries and other parties to the Contract.
- 3.7 Securing Guarantee Sources and Expenses: Guarantees require various sources for designing, granting and managing it, which burdens the government with costs. Furthermore, guarantees require observation and monitoring during its entire lifetime.
- 3.8 Guarantee against Fees Paid by the Private Sector: The government may provide guarantees in return for fees to be paid by the private sector. Charging the private sector with such fees has various benefits including: Relieving the burdens on the government when the circumstances require paying the guarantee amount. Motivating the private sector to find more economical means than the government's guarantee. For example, if a public organization wishes to conclude an agreement with a private sector partner, and asks for the government's guarantee, such public organization shall pay the costs and expenses of such guarantee.



and that would motivate it to improve its credit rating against the private sector. It will then require the public organization to pay a part of such guarantee amount when circumstances require the government to do so.

The project company shall pay the guarantee fees. Such fees may be paid on the date of signing the agreement or in installments. The government, taking into account recovering the guarantee amount and cost, shall determine the amount of such fees.

3.9 Guarantee Effectiveness: Guarantee is more effective in achieving the targets if it is limited in terms of scope and duration as the need for guarantee changes with the passage of time. The partnership program might need extensive guarantees in its early phases. But when the program matures, the need for guarantees may diminish or its scope narrows down. On the project level, the need for guarantee is not constant in all project phases.

3.10 Importance of Guarantee Accounting Treatment: Probabilistic nature of guarantee and its noticeable impact on the government financial situation highlight the importance of guarantee assessment and how to calculate it. The generally accepted accounting principles stipulates that recognizing the potential duty results in a liability if the occurrence possibility of the event requiring payment of the guarantee is over 50%.

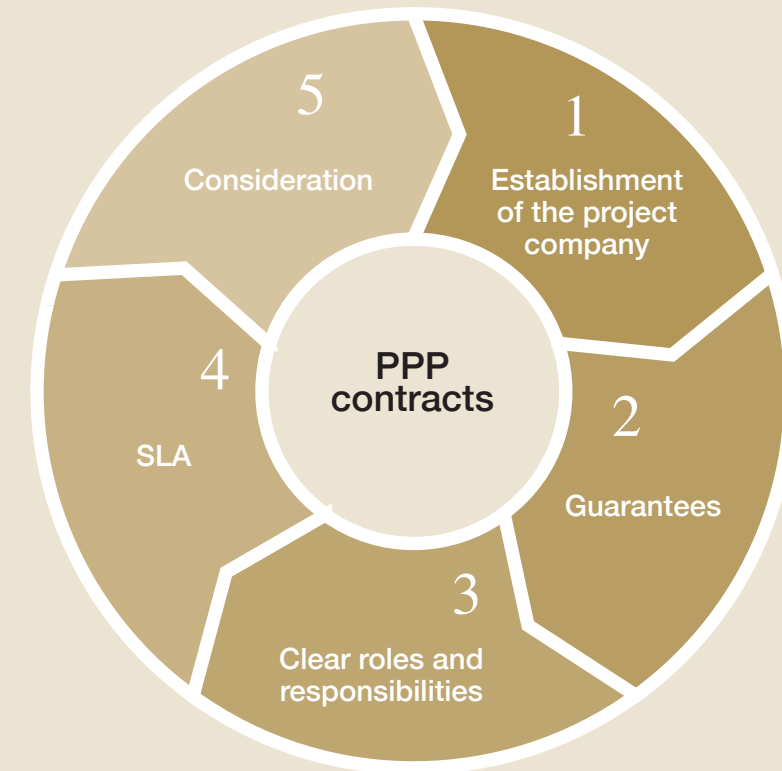
3.11 Planning Guarantee Program: The government entity shall develop a program for providing guarantees in which it shall identify the purpose of guarantee provision, means of provision, mechanism of decision taking, and ceiling of the total amount of guarantees. The government entity shall continually coordinate with the competent authority to develop and review such guarantees.

4- Private Sector Partner Guarantees to Government:

In addressing partnership project guarantees, the core topic is about the guarantees provided to the private sector partner and project creditors as they are the partnership project financiers. In contrast, the government may, in some cases, need a performance bond as establishing the project company keep the private sector partner isolated from the project risks which it won due to its experience. Therefore, if the project fails, the private sector partner's loss will be limited to the amount specified at the time of establishing the project



Figure No (3-5)
Elements related to PPP contracts





company. Accordingly, the government may ask the private sector partner to show commitment to implementing some or all of the project company obligations specified in the partnership contract through a performance bond. The private sector partner to the government provides this type of guarantee where the private sector partner pledges to execute all obligations of the project company according to the performance standards specified in the partnership contract. The project company always relates such guarantee type to establishing the project within the specified period and cost.

Item 3: Clear Identification of Partnership Contract Parties' Roles and Responsibilities

Cooperation between the partnership parties is very important for execution and long term success of the partnership project. Clear identification of the roles and responsibilities of all partnership parties, the ability to distribute risks, and good communication between all beneficiaries ensures competence and transparency in project execution.

The best international practice for responsibility distribution is: "Each party shall take the responsibilities and risks that it can manage". This shall be applied in terms of the technical expertise and cost. As there are costs related to risk management including resources distribution, capital investments and technical expertise, each party shall determine the cost that it will bear in return for managing such risks. This mechanism will eventually result in more cost effective projects in order to benefit all the parties involved. Because of difference in requirements and needs from a project to another, distribution of risks will necessarily differ from a project to another. Identification of roles and responsibilities is not the government entity's mission alone. Such process shall be carefully considered by the private sector and the government entity and it shall be undertaken jointly as it is a joint effort to create a framework to design a commercial and financial structure guaranteeing completion of the relevant project.

1- Concept of Roles:

Partnership roles may be divided into three main categories:

- **Roles of the Concerned Government Entity:**

The first duty of the government entity is identifying and understanding



the roles of all parties and beneficiaries that help the partnership projects in a better way. Within the government entity, the major roles include:

- The government entity
- Partnership Committee
- Advisory Group (Advisors)

- **Private sector partner Roles:**

Private sector companies form unions to submit its offers for the partnership project. Individual companies within such unions may be:

- The Main Partner: who runs the whole union and addresses the project's establishment and completion risks.
- Operation and Maintenance Partner: Operator who is a part of the union due to its important role in revenue stream in addition to the financing, design and establishment management missions.
- Investors through contribution and debt: Investors through contribution are the companies of establishment and operation who take part in the actual service provision. Contributors wish to receive positive return from the investment.
- Creditors, such as banks, provide the union with most of the financing needed for the project.
- Advisors include financial, legal and technical advisers.
- Roles of other beneficiaries:

Other beneficiaries who may have important inputs in the agreement management include:

- The Supreme Financial Policy Committee and the Supreme Legislation Committee as there is a need to the existence of a supreme authority to approve the terms of agreement management and monitor the agreement execution.
- Other Government Entities: Other government entities that may be affected by the new partnership project shall be contribute due to benefiting from the project. The concerned government entity shall take



identification of the beneficiaries into consideration when it plans the partnership project.

2- Responsibilities:

To ensure value for the money paid, responsibilities of all parties shall be clearly defined. In the partnership projects, not all responsibilities are assigned to the private sector partner. The golden rule is that responsibility shall be assigned to the party that would manage it in the best way. Responsibility management process requires that the party thereto responsibility is assigned shall have the ability to assess it and to practice some control on the circumstances surrounding the assigned responsibility and the corresponding risks.

When every party wishes to control the circumstances surrounding its responsibilities in order to avoid the relative risks, it is necessary that all parties work as a team as risks, in most cases, depends on the presence of each other. Responsibilities are always categorized as follows:

- Private sector partner Responsibilities:

Activities often assigned to the private sector partner include:

- Establishment: Establishment of physical assets required for service provision while ensuring compliance with the budget, schedule and specifications.
- Design: Designing physical assets, work procedures, and ensuring that services meet the performance and quality standards.
- Maintenance: Maintenance of the physical assets and ensuring to keep them in a good condition.
- Operation: Operating the physical to provide the service agreed upon between the government and the private sector partner, and ensuring that the provided services meet the performance standards.

- **Government Entity Responsibilities:**

Activities typically carried out by the government entity include:

- Determining Standards and Instructions of the PPP and the declared laws and regulations for partnership projects execution: The government entity



usually define and identify the need for services and the audience expectations. It determines and describes the private sector's obligations which include approval, authentication, availability of the project location and its surrounding conditions, entrance to the location, required permits, and controls of procurement and/or subcontracting according to the government competition and procurement law and its executive regulations, and the applicable financial rules and regulations.

- Project Performance: The government entity is responsible for setting the performance standards and requirements. The requirements cover outputs, consumption, operation efficiency, maintenance needs and costs, quality of outputs during its lifetime and the operation cost. The government entity also monitors the private sector partner's performance and take decision in light of the monitoring result. The project management team within the government entity (Partnership Committee) usually carries out the missions of monitoring and performance assessment. This is a very important responsibility and it always represent the biggest part of the government entity's work during the partnership life cycle.
- Setting Standards for Ensuring Maintenance System Efficiency: At the time of transferring the project to the government, the project value and operational capacity have decreased as a result of consumption. To mitigate the adverse impact on the project resulting from operation, the government entity need to ensure efficiency of the maintenance system (including replacement of spare parts and consumables) executed by the private sector partner in light of the nature of works included in the project.
- Agreement Management: The government entity is responsible for the partnership contract management (and address any changes thereto).
- Staff Responsibilities: If the concerned government entity keeps a part of the service provision responsibilities, it shall ensure that it is ready for that on the staff level, and this includes equipping its staff with the required skills.



Item 4: Service Level Agreement (SLA)

If the partnership subject is service provision, a service level agreement shall be developed and it shall be well-defined. It shall further set the major performance measurements as a part of the partnership contract. SLAs are the best internationally recognized practices. The best practices recommend developing an SLA which sets - in advance - the quantitative measurements for the partnership project performance. To manage the partnership project agreement, the government entity shall ensure that the provided services meet the standards of the agreed schedule, cost, quantity, and quality. This includes the objective testing standards that show if the services are provided at the required level.

The best way to agree on the service level that shall be provided by the private sector partner to the government entity is SLA. In fact, it is a part of the agreement or a separate document attached to the agreement. SLA includes definition of the required service levels in terms of schedule, cost, quantity and quality in the form of major performance indicators that identify the previously set target to be achieved by the private sector partner. SLA mainly sets strict monitoring measures for performance during the project life cycle. Assessment and management of service shall be divided into categories and shall be defined in a way that allows the government to monitor such levels and the private sector partner's management efficiently.

SLA shall be developed by agreement between the government and the private sector with focus on working together in order to achieve the service provision targets. A period of initial testing may be required after signing agreement, where the service level is tested.

SLA shall address certain subjects such as:

- Required Performance Standard.
- Method of assessing and monitoring performance against this standard. For example: Major performance indicators that shall be used.
- The method of monitoring performance; the responsible party for assessment and analysis of date whether the private sector party, or the public sector one or an independent third party; what the inspection and test processes include; how and when such test can be repeated.



- Documenting and tracking service levels.
- The government right in conducting an auditing if the private sector partner is the party assessing performance.
- Service description.
- Purposes of service.
- Parties allowed to take part in performance assessment tests (such as: creditors, major relevant partners, etc.).
- Mechanism of results reporting.
- Penalties in cases of failure to meet the set performance levels.
- Identifying the liability for defects period.
- Distributing risks of failure in meeting the set performance levels between the main partner and the operator whether such risks are related to defects, improper operation or maintenance.

Item 5: Foundations of Collecting Fees and the Method of Calculation

A. Foundations of Collecting Service Fees

The partnership contract shall include the foundations according thereto the project company collects the fees for services provided or the works carried out thereby in one of the following ways or both of them:

First: By the government entity, in return for:

- Providing services meeting the agreed performance standards.
- Utilizing the service or the infrastructure provided by the project company.
- The minimum projected demand on the service or the infrastructure provided by the project company.
- Completing specific phases of implementation, operation or infrastructure provided that it shall be agreed thereon in the project's approved schedule.



- Achieving the internal return specified in the Requirements and Specifications Manual.

Second: Beneficiaries of the service or infrastructure of non-government entities within the framework specified in the partnership contract for calculating fees mechanism.

B. Method of Calculating Fees

The partnership contract shall identify the method of calculating fees to be received by the project company for the service or any infrastructure works executed according to the nature of the partnership project and its requirements. When identifying the fees, the following shall be taken into account:

- Fees of the services and works carried out by the partnership project shall be appropriate in light of the quality considerations.
- Observance of the consumer interest and the similar works and services prices if the economic prices apply.
- Achieving a financial return suitable for the private sector partner according to the foundations provided for in the project's feasibility study and assuming availability of the competencies required for the project execution and operation.
- When the prices of the services and works carried out by the project - if determined in the agreement - inflation rates shall be taken into account. Such prices shall be linked to clear change indicators during the agreement's lifetime to address the funding service and exchange rates if it would adversely affect the private sector partner returns and harms the agreement's financial balance. Therefore, the service price and its change is agreed on in the agreement documents.
- Any support provided by the government to the project.

C. Method of Collecting any Fees from the Private sector partner by the Government Entities

- When the government entities decide collecting fees for any in-kind assets provided, by the project company, for the private sector partner to be used in the project it shall take the following into account:



- Collecting fees appropriate for such assets and taking the alternative opportunity cost in account.
- Level of the financial return expected from the project.
- Project nature and requirements.
- Effects of collecting fees for the in-kind assets provided by the government.
- Project total cost.
- Rate of the financial return expected from the project.

Based on the government entity's (partnership committee) recommendation, the competent authority identifies the fees to be collected from the project company in return for the assets provided and the project land - if any - in light of the previous foundations commensurate with the project launched.

Third: Draft of PPP Projects Agreement

This draft is used as a tool that would help in legalizing and standardizing texts and provisions - as much as possible - before the project company concerned government entities.

- 1- Definition of Agreement Terms: This article reviews all definitions used in the agreements of the PPP projects.
- 2- Interpretation: This articles identifies the principles to be invoked in interpreting terminology, definitions and other terms used in the PPP agreement.
- 3- Partnership contract Period: In this article, the PPP agreement period is identified. The partnership contract shall identify its period or its validity period and the other dates to be identified in this paragraph, and it includes the following:
 - Date of signing the agreement.
 - Date of launching the project outputs or service provision.
 - Deadline: it is the last specified date for provision of outputs or service start whereas the government entity is authorized to terminate the PPP agreement immediately if such deadline is not met.
 - Agreement Expiry Date: the date specified on the date of signing the agreement as the agreement's expiry date.



4- Role of the Government Entity Concerned with the Partnership Project: This article identifies the government entity's role before signing the agreement and after output provision or service start. It can be summarized as follows (assuming that there is a design and establishment phase):

- Reviewing any changes in the designs of the entity representing the private sector and giving feedback on such changes taking into account non-approval/adoption. The private sector partner shall bear the new designs' costs.
- Reviewing the drafts of any documents in the phase of development.
- Reviewing the private sector partner activities related, for example, to quality management which shall be previously agreed and included in the partnership contract concluded between the two parties.

In order for the government entity to perform its role efficiently and effectively, it shall have adequate information about the work progress in the project with access to the project location.

5- Contracting Parties Important Timings: This article identifies the deadline for service start or provision of the partnership project final outputs. This paragraph identifies the date thereafter service or outputs cannot be provided. If the private sector partner cannot start providing the services before that date, the concerned government entity may terminate the partnership contract. In this case, the concerned government entity shall have an emergency plan. This part of the partnership contract shall also include a text providing for that the private sector partner shall bear the costs incurred as a result of not meeting the deadline thereby.

6- Mechanism of Submitting the Project Designs to the Government Entity by the Private sector partner: This article identifies the mechanism of submitting designs and information to the concerned government entity before providing the project outputs or services. The partnership contract shall include a mechanism facilitating the following:

- Submitting the designs and reviewing the major features of the project by the private sector partner and incorporating it as annexes to the PPP agreements.



- The government entity has the right to review the designs submitted thereto and giving feedback thereon to ensure fulfillment of the requirements and meeting the desired outputs specifications and project purposes. The inputs and feedback given by the concerned government entity - as stated above - do not exempt the private sector partner from the responsibility of addressing risks and consequences of confirming that the outputs or services will not be affected.
- The private sector partners shall have a mechanism for referring any slight changes in the designs which do not result in changes in service or the final outputs of the partnership project.

7- Guarantees: Guarantee means a confirmation of the validity of information submitted by any of the two parties - the concerned government entity and the private sector partner. Following are the key elements that shall be taken into account in drafting guarantee provisions and texts:

- Failure to meet any of the guarantee clauses mentioned in the PPP agreement does not result in termination of the agreement but it shall result in a claim of damages by virtue of the partnership contract texts on compensation for damages.
- Guarantee shall be provided by both parties - the concerned government entity and the private sector partner.
- The concerned government entity shall consider the cases of every project separately to ensure that it did not deliberately disclose any important information related to the project and the assets that may be possessed by the concerned government entity or at its disposal in order to show goodwill and reassure the private sector partner.
- The concerned government entity shall submit the guarantees related to the existing services and facilities information if such entity is the sole source of such information.
- If the concerned government entity is not the sole source of information or if the validity of information can be checked by an independent party, then the concerned government entity shall not provide any guarantees for such information. Conversely, the private sector partner shall depend on its efforts and use due diligence in considering all aspects



and review any available documents and information and the results of surveys provided by the concerned government entity.

8- Monitoring the Private sector partner Performance: The performance levels shall be identified in the PPP agreement in the form of an annex with more features making it an official document, as the performance levels are usually identified in the SLA. It should be noted that the SLA shall be annexed to the partnership contract as it is a part and parcel thereof taking the following into account:

- This article shall include a clear identification of the methodology to be followed in monitoring the performance of agreement execution.
- This article shall identify the dates of achieving the desired performance levels. Some projects may face some obstacles in achieving the required performance levels in the initial phase. In this case, the government entity shall show some flexibility with the private sector partner regarding achieving the required performance levels.
- This articles provides for the entity bearing the monitoring costs. And whereas a certain part of the monitoring is internal, the private sector partner shall bear the costs.

In case of any review by the concerned government entity, it shall bear the costs of such review.

- This article of the PPP agreement identifies the method of addressing the qualitative factors assessing the performance level (for example level of staff readiness to help) if the quantification factors cannot be identified.
- This article of the PPP agreement identifies the requirements of monitoring activities reporting. Regarding the key aspects to be agreed in the reporting article of the PPP agreement, it shall include the required reports and its timings.
- This article shall include a clear identification of the consequences of any failure by the private sector partner to meet the desired performance levels.

9- Maintenance: This article addresses the responsibilities of the partnership project assets' maintenance.



The maintenance works shall be performed in order to keep the project in a condition that would enable it to meet the specifications of the outputs envisaged in the PPP project during the lifetime of the project. And whereas the maintenance works are usually the private sector partner's responsibility, it shall have the freedom to identify the maintenance works in terms of its nature, timing, rate of execution. The private sector partner shall take any necessary measures to ensure that the maintenance works do not overlap the normal operations or affect it.

Another matter that shall be addressed in this context regarding maintenance is the project and its assets condition when the agreement's expiry date approaches, as it is assumed that the two parties agreed, on the date of signing the agreement, on the specification of the project and its assets condition when the partnership contract expires.

10- Change in Partnership Projects Performance: Changes in output provision or the service level is inevitable and cannot be avoided especially in the projects that last for very long periods. Therefore, a change mechanism clearly describing roles, responsibilities and procedures when a change appears shall exist, in addition to effective change measures that can be executed without delay.

Regarding changes, it is whether:

- Expected Changes: It can be defined and identified in the bidding process and it shall be expected and included in the solutions submitted by the entity representing the private sector in response to the bidding requirements.
- Or Unexpected Changes: It is unknown and appears during the project period.

Both types of changes require adopting changes mechanism in the PPP agreement as this area is very important and sensitive.

The following shall be taken into account:

A. Identifying the Mechanism of Change Reporting: Identifying a clear mechanism for notification of changes by both parties. Goodwill shall be considered while using such mechanism, and the original specifications and the required action resulting from the new changes shall be mentioned.



Differences in the financial aspects and timeline shall be specified and clearly identified.

B. Private sector partner Estimates: The private sector partner is entitled, in its capacity as the entity that should execute the required changes, to have a period of time to consider the changes and its dimensions if so required by the concerned government entity. This entity should also clarify that the private sector partner may reject carrying out the required change if it is not reasonably accepted. In this case, the rationale for rejection and the conditions requiring rejection shall be stated.

If the private sector partner agrees to carrying out a change, the change mechanism shall clarify the schedule of the private sector partner's response. This is done by submitting a design including the new change and any costs incurred due to the change or resulting therefrom, and the entity bearing such costs (usually, the entity that made or required the change bears its costs).

C. Approval of the concerned government entity: The approval procedures followed by the concerned government entity shall be clarified with a sufficient period of time for considering the private sector partner estimates.

D. Execution of Changes: A schedule shall be set for executing the changes once the required approvals are obtained. Different time periods shall be identified for the required change elements according to its size and complexity.

11. Protection from Delay or Outputs below the Agreed Level: In this article, the concerned government shall ensure it will not delay provision of services or outputs or providing them without meeting the required level. The concerned government entity shall request guarantees protecting the private sector partner against the late start probability. This shall be made in order to achieve the value for the money agreed thereon with the concerned government entity. The government entity shall also decide that the private sector partner should pay the same amount of attention paid by the concerned government entity with respect to the start of the project output or service provision. Otherwise, the private sector partner's dues, to be paid in unit, will be delayed or deducted as a penalty. The concerned government entity may consider different options of protection in this regard.



12. Delay of Project Outputs Due to Uncontrollable Reasons: This article identifies the cases where the private sector partner shall be exempted from the liability for delays in output or service provision. And whereas the private sector partner pledges starting provision of outputs or services on a certain date, there may be some circumstances that would exempt it from the liability of failure to meet such date. Such circumstances are called "Emergencies" because it is beyond the reasonable control of the private sector partner. Emergencies include three categories:

- Reasons Requiring Compensation: It is the cases where the concerned government entity bears its consequences, and the private sector partner shall be compensated for it.
- Reasons Exempted from Liability: It is the cases which occur, at best, under the private sector partner's management but not necessarily under control of such entity. Such reasons do not give rise to a right to terminate the agreement.
- Force Majeure: It is the events and cases which do not fall under the responsibility of either party and it would give rise to the right of terminating the agreement.

13. Pricing and Payment of Entitlements Policies: This article identifies the core of the PPP agreement - payment of entitlements mechanism - as the payment of entitlements mechanism forms the core of the agreement for the following reasons:

- Enforces risks distribution, financially, between the concerned government entity and the private sector partner.
- Decides the method of payment by the concerned government entity to the private sector partner (if this system is adopted).
- Identifies incentives for the private sector partner in order to provide the outputs or services in a way achieving the value for money.

14. Results of Low Level Performance: This article clearly identify the steps that shall be taken against the private sector partner if the product or service levels are below the agreed level.

The private sector partner's low level performance depends on the sur-



rounding circumstances and conditions. The partnership contract concluded with the government shall include the measures to be taken in cases of failure to meet the agreed performance levels as stated above. In general, there are two options for addressing poor performance:

- Financial arrangements (deduct from entitlements).
- Non-financial arrangements: It may vary from sending early warning to the private sector partner regarding changes in the project to terminating the PPP project agreement.

The concerned government entity may only deduct from the entitlement after a detailed study of the conditions and circumstances that resulting in failure to meet the required performance level. In this regard, good practices require including a separate annex to the agreement in the form of a schedule summarizing the mechanism used to apply deductions from the entitlements.

15. Change in Law: An article indicating the risks of changes in law shall be drafted, and it shall identify the types and patterns of change as the law changes may include risks that can be expected by the private sector partner. Therefore, such entity shall expect the risks and take the required precautionary measures and taking it into consideration while submitting the bid by the private sector partner. Conversely, some of law changes may not be expected by the private sector partner or the concerned government entity. In this case, the partnership contract shall address such risks by distributing it between the two parties. The best way for addressing such risks is by sharing it between both on the basis that both of them may have a little impact on enacting laws and legislations and their abilities in addressing the risks of law changes may differ.
16. Early Termination of the Partnership Project Agreement: An article indicating results of the agreement's early termination shall be drafted. It shall embody the purposes of the two parties of the partnership contract and their wish and keenness to execute the agreement entirely, maintaining it effective till the end of its term and on its expiry date. Despite of that, the PPP partnership project may be terminated before its expiry date for any of the following:



- A. Early termination of the agreement due to failure on the concerned government entity's party:

This article shall include the cases that can be considered a failure on the concerned government entity's part which authorize the private sector partner to terminate the partnership contract concluded with the concerned government entity.

Some cases of breaching the agreement terms give rise to the private sector partner's right to terminate the partnership contract concluded with the concerned government entity such as the cases requiring compensation. Such cases shall include, only, the cases that represent a breach of the contractual obligations on the concerned government entity's part in a way making the private sector partner unable to meet its contractual obligations (or makes its mission economically or operationally unfeasible). When the partnership contract is signed with the private sector partner, the concerned government entity shall make sure that the private sector partner has the necessary measures to mitigate, as much as possible, the consequences of the government entity's failure to meet its contractual obligations. As for the circumstances giving rise to the private sector partner's right to end the partnership contract with the concerned government entity, it shall be considered for each project separately. The private sector partner shall bear in mind that the cases of the government entity's failure to meet its contractual obligations may be addressed as cases requiring compensation, and terminating the agreement is the last resort which should be sought only after exhausting all other options.

- B. Early Termination of the Agreement due to Failure of the Private sector partner:

This article shall indicate the cases where the concerned government entity is entitled to terminate the partnership project agreement concluded with the private sector partner due to its failure to meet its contractual obligations. It shall expressly provide for the reasonable grounds for terminating the partnership project agreement concluded with the private sector partner due to its failure to meet its contractual obligations.



- C. Early Termination of the Agreement Due to a Force Majeure: This article shall clarify the rationale for terminating the PPP agreement in the force majeure events.
- D. Early Termination of the Agreement Due to Corruption: This article shall clarify the corruption cases justifying the early termination of the agreement. This article is related to the private sector partner practices (or sub-partners - creditors) including bribes, corruption, forgery and embezzlement related to procurement and performance of the partnership contract concluded with the concerned government entity. This includes giving gifts and paying money and other practices of corruption.
- E. Returning the Project Assets to the Concerned Government Entity: This article shall identify the conditions and circumstances in which the project assets shall be returned to the concerned government entity when the project is early terminated or expires. This may include an assessment of the project assets and the amounts due to the private sector partner. The aforementioned depends on the nature of the partnership contract concluded with the concerned government entity. The mechanism of payments related to the project's termination or expiry shall be defined. The article shall also identify the method of inspection and testing in order to determine the project assets condition before returning it to the concerned government entity. If the project assets are not in the condition stipulated in the agreement, both parties shall agree on the necessary corrective measures before returning such assets. As for the project assets and remedial actions regarding repair, it shall be addressed for each project separately.

This article shall further identify the guarantees to be provided by the private sector partner to the concerned government entity. The PPP project agreement shall include a text obliging the private sector partner to indemnify the concerned government entity against any damages that would affect it due to provision or non-provision of the project outputs by the private sector partner. Bids submitted by the private sector partner usually cover such contingent liability to the extent not covered by the insurance company. In general, there are five types of liabilities that require the private sector partner to provide



guarantees therefor to the concerned government entity, including:

- Property Damage
 - Breach of laws and regulations
 - Death and personal injury
 - Third party claims
 - Failure to meet the private sector partner's guarantee requirements
- F. Confidentiality: In this article, both parties shall agree on maintaining the information exchanged therebetween classified. Both parties shall balance between the need for providing information service the common interest taking into account the principle of transparency on one hand and the sensitivity of commercial information exchanged by both parties on the other hand. Information can be confidential for various reasons including:
- National security.
 - Sensitive commercial information as any information about the private sector partner shall not be disclosed to other competitors.
- G. Intellectual Property Rights: The private sector partner may need to use the intellectual property rights in the project. The intellectual property rights may be owned by the private sector partner or a third party and in this case, a license shall be obtained to use it. Both parties - the private sector partner and the concerned government entity - shall not breach the intellectual property rights requirements. Therefore, breaching the intellectual property rights shall be addressed in this article.

Breaching intellectual property rights by the private sector partner means that all costs incurred as a result of such breach shall be borne by the private sector partner. The private sector partner shall notify the concerned government entity of any the intellectual property rights breach if it would affect service provision. As for the breaches of intellectual property right by the concerned government entity, all costs incurred due to such breaches shall be borne thereby. This paragraph shall also address the method of dealing with the intellectual property rights in case of the agreement's early termination of expiry.



H. Insurance: An insurance coverage shall be provided by the private sector partner including coverage of losses that the private sector partner cannot secure from its resources. The insurance coverage may not be available for a reasonable cost or in all conditions and circumstances. Consequently, both parties shall consider the types of the required insurance coverage and agree on it.

Insurance requirements to be met by the private sector partner shall address the following:

- If it is possible or not to use the insurance coverage for managing certain risks and the extent of such use.
- Level of the required insurance coverage and its sustainability.
- Ensuring the proper use of the measures related to any claims by the private sector partner.

I. Dispute Settlement: This article shall identify the procedures of dispute settlement by virtue of the PPP project agreement provisions. Dispute settlement shall not be through resorting to judiciary as a first option. But, disputes shall be settled through the goodwill efforts by both parties in amicable meetings held between both parties and referring the matters to the senior management and senior executive officers in each party. If the dispute cannot be settled amicably as aforementioned, resorting to judiciary shall be the last resort.



Framework No. (12)

International Practices of Addressing the Time Value of Money

PPP projects usually take the form of long term agreements where the time value of money changes (cash price / value of the cash unit/ cash value of the currency units) during the project's lifetime. Also, inflation rates, operation costs and exchange rates may affect the time value of money. This would, in turn, change the value of the PPP agreements. Consequently, both parties shall work together to adopt provisions and controls addressing changes that may affect the currency cash value in certain economic circumstances during the agreement's lifetime. Adopting of provisions and controls as stated above would help the private sector partner to address any un-counted or unexpected changes in the operational costs, and at the same time this will help the government entity ensure that the agreed price will not exceed the future actual market price. Addressing the difference in the cash units' value with passage of time can be addressed through reviewing the prices in order to achieve balance in the inflation or operation costs impacts. This will lead to price control within the actual purchasing power through adjusting the paid amounts and changing it according to the inflation rate and operation costs.

Consequently, PPP project negotiators address difference and change in the currency cash value through adoption of a mechanism for reviewing prices at regular intervals during the project execution period. For example, it may be reviewed once every five years. Adoption of the above mentioned mechanism would be beneficial for the government entity in case, for instance, there are signification reductions in costs due to technical development. Anyway, regarding significant increases in costs, the private sector partner may claim that the government entity should bear a part of the cost increase which was beyond the private sector partner's control. These matter constitute the subjects of negotiations while completing the procedures of contracting in the PPP framework.



Phase 5: Monitoring the Partnership Projects Performance

First: Parties of Partnership Projects Monitoring

Second: Monitored Phases in the Partnership Projects

Third: Partnership Projects Monitoring Procedures



Phase 5: Monitoring the Partnership Projects Performance

This phase aims at ensuring that any project including the government as a party thereto is subject to the national control regulations and it applies to the partnership project with the private sector. For major projects, usually an internal control team is formed to ensure compliance with the agreement and abidance by its terms. Therefore, it is necessary to form a review or control unit in any partnership project in order to ensure compliance with the legal, regulatory or any other requirements. Usually, all aspects of the project are monitored including abidance by the decided operations and procedures, project's financial aspects, legal conditions, performance development and the administrative processes and procedures.

To that end, Article (13) of Law no. (22) of 2015 governing and regulating PPPs in Dubai states:

“Financial Audit Department shall supervise and monitor the partnership contract execution in accordance with the law of its establishment and the provisions thereof, the decrees issued by virtue thereof, the partnership contract terms and the regulations applicable in the Emirate”.

Article (34) of the law on (Verification of the Partnership Project Feasibility) states:

“Without prejudice to the Financial Audit Department's role, the concerned government entity shall monitor the project establishment and equipment phases; provide the services included in the partnership contract, make sure that the quality standards are met. To that end, it may appoint representatives for monitoring execution according to the terms and conditions of the partnership contract, laws and regulations applicable in the emirate provided that such entity shall submit periodical progress reports to the partnership committee according to the procedures, controls, and terms defined by the decisions issued by this law”.

First: Parties of Partnership Projects Monitoring

Best practices indicate that there are obligatory monitoring elements for all partnership projects. Other types of monitoring are recommended if there are sufficient time and resources. It is represented in the following:



1. The Government Entity Concerned with the Partnership Project:

The responsibility of providing and ensuring continuity of services to citizens in the partnership projects lies on the government as the partnership projects provide its services in the government's name. If the provided services do not meet the standards mentioned in the agreement in terms of quantity, cost or quality, the government may be legitimately criticized. Consequently, the government shall monitor the service provision closely in order to enforce the provisions of the agreement and its annexes. Therefore, it is necessary to establish an organizational structure within the concerned government entity to monitor and follow up the agreement execution and the preparation therefor shall start in the awarding phase in order to ensure agreement execution once it is authenticated.

The responsibility of monitoring the partnership project lies on the government as the contracting person, regardless of being a government entity, will manage the partnership contract and monitor execution of the contractual obligations of the project company as specified in the partnership contract. Such agreement will control the relationship between the government and the private sector partner until the agreements expiry date.

2. Audit Government Entities:

Best practices recommend depending on external audit entities in order to ensure meeting the constitutive and operational requirements of the partnership projects even if such projects are characterized by strict adherence to the requirements of financial situation integrity and hires an external auditor.

Second: Monitored Phases in the Partnership Projects

- Preparation Phase: This phase starts as of the date of authenticating the partnership contract by the concerned government entities.
- Operation Phase: This phase starts on the date of beginning operation processes and providing service or product until it is completed as specified in the partnership contract.
- Phase of Project Delivery to the Government: It is the phase that means end of the contractual relationship between the government and the private sector partner.



1- Preparation Phase:

The government shall determine an internal or external entity (preferably independent) to help in monitoring execution of the partnership project during the constitutive phase. Such entity shall be determined by agreement with the project company according to the partnership contract provisions or any agreement to be signed later with the project partner. The entity monitors the project and submits fair and neutral reports to the government and its role is purely technical. The government shall follow up other matters including legal, financial and other accidental matters.

The monitoring entity missions include:

- Reviewing and monitoring works to ensure it is conforming the agreed designs and drawings.
- Issuing monthly reports and certificates of achievements after the necessary tests.
- Identifying the delays and defects that require taking actions by the government to enforce the agreement terms.
- Deciding if the costs of any works or services are within the reasonable limits as specified in the partnership contract.
- Reassuring the concerned government entity about the project's progress.
- Play a mediating role in settling disputes between the project company and/or the government and/or any financing entity.
- Checking the extent of the project company abidance by its contractual obligations related to this phase.

2- Operation Phase:

Mechanism of monitoring execution of the project by the government during this phase is limited to establishing a unit for managing the partnership project. The aims of such unit are:

- Monitoring the project company's abidance by the standards of performance and maintenance.
- Identifying the delays and defects that require taking actions by the government to enforce the agreement terms.
- Issuing periodical monitoring reports.



Before the start of this phase, the concerned government entity shall assign a unit for managing the project and it shall be different from the unit that supervised the project in the preparation phase due to the different competencies and experiences required in those two phases. The unit undertakes the following:

- Supervising the project company operations in terms of outputs, and quality levels of the required services against the set standards.
- Supervising the proposals of the plan for addressing the project company's failures to abide by its obligations and imposition of penalties.
- Managing existing dispute settlement and changes.
- Ensuring that the project company operations satisfy the requirements specified in the partnership contract.
- Availability of the project assets and delivering it at the end of the agreement's period.
- Preparing quarterly monitoring reports for the first two years and annual reports for the subsequent years. Copies of such reports shall be sent to the competent authority to take the appropriate decisions.

If the project company breaches its obligations, the government entity may, at any time, perform verification, auditing, monitoring and testing processes for the services provided in order to ensure that it satisfies the agreement conditions. If the breach is repeated or if there are many complaints about the provided services or the quality of the final product, the government entity may refer the matter to the higher competent authority.

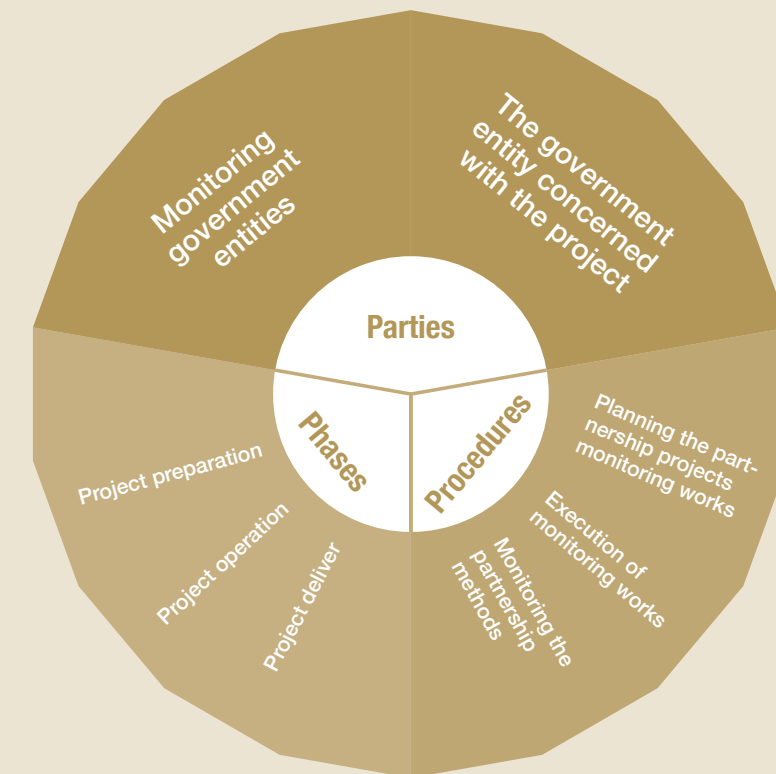
3- Project Delivery Phase:

Agreements of any partnership project always include a clear legal text obliging the executing or sponsoring company of the project to deliver all assets and properties of the project on the specified delivery date. It shall be delivered in a good condition and free of any defect that may adversely affect the project's future performance after it is transferred to the government. If there are any defects in the project equipment, the project execution company (the private sector partner) is legally obliged to fix such defect on its own cost. Also, subcontractors and suppliers dealing with the company shall bear the costs (if any of them caused, in any



Figure 3-6

Monitoring Partnership Projects in Dubai





way, a defect or serious issues to the project, its assets and/or important equipment from the viewpoint of the host governments which will be the project's main future beneficiary).

Consequently, the project execution company or the private sector partner usually undertakes to deliver the project, at the end of the agreement term, in a good operational condition and free from any defects. It further undertakes to deliver the project assets (equipment) in a good condition (through doing a comprehensive periodic maintenance during the agreement's operational period).

It is clear that the main purpose of the government entity's insistence on all these undertakings and guarantees is ensuring that the project, when delivered, will be commensurate with the minimum requirements of construction and operation quality, performance and maintenance standards (and the environmental compliance). Good practice in this regard includes terminating the operation agreement (i.e. delivery and transferring ownership to the host government) while maintaining or extending the maintenance bonds for the coming years (even after the actual ownership transfer). This is to ensure that the project execution company is compliant with the future comprehensive maintenance processes (as long as it will be profitable according to the maintenance agreement to be reached by both parties).

Third: Partnership Projects Monitoring Procedures:

These procedures can be carried out by the concerned government entity, the monitoring government entity, or both of them. Partnership projects monitoring procedures include major three phases:

Phase 1: Planning the Partnership Projects Monitoring Works:

Planning is the most important phase in partnership project monitoring. It is inconceivable to have a positive result in any monitoring mission without proper planning.

1- Forming the team charged with partnership projects monitoring:

Before the monitoring mission starts, the government entity shall form a competent and experienced team for such mission as this type of mis-



sions requires technical capabilities to study laws, regulations, agreements and contracts related to the partnership subject, considering the financial statements, analyzing data and using the mathematical and statistical methods, etc.

The government entity shall equip its staff with the required skills and practical experiences to carry out the monitoring mission. This can be achieved through joining some staff members with external specialized organizations to gain the necessary experience and take part in workshops, seminars and conferences related to the partnership subjects, and benefiting from the other countries experiences. Furthermore, the government shall seek the help of consulting firms – if necessary – through contracting with some legal and financial experts and consultants in order to ensure accuracy of the conclusions and findings. The government may also contract with consulting firms including consultants, technicians and analysts in some of the inspection phases – whenever required –, provided that they shall not have any relation to the project or the facility subject of partnership. In case of hiring consulting firms, the contract shall be for an appropriate period of time in order for the government staff members to benefit from the experiences and develop the skills required to carry out the projects monitoring mission.

If the government entity did not carry out any mission in the partnership field, it is appropriate to form the workgroup of the members who previously took part in the performance monitoring missions as monitoring partnership projects are similar to performance monitoring.

Most important knowledge and skills that the team members should have can be summarized as follows:

- Full knowledge of the partnership essence and its causes.
- Ability to analyze and compare information and data.
- Knowledge of the laws and regulations governing the partnership.
- Ability to draw findings and recommendations.
- Knowledge of the relevant entities and coordinate therewith any matters related to the partnership projects.



- Ability to learn how to manage the public project funds to be included in the partnership projects.
- Awareness of the economic, social and commercial trends in order to focus on the significant aspects related to monitoring.

2- Conducting an Initial and Compressive Survey of the Facility or Partnership Project

Initial survey is one of the main pillars of the partnership monitoring mission. Through the initial survey, a clear and comprehensive image can be formed about the mission nature and the procedures and means required to carry out such type of monitoring.

The purpose of this phase is collecting analyzing basic information and data. In such phase, success of the mission can be judged as the initial survey phase requires collection sufficient information about the partnership project in terms of the project's specialization, organization structure before and after the partnership, learning the project activities, financial situation of the project (budget/assets/liabilities) or any other information.

Initial survey means include using researches, laws and regulations and analyzing financial statements. Interviews are an important tool in the initial survey whether with senior officials concerned with the partnership matters or with the different departments. Through interview, some unclear aspects can be clarified. It may also add some information that would help in monitoring. Such information may not be available in the documents obtained by the workgroup. Information obtained during the survey phase help in setting the overall objectives, policies, procedures and work phases.

3- Developing and Integral Program for Monitoring:

Work plan includes developing a written program for the mission clarifying the work progress during the execution phase. The key elements that should be covered by the program include:

- A. Monitored entity.
- B. Monitoring purposes and scope.
- C. Names of the monitoring team members and name of mission supervisor.



- D. Time period needed for carrying out the mission.
- E. Detailed monitoring measures and procedures.

Based on the information and data obtained during the survey of the facility or partnership project and the mission program's key points as stated above, the government entity may determine the mission is feasible or not.

Phase 2: Carrying out Monitoring Works in Partnership Projects

This phase includes the following:

1- Reviewing laws, regulations and systems related to the partnership projects

Team members should review laws, regulations and procedures governing the partnership in order to check compliance of the concerned government with the rules and regulations set by the legislator.

2- Reviewing the partnership project procedures

In this phase, team members should check the integrity of the partnership project procedures in order to understand and be familiar with the partnership methods and its impact in achieving the partnership desired goals. This include checking the following:

- Maintaining the project staff rights after including it in the partnership.
- Transferring the project assets to the government with the targeted returns.
- Reviewing the partnership's immediate targets including any liabilities owed by the project to be included in the partnership.
- Confirming that the project partnership targets are relatively long term including development of the market economy and the social and environmental considerations.
- Ensuring rectifying the partnership projects situation in order to improve its performance and effectiveness.

3- Monitoring the Partnership Assets and Liabilities.

In this phase, the team shall do the following:

- Ensuring that the concerned government entity conducted a comprehensive assessment for the project before including it in a partnership.
- Ensuring that the assessment is comprehensive, independent and neutral.



- Ensuring that those charged with preparing the partnership project have no direct or indirect interest as people in charge of the partnerships may wish to achieve personal profit and at the expense of public interest. Such risk may take various forms and it thrives in the midst of ambiguity and uncertainty surrounding such business processes.

Project assessment before partnership contributes to the following:

- Taking decisions regarding partnership.
- Determining the appropriate method for partnership.
- Determining whether the partnership project owes significant liabilities to the government or any government organizations and whether those debts were written off entirely or converted into equity capital or new debts and its impact on the financial feasibility study.
- Setting criteria for assessing proposals, whether technical, financial or legal, and determine the suitability of such proposals. If the submitted proposals differ from the amounts mentioned in the study, it shall be reconsidered. Assessment criteria shall be clear and consistent with the partnership purposes.
- Expecting the partnership revenues.
- Long term agreements include a periodic review of the rent in order to be flexible and commensurate with the inflation rate and prevailing prices.

4- Partnership through franchising:

While inspecting the partnership through franchising works, the monitoring team shall check the following:

- Adequacy of the franchising agreements' provisions and balance between rights and obligations in a way benefiting the public treasury.
- Franchising agreements include a clear scope of work.
- Clear payment terms and method and the costs to be borne by the private sector partner and the government.
- Clear and specific time period for the franchising.
- Terms and controls of the method of dealing between the franchisee and other parties.



Framework No. 13

International practices of partnership projects monitoring planning

International practices on monitoring phase recommend:

1. Clear executive plan must be developed:

Monitoring procedures are very significant for the PPP project due to their sensitivity and deep impact on monitored parties. Either internal or external monitoring, it is fulfilled by following these steps:

- Prepare lists for monitored items - These lists shall contain the type of general information- including, for example, monitored project data, administration, date, time, names and data of monitors, etc. It also includes specific information related to monitored fields and activities. This part shall include detailed information about how to conduct monitoring for each activity separately, and what information to be collected.
- Inform partnership project team members or who are subject to monitoring of the monitoring lists, provided that the lists are sent, upon completion, to such monitored parties. This is for information, review and readiness.
- Design and report monitoring schedule- Monitoring schedule shall be designed on the basis of equal periods of time, and the responsibility shall be assigned to the monitoring team members to take over responsibility of monitoring. The team leader shall design the schedule to be able to organize and depend on time periods when the activities and fields that must be monitored are distributed, in order to allocate a specific period of time for each activity or specific field.
- Study of regulatory requirements and must-follow procedures according to the fields and activities that must be subject to monitoring.
- Hold a preliminary meeting for conducting monitoring: the main drive of the meeting is to define the intention and purpose of monitoring, in addition to discuss the schedule and make any changes when needed. The meeting is very important further to its pivotal role in control of monitoring developments and steering the follow-up and surveillance process towards conformity against process and procedures improvement.
- Check and take some of the records: the evidence and data must be obtained and collected when checking and verifying that the activities are meeting requirements. Statistical records shall be taken on the basis of random selection without previous planning, provided that the period is covered since the last conducted review.



- Record results: upon records sample study is completed and data are verified, the results shall be examined and discussed with monitoring team leader. After the results are accepted and agreed upon, they shall be documented in order to be examined with monitored parties within the partnership project.
- Prepare the report: the report that contains the target description is drafted of monitoring, summary of results, and any key remarks that draw the attention of the management or informing it thereabout.
- Agree on corrective actions and completion dates: the team leader will arrange for holding a wash-up meeting with monitored parties to discuss the monitoring results and outputs. Once the results are agreed upon, the necessary corrective actions shall be taken with defining completion dates and responsibility of monitored team towards ensuring implementation of such corrective actions.

2. Partnership projects monitoring shall be implemented through KPIs:

The measurement of key performance indicators of PPP project throughout such project is a very important process in project monitoring and observation of work flow progress. The PPP agreement shall include –as part and parcel thereof- a detailed agreement of the service level or the quality of outputs with KPIs, provided that the agreement includes:

- Parties of outputs or service level agreement
- Agreement validity period
- Job tasks and activities covered by outputs or service level agreement
- KPIs and outputs or service standards
- Targeted levels of performance in particular
- Measurement mechanisms

KPIs responsibility must be defined. In this regard, there are multiple options, either a specialized unit of the regulatory body or each team prepare reports about KPIs related to a field assigned to it by the team leader. In this regard, the inputs and visions of partnership project parties have inestimable value to identify KPIs, and approve standards in conformity with performance comparison on the basis of final product or service provided to all beneficiaries. The process of KPIs measurement must be characterized by transparency and visibility for the management team of the PPP project and all stakeholders in the project in order to achieve a clear understanding of how to assess the actual performance against established goals.

Information formats and sources necessary for KPIs measurement shall be a part of service level agreement or agreement conditions, and such formats and sources must be defined, accepted, and agreed upon within the framework of such agreement in order to enable regularity and harmony in the performance assessment in the partnership project by all stakeholders.



3. Results of performance monitoring of partnership projects must be studied and analyzed:

After conducting monitoring and measurement of KPIs of PPP project throughout the project period, result analysis process comes. Results must be reported to stakeholders and competent government authorities once the KPIs are measured and monitoring rounds are made. Monitoring mechanism through KPIs will depend on:

- Verification of measurement results: it depends on the KPIs to verify measurement results in order to ensure they are in conformity with the established and agreed upon operations methods and with formats contained in service level agreement.
- Performance Comparison: comparing the actual performance in the project against the agreed targeted levels of performance in SLA.
- Gap analysis: when the performance is below the required level, reasons and request for clarification and analysis are required from the competent team which is responsible for the relevant KPI. The analysis shall include a detailed explanation of the reasons for the low performance below the target level.
- Trend analysis: conduct an analysis for the project performance in the future based on the previous performance data where there are many statistical methods to help anticipate future performance, helping the management team of the project to take the steps necessary to ensure the performance reach to the accepted desired levels.
- Documentation and preparation of documents: the monitoring results are documented and included and detailed in documents containing clarifications of any cases of non-conformity with reference to any violation of policies and procedures or any breach of laws and regulations.
- Discussion: discuss and agree on the final findings with the monitored entity, during the closing meeting with such entity. The purpose of presenting findings to the monitored entity is to become acceptable and valid for action. It is important that the monitoring findings are stemming from actual facts and supported by proofs, arguments and evidence.
- Action plan: set an action plan for required corrective actions with the monitored entity, and define the target dates and aspects of responsibility for the closure of all open or outstanding clauses that have not been settled. One of the best practices in this regard is to allow the monitored entity to take a decision on the optimal corrective action necessary to ensure resolve and remove the root causes of any problems.
- Prepare reports: prepare reports on the results and reporting them to the key stakeholders for study and action. In this regard, it is important that the stakeholders are notified of the performance according to its key indicators to inform them about the course of events in the project and have their support for the actions needed to ensure the success of the project.
- The best practices refer to the need for classification of results obtained from the performance assessment sessions and monitoring rounds, and sort these results by priority based



on product or service provision and the progress of work in the project.

4. Significance of following-up implementation of monitoring results recommendations

There must be a kind of follow up to ensure that gaps are filled and bridged. This must continue throughout the project period. Once corrective actions are taken based on KPIs results and monitoring rounds, there have to be a kind of follow up for action plans to correct the situations within the monitoring results and achieve KPIs goals. The monitoring team shall be responsible for follow up through evidence obtained from the monitored entity to prove that the necessary measures have been taken.

Monitoring results and procedures facts resulted therefrom are saved in a special file to ensure that the same problems don't occur again. In case of specific problems are repeated, a new analysis of the root causes shall be conducted to know the real reasons. In case of corrective actions or steps are not completed on the dates specified, the issue shall be referred to the competent authority in the PPP project for necessary action. Corrective actions shall be taken and dealt with seriously by all stakeholders, and they shall not in any case be viewed as unnecessary actions just to satisfy the monitors. If corrective actions are not closed by implementing them in the way agreed upon, the partnership project will be needlessly at risk, which may result in a significant impact on the project financially and/or operationally. The government entity and stakeholders of the project shall take a firm stand and deal with monitoring results seriously. Their message to others shall be that they must deal with and resolve the detected problems irrevocably. The stakeholders (financers of partnership project) shall interfere at any time if they feel partnership project management team can't take over its responsibilities. They shall also deal with the monitoring results and corrective actions resulted therefrom.

5. Importance of the monitoring government entity role:

Monitoring government entity shall review KPIs results and monitoring outputs in the project on a quarterly basis, so that all internal monitoring results made during the previous quarter are checked. Arrange for holding a meeting to discuss the monitored project key results and take necessary actions accordingly. And conduct a discussion and take measures towards results haven't been checked yet, and analyze monitoring effectiveness and efficiency and make improvements.

And also define the direction of corrective actions required to be taken in accordance with recognized standards and address any problems outside project scope, which may require the concerned government entity and competent authority, this include- for example- policies amendment. All administrative review meeting results must be documented and distributed to all project officers as being responsible for implementation of any changes in the partnership project, and submit reports on partnership project performance to the concerned parties and competent entities.



Conclusion

As partnership contract period with the private sector is about to come to an end, the concerned government entity shall assess different options available on partnership project with the private partner, this may include:

- Extend partnership contract with the same private partner in case partners are convinced that partnership is useful for them, and then continue under a new partnership contract, this is a good option.
- Take charge of partnership project by government entity itself, this requires a great deal of planning and study of the various aspects of partnership project.
- Award PPP agreement to a new private partner- this option requires a new agreement between the concerned government entity and the new private partner.

In case of a decision that the current private partner shall not continue in partnership project, the main element government entity shall focus on is to ensure a transition free of any difficulties in partnership project either for government entity itself or a new private partner.

The main elements that shall be addressed at this phase include:

- A decision on the option to be adopted upon expiration of public-private original partnership contract shall not be left until agreement expiration, but shall be carefully studied in the first phase- planning and study phase of partnership project- since this decision impact all decisions related to the project and its cycle.
- It is important upon roll-out of a new partnership contract with the private partner that government entity observes the lessons learnt from its last agreement and it shall also be aware and deal with the problems happened before they occur in the new agreement.
- In case of the government entity decided to be responsible for project management, it shall be aware of its capability to possess and utilize necessary resources.
- Define decision making criteria on the best option to meet government entity needs in terms of financial value and customer needs as such criteria shall be set by government entity at an early phase of project in consultation with monitoring entities of partnership project.
- Full awareness and study of any changes may occur when the project outputs are presented in case the project is taken over by government entity or awarded to a new private partner.
- Consultation with stakeholders on transition and its mechanisms, such consultation is extremely significant during any transition period of a PPP project.



References

First: Arabic references

1. إصدارات البرنامج القومي لشراكة القطاعين العام والخاص. الوحدة المركزية لشراكة القطاعين العام والخاص. الإصدار الثاني. جمهورية مصر العربية. 2009.
2. الدليل الإرشادي لشراكة القطاعين العام والخاص. برنامج التعاملات الإلكترونية الحكومية. المملكة العربية السعودية.
3. د. إسماعيل حسين إسماعيل. د. شكري رجب العشماوي. نظام BOT لتمويل وإدارة وتحديث مشروعات البنية الأساسية. الدار الجامعية للطبع والنشر. الإسكندرية. مصر 2013.
4. دليل الأونسيتال التشريعي بشأن مشاريع البنية التحتية الممولة من القطاع الخاص. لجنة الأمم المتحدة للقانون التجاري الدولي. مطبوعات الأمم المتحدة. نيويورك 2004.
5. د. سعيد عبدالعزيز عثمان. د. شكري رجب العشماوي. دراسات جدوى المشروعات بين النظرية والتطبيق. الدار الجامعية للطبع والنشر. الإسكندرية. مصر 2014.
6. دليل شفافية المالية العامة. إصدارات صندوق النقد الدولي 2007.
7. دليل منهجي للتعاقد بين الدولة والمؤسسات والمنشآت العامة. إصدارات وزارة الاقتصاد والمالية. مديرية المنشآت العامة والخصخصة. المغرب 2012.



Second: English references

1. Economic Evaluation for Business Cases Technical guidelines, Department of Treasury and Finance, (www.dtf.vic.gov.au) Australia, August 2013.
2. A new approach to public private sector partnerships (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205112/pf2_infrastructure_new_approach_to_public_private_partnerships_051212.pdf), December 2012.
3. The 2012 EECIS Infrascopes, Findings and methodology, (http://www.eiu.com).
4. Evaluating the environment for public-private sector partnerships in Latin America and the Caribbean, (http://idbdocs.iadb.org/wsdocs/getDocument.aspx?DOCNUM=39560897), 2014.
5. The value for Money Analysis: A Guide for More Effective PSC and PPP Evaluation (http://www.ncppp.org/wp-content/uploads/2013/03/PS-051012ValueFor-Money-paper.pdf).
6. Public-Private sector partnerships; A Guide for Municipalities. (http://www.p3canada.ca/~media/english/resources-library/files/p3%20guide%20for%20municipalities.pdf), Canada, November 2011.
7. Public-Private sector partnerships; Reference Guide, version 2.0, (www.world-bank.org).
8. Guidelines for Successful Public-Private sector partnerships, (http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf), March 2003.
9. Public-Private sector partnership (PPP) Projects (http://www.ptb.gov.kw/pdf/PTB%20Guidebook.pdf), Kuwait, November 2009.
10. Practical Guide to Public Private sector partnership (PPP) Projects (www.hkis.org.hk), Hong Kong 2009.
11. Partnerships Victoria: Practitioners' Guide (http://www.partnerships.vic.gov.au), Australia, June 2001.



Third: Referenced PPP laws

1. Law No. 49 of 2015 on PPP Agreements, Tunisia;
2. Decree No. 78 of 2015 issuing the executive regulations of law (116) of 2014 on PPP, Kuwait;
3. Law No. 31 of 2014 concerning PPP, Jordan;
4. Law No. 116 of 2014 concerning PPP, Kuwait;
5. Prime Minister's decision No. 238 of 2011 issuing the executive regulations of Law No. 67 for the year 2010 Promulgating the law regulating Partnership with the Private Sector in Infrastructure Projects, Services and Public Utilities, Egypt;
6. Law No. 67 for the year 2010 Promulgating the law regulating Partnership with the Private Sector in Infrastructure Projects, Services and Public Utilities, Egypt;
7. Law No. 7/2008 on the Regulation of Build, Operate, and Transfer (BOT) Operations and Similar Operations, And amendment of some provisions of Decree-Law No. 105/1980 on the regulation of public domain, Kuwait;
8. Law No. 12 of 1986 concerning PPP in Economic, Social and Environmental Council, Morocco – 2014.

