



United Arab Emirates

Public Private Partnership

Procedures and Guidelines Manual



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Chapter One -Introduction

Preface:

For the purpose of developing the state-level standardized system of policies and procedures according to the best international standards and practices, Ministry of Finance “MOF or The Ministry” has developed this Manual to enhance investment opportunities at the national level and promote the efficiency and effectiveness of governance and risk management in order to diversify development mechanisms of strategic infrastructure projects and improve the quality of services through entering into partnerships with the private sector for being able to employ innovative solutions and technologies.

The objective behind preparing this Manual by the Ministry is to document the general context of guidelines and procedures relating to partnership projects between federal and local entities from one hand and the private sector on the other hand in line with what has been agreed upon in the annual meetings of the UAE government with the aim of joining the efforts of all federal and local authorities and national events at all levels and directing them towards supporting the progress of the development plans of the state up to the UAE Centennial Year 2071.

This Manual presents a high-level framework for the life cycle of the partnership with the private sector. However, the government entities shall perform more specialized and in-depth research and studies regarding the financial, technical and legal issues, including the legislative environment and to coordinate closely with PPP Higher Committee which is responsible for supervising the PPP contracts prior to entering into partnership contracts with the private sector, as the nature and life cycle of the project, documents, studies,

risks, contracts, and contracts management differ from one project to another.

United Arab Emirates enjoys many investment-oriented privileges such as political stability, advanced legislative and economic environment, strong logistical infrastructure, privileged geographical location as well as its adoption of electronic and smart administrative services and its elimination of routine administrative methods. This in turn facilitates and speeds up procedures for investors. In addition, the leadership believes that the UAE's progress, development and advancement are a collective responsibility that will not be realized unless efforts are united and government entities work as a team to reach a diversified knowledge-based economy that competes with the best of the world's economies and creates real non-oil-based economic development.

Successful partnership with the private sector depends on several factors. The most important factors are the political stability and the maturity of the legal and legislative environment, as well as enrolling qualified human resources who are experienced in developing, managing and implementing partnership contracts with the private sector. This is in addition creating links between the legislations and systems and the governance concept as they both have various dimensions featuring with administrative, legal, economic, and social aspects that they all meet in common points based on the principles of transparency, disclosure, accountability, equal rights of stakeholders, and responsibility determination with a view to promoting the efficiency of resources utilization, strengthening the competitiveness, attracting financing sources and

expanding projects to create new job opportunities and support the economic stability.

Various types of partnerships with private sector and their governing contracts will provide modern means and channels that would enable the Federal Government to give the way to real investment opportunities for the private sector in order to participate with its capital, various experiences and creative ideas in implementing major strategic projects, which have been carried out by the State until recently. Moreover, the Government retains at the same time its authorities to supervise the implementation of these projects and to evaluate the quality and efficiency of implementation through judging the project outcomes.

The global experiences have proved that the PPP contracts with the private sector result in raising the efficiency and effectiveness of performance, promoting the level and quality of services, reducing the cost, achieving optimum utilization of resources through innovation, enhancing competition, stimulating economy and assuring the interests of the society members.

Among important reasons of resorting to partnership approach with the private sector are to distribute the project's risks between the public and private partners, ensure implementing the project within the agreed period and expenditures, avoid waiting for financing, determine in advance all or the total operational and capital expenditures in the budget, enhance the service quality and promote transparency.

The UAE Government is looking forward to achieve a great benefit for the society members, the state, the private sector and the entire national economy through implementing strategic development

projects by virtue of partnership contracts with the private sector. Meanwhile, the Government realizes the extent of complications related to implementing these projects as well as the challenges that may be faced, especially in the first phases of implementation. Therefore, providing this Manual is considered the first practical step and serves as an open invitation to the private sector to participate effectively and contribute positively in supporting the State's efforts in developing the major strategic projects and supporting the national economy. This goal can only be achieved through deep rooting transparency, governance and flexibility principles, diligence on part of all relevant stakeholders and concentrating efforts to implement the partnership with integrity and in a manner achieving the supreme interests of the State and the society members.

1. Introduction

1.1 Definitions

For the purpose of this Manual, the following words and expressions shall have the meanings assigned thereto, unless the context otherwise requires:

Term	Definition
State	United Arab Emirates
Government	The federal government and local governments of the seven emirates.
Ministry	The Ministry of Finance
Minister	The Minister of Finance
Supreme Authority	Represents the executive authority, which is the apex of the government pyramid in governments and is responsible for approving partnership projects as provided for in this manual.
Higher Committee	A PPP Higher Committee Projects acting act as the link with governments. The cabinet shall issue a resolution specifying its members (government representatives), their tasks and duties
Government Entity	The entity directly involved in the partnership project, whether federal or local.
Competent Authority	The department entrusted with the authority to approve decisions related to the partnership project in the concerned government entity as stipulated in this manual.
Technical Bureau	An office reports to the Minister of Finance consists of experienced and competent financial, technical and legal consultants in charge of providing financial, technical and legal support to the Federal Entities that are parties to a partnership project through partnership with

Term	Definition
	local government(s) and the private sector.
Public Sector	Includes government entities.
Private Sector	Includes private institutions and companies, both domestic and foreign.
Partnership	A contractual relationship between the public and private sectors, established in accordance with the provisions of this manual and the partnership contract, aiming at implementing the project in whole or in part, to ensure the quality of services or the development of state revenues or any other matter by taking advantage of the efficiency of the private sector and its financial and technical capabilities.
Partner/investor	Any legal entity or an alliance of legal persons from the private sector that is a party to the partnership contract.
Project Company	Any governmentbody or institution established to represent the governmentparties contracting with the private partner, any individual institution or local or foreign private company (or group of companies) licensed to work in the State and contracted by the relevant government entities or body to implement the partnership contract.
Public Private Partnership contract	An agreement between the public sector and a private institution / company to share the risks and opportunities in a joint venture whereby the company shall implement the project in accordance with the provisions of this manual and the terms of the contract in a certain term and for a specified amount or through sharing of the proceeds of the project in whole or in part.
Governance	A set of laws, regulation, decrees, principles and

Term	Definition
	<p>general controls aiming at achieving the quality and excellence of performance by selecting proper and effective ways to achieve plans and goals. Therefore, governance means application of regulations that control the relationships between the key parties affecting the performance. The governance aims at achieving justice, integrity, liability and transparency, enhancing the performance and ensuring the interests of the society.</p>
Risk	<p>An event causing the real conditions of the project to differ from those that are assumed and based on the expected project cost.</p>
Risk Assessment	<p>Determination of the likelihood of the specified risk occurrence and its consequences or results, if occurred.</p>
Risk Analysis	<p>Determination of all the risks related to the project.</p>
Risk Mitigation	<p>An attempt to reduce the likelihood of risk occurrence and the degree of its consequences on the affected entity</p>
Risk Distribution	<p>An expression means that the parties to the PPP contracts jointly bear and manage the risks, where each party manage the risks which it has the experience in managing and handling thereof.</p>
Design Risks	<p>Risks related to defects or deficiencies in the project designs. For example, the project design does not meet the objectives or provide the contracted services.</p>
Construction Risks	<p>The risks related to the project construction or implementation period. These risks can be divided into more specific sub-groups to include the risks resulting from delay in supplying</p>

Term	Definition
	equipment or obtaining the permits and licenses required to handover the project site to the investor, or from the operational loss risks resulting from not handing over the project by deadline etc.
Operational Risks	Represents the risks related to the operational period of the project, such as the risks of the project need to spend maintenance expenses much higher than the planned expenses in order to ensure the operation efficiency and effectiveness or to ensure the continuity of the project for the expected period.
Value for Money	The optimum combination between the total cost of the project and the return on investment throughout its entire life cycle, taking into consideration the operational costs, the environment protection, sustainability and the benefit to the concerned entities and the State.
Total Estimated Cost	The cost estimated to implement the project according to the detailed feasibility study approved by the competent authority. It includes, but not limited to, all the designs, construction, maintenance and other necessary expenses required ensuring the optimum use of the project.
Feasibility Study	A set of activities and successive phases consisting of a number of accurate and comprehensive studies and data with a view to estimate the viability of the investment project to achieve the desired objectives. The feasibility study takes into consideration, for example but not limited to, the financial, technical, legal, economic, environmental and sustainability aspects.

Term	Definition
Sustainability Report	The report prepared by the concerned government entity (s), including the findings and recommendations of the feasibility study.
Financial Study of the Project	It represents one of the feasibility study components, and means preparing financial data and analysis that show the expected cash flows throughout the life cycle of the partnership project. These studies shall be designed in a flexible manner that would enable to achieve clear and accurate outcomes in case of changing the assumptions as well as clarify the impact of those changes. The financial study includes risk analysis, costs and its distribution and the expected financial statements.
Internal Rate of Return "IRR"	It represents one of the factors used in assessing the investment proposals, and depends on calculating the project's cash flows. It is considered one of the common methods used to compare between a set of projects to select the best one. It is defined as the discount coefficient that makes the output of "the current positive value of cash flow" minus "the negative value of cash flow" equals to zero. In general, if the IRR exceeds the project financing cost, it shall represent an added value and the project is accepted and vice versa.
Project manager	A person or entity designated has a sufficient ability, efficiency and experience to manage the PPP contract with the private sector from the project commencement until its handover and closure.
Technical specialist	A person plays a vital role due to his abilities to

Term	Definition
	manage the PPP contract as well as his experiences and skills that enable him to provide technical support to the project. He also assists the concerned parts in the technical assessment of the outcomes provided by the project consultant.
Project Consultant	An entity (Person(s) or a company) has the experiences, qualifications and skills necessary to provide the technical support in its capacity project consultant. The project consultant's services include drafting and preparing the PPP contract and helping the parties to understand thereof prior in preparation for signing it.

1.2 Manual Objectives

The Ministry has prepared this Manual with a vision to inform the stakeholders with the basic concepts and issues related to joint projects in general, and to provide guidance to the federal and local entities that may have initiatives to jointly implement projects and to the private sector investors in particular. This Manual was prepared in light of the State's efforts to motivate the joint projects between government entities and the Private Sector.

Users of this Manual shall comply with the following:

- The objective of this Manual is to provide guidelines to clarify procedures and some tools that shall be used in studying, designing and implementing joint projects.
- The Manual may be supplemented with memorandum of understanding between the governments and regulative and executive instructions and memos.
- This Manual does not include answers for all the questions related to the partnership as it only provides a wide and high-level practical frame.
- This Manual summarizes, in a high-level framework, the general guidelines and the main and important procedures that shall be followed by the government Entities - upon which these Manual provisions are applicable - when there is a desire to implement projects and initiatives by virtue of partnership contracts with the Private Sector. The Manual also provides important guidelines to the investors in the private sector, who are willing to enter into partnerships with the governments in order to implement strategic projects.

- The continuous reference to the guidelines stipulated in this Manual ensures permanent harmony and consistence in its application, which is beneficial to the government entities concerned in particular and the State in general.

Manual Goals:

- 1- Develop clear procedures for the mechanisms of concluding the partnership contracts between government entities and the private sector in relation to major strategic projects and their governance and control in order to ensure work efficiency and effectiveness and to optimize the utilization of the available financial resources.
- 2- Documenting and unifying the mechanisms, standards and terms of concluding partnership contracts between the government entities and the private sector.
- 3- Clarify monitoring basics for managing and implementing partnership contracts with the private sector.
- 4- Clarifying the contracting parties' rights and liabilities under PPP contracts.
- 5- Serving as a main reference for all the entities concerned with the implementation of the PPP contracts to ensure the proper and ongoing application of the approved guidelines.
- 6- Facilitating the training process of new employees on functions related to partnership contracts with the private sector.

1.3 Manual Approval

- His Excellency/Minister and representatives of local emirate governments shall initially approve the guidelines and procedures included in this Manual.
- The Cabinet has the discretion authority to grant the final approval of this manual.

1.4 Manual Implementation Supervision

- The PPP Higher Committee plays a key role in ensuring that government entities are committed to implement the guidelines and procedures set out in this Manual. The Committee shall also be responsible for distributing the Manual and approving the amendments necessary for updating the same with new requirements in preparation for its final approval by the competent authority.

1.5 Manual Implementation Scope

1. This Manual shall apply only in cases where the Federal Government and any one or more local emirate governments are (jointly) involved in the implementation of a PPP project with the private sector.
2. local governments may or may not choose to implement this Manual when conducting PPP projects either individually or together with other emirate government(s).

1.6 Manual Implementation

A-The provisions of this Manual shall be applied as of the date specified in its approval decree.

B- The provisions of this Manual shall be applied on all joint projects classified under PPP as outlined in this Manual, except for the following:

1- Outsourcing of minor services or operations e.g. guard and security services, cleanness, experts and consultants, employees necessary to support some functions, computer maintenance services, programing and improving systems and applications, accounting services, collecting fees, auxiliary services in the health sector, education, employment services, etc., which are usually contracted through traditional procurement methods.

2- Franchising contracts.

3- Military or security nature procurement contracts

C- In case of conflict arise between the provisions of this Manual, or the implementation of the PPP contract and any other law applicable in the State, the provisions of the Federal Law or the Federal Decree-Law shall prevail. The contraction may be completed only after obtaining a formal exception or removing the conflict.

D- The competent authority in the federal entities or its delegate shall apply and control the application of the guiding procedures stipulated in this Manual when launching initiatives or planning to implement major strategic projects under PPP.

E- In case of a dispute concerning the interpretation or application of any of the guidelines or procedures included in herein, the PPP Higher Committee shall be consulted.

F- The internal audit regulatory units in each Government Entity and external control bodies shall be responsible for ensuring the government entities' adherence to apply the guidelines and principles approved in this Manual, monitoring any infringements or breaches and providing recommendations to support the internal control and monitoring systems on the implementation of projects under the PPP contracts with the private sector.

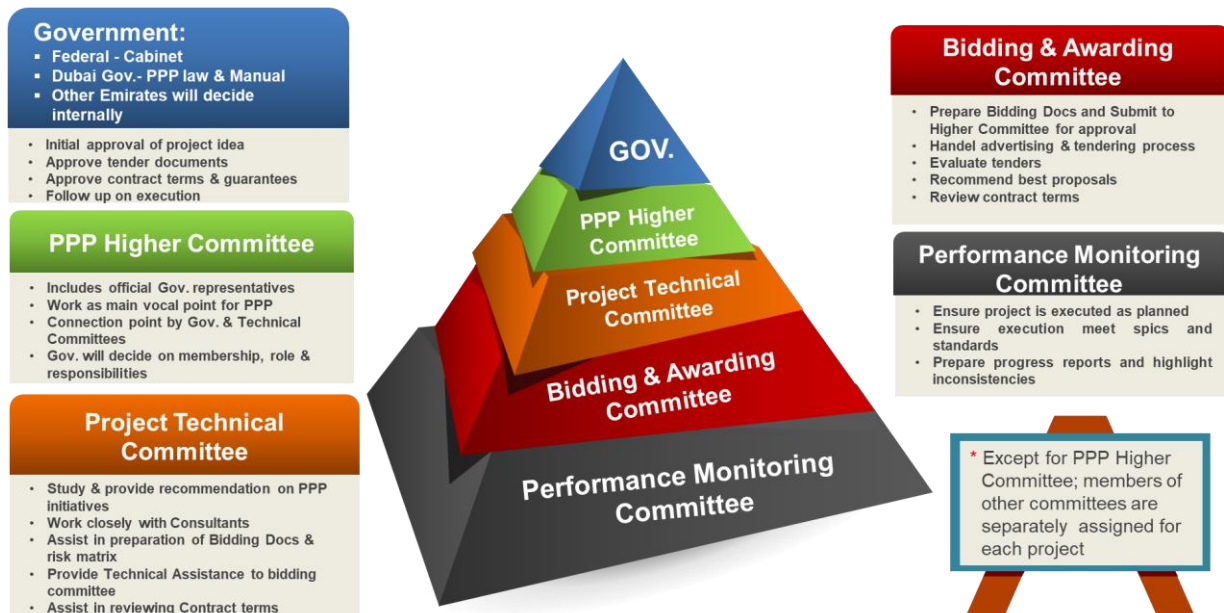
1.7 Manual Update

- The Ministry shall review, update and amend the guidelines mentioned in this Manual if there are reasons thereto.
- The suggestions to improve and update this Manual, any modification in some procedures contained herein or introduction of new procedures shall be submitted to the Ministry in writing to be considered and discussed by the members of PPP Higher Committee for appropriate decision.
- The guidelines contained in this Manual shall be amended after being accepted by the PPP Higher Committee and then approved in its final form by the cabinet.
- The Ministry shall, after adopting any update or amendment to this manual, ensure that the following matters are taken into account:
 - 1- Modifications, updates and amendments to the work guidelines and procedures mentioned herein are to be added to the Manual
 - 2- Updating or amending the relevant procedures (if necessary) to ensure that procedures followed are consistent with the amended guidelines.
 - 3- Informing all the government entities with the updates made to the Manual clearly, in an appropriate and timely manner.
- Any questions or inquiries on amending or updating the Manual shall be addressed to the Ministry.

1.8 Organizational Structure of Partnership

PPP projects differs from traditional procurement and outsourcing transactions. The complexity and high value of such projects require creating a flexible and effective structure involving all levels of government in the state. In addition, governemnt must attract competent and experienced cadres with wide and fresh knowledge of PPP contracts in terms of financial, technical, legal, and regulatory aspects related to risk and contract management. Moreover, it requires applying accurate procedures and standards when studying and analyzing the initiatives. Hence, the structure through which PPP projects will be implemented will be as follows:

PPP Roles & Responsibility distribution among Government Levels



PPP Higher Committee

Given the unique political structure of the UAE, and to ensure effective communication between the concerned government and other committees concerned with studying, implementing and monitoring partnership projects, the PPP Higher Committee plays an important role in this aspect. The committee will be the main point of contact for all federal / local partnership projects with the private sector, as well as the link between the concerned government entity and the level of government it represents. Consequently, federal / local initiatives and projects of partnership with the private sector are received from the relevant government entities and submitted to the appropriate government level as provided for in this manual or as deemed appropriate by the concerned government. In view of the pivotal and important role of the PPP Higher Committee in the success of federal / local partnership projects with the private sector, a resolution will be issued by the Cabinet specifying the Chairman and members of the Committee and its tasks and responsibility.

PPP Technical Committee

Partnership projects are usually of great value and long term, and involve many complexities, overlaps and technical requirements that vary from project to project. Therefore, there must be a permanent technical committee to provide technical support, coordination and cooperation with various government entities on one hand and private investors on the other hand in all matters related to the study, analysis and evaluation of partnership projects. The existence of a technical committee is a cornerstone of the accumulation of necessary experience at the national level.

The global experiences, the international best practices, and the World Bank recommendations demonstrated the need to form a technical committee dedicated to follow up and supervise the study and management of the PPP contracts between the public and private sectors. Indeed, the existence of this committee/body is considered a key component of the success of the experience of applying partnership contracts. In order to ensure the success of committee/body to provide its services and achieve the objectives for which it has been formed, the concerned Government Entity shall be involved in its work, in particular the decision-making process regarding designing and implementing the project and later in monitoring the implementation and evaluating the outcomes.

The PPP Technical Committee shall be formed for each project by a decision of the PPP Higher Committee. The committee comprises the competent regulating units at each level of government (e.g. the Federal Government Technical Office) and / or representatives of each local emirate government as decided by the emirate to study technical, financial, legal, environmental matters.... etc.

The PPP Technical Committee reports directly to the PPP Higher Committee. The PPP Technical Committee submits all proposals / recommendations for projects and initiatives that can be implemented by the partnership contracts system to the PPP Higher Committee which in turn passes them to the appropriate government level to approve the initiative and start the necessary studies.

The PPP Technical Committee shall submit all studies, documents and recommendations of the partnership projects to the PPP Higher Committee which in turn shall pass them to the appropriate

government level for approval in preparation for their final approval for implementation by the PPP Higher Committee.

Hereunder is a summary of parties involved in executing PPP projects between government entities and the private sector.

1. The government
2. PPP Higher Committee
3. Technical and Supervisory Committees - established for each project separately
4. Government entities concerned with the project
5. The private sector - Partner/Company that shall implement the Project

Work Mechanism of PPP Higher Committee when studying the developmental projects and initiatives:

General:

The PPP Higher Committee shall elaborate an action plan based on studying the developmental projects and initiatives that can be implemented through PPP, which are referred thereto by government entities, focusing on giving the priority to the most important and more persisting projects to the State and society members. This priority shall be assessed through analyses of the following:

- Macroeconomic status and the impact of the project thereon.
- The importance of the project from the developmental and strategic aspects of the State.
- Is the project one of the main sectors that the State gives high priority?

- The extent of the project's contribution to economic growth and job opportunities creation in the long term.

Key sections for developing an action plan on partnership projects:

1. Sector Identification.

Identification of key sectors of interest is a cornerstone for the development of a comprehensive future plan for possible future federal / local partnership projects. Studies and analyzes of public spending at the State level can be used to develop this plan. An example of such studies is what has been done on spending policies on health and education sectors. Such studies, analyses, and other environmental and legal analyses and strategic plans in the State contribute to identifying priority sectors for executing projects under PPP. Based on the global best practices, six sectors can be selected as key sectors to implement PPP projects, such as Public Expenditure Review on Health and Education. Such reviews and studies help government on identifying sectors with top priority. International best practices define six potential sectors that could be executed under PPP models such as Health, Education Energy, Transportation, Environment and Water. Projects in such sectors support key national development goals such as improving the quality and efficiency of services, developing and diversifying revenues, economic diversification and job creation and increasing private sector participation.

2. Sector Analysis

Additional and more detailed studies and analyses shall be performed to assess each sector separately in order to determine its exact requirements and determine whether it is appropriate to

implement them in partnership with the private sector. In addition, there are other analyses such as supply and demand analyses, the capabilities of government entities, and the private sector efficiency. Based on these studies and analyses, a comprehensive list of relevant projects that can be implemented in accordance with the system of partnership with the private sector shall be prepared. This list will serve as a comprehensive roadmap that includes joint projects that can be implemented in partnership with the private sector. It also facilitates the study of all aspects and requirements of the project and limits the fragmentation of projects.

3. Project ranking according to their priorities:

For the purpose of facilitating the work, specific performance criteria may be adopted for evaluating the partnership projects, which have been identified by analytical studies, and classify them by priority to ensure the evaluation of projects according to the vision and strategy of the State and its future development plans.

To ensure the successful implementation of projects, consultation and continuous and in-depth coordination shall be made between government entities to ensure the highest levels of coordinating for the spending policies and the unified development vision at the State level.

4. Project schedule and key performance indicators:

Work mechanism shall include a detailed timetable for the implementation of the selected partnership projects.

Clear, specific, and detailed indicators were identified to measure the success of the partnership projects action plan by using the key economic performance indicators to measure the social and economic impact in general, while the key performance indicators for projects are used to measure the progress of the project performance in light of the specific relevant mechanisms.

Chapter Two - Overview on Public Private Partnership

2. Overview on Public-Private Partnership

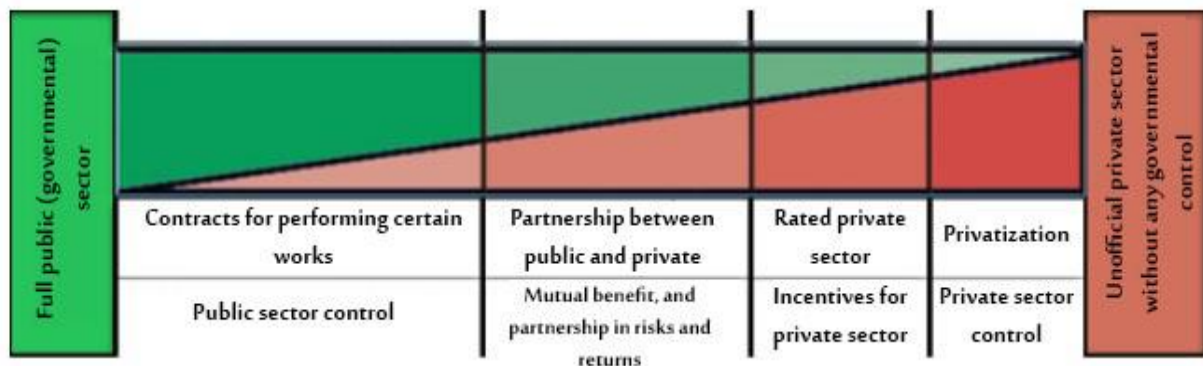
2.1 Nature of Public-Private Partnership

The PPP contracts shall be on long-term basis, and aim at providing public services and establishing infrastructures through utilizing the private sector's efficiency, financial potentials and expertise. It is not a capital-based partnership nor a profits-based partnership only, but it is a partnership in risk sharing, where the public sector transfers some of project risks to the private sector and retains others. The privatization involves transferring all project risks to the private sector, where the State's role is limited to regulate and monitor implementation; while the private sector partner (the project company) bears both profit and loss risks. In the case of management or management and operation contracts then the State's retain all the risks, while the private sector's role is limited to providing a certain service in return for charges with some incentives. However, the PPP shall include all kinds of risk-based partnership according to ratios varying from project to another. For example, in partnership contracts, the private sector shall bear the risks of development, design, construction and operation, exploration, finance and inflation, whereas the public sector shall bear the environment, regulation, policy and tariff risks. Both parties may bear the risks relating to force majeure, supply and demand, personnel relations, profit and loss, technological development, etc.

The second element that distinguishes partnership from traditional procurement deals or simple outsourcing contracts is identification of outputs rather than inputs, i.e. the State does not buy (or build at its own expense) the assets required for providing the public service as is the case in traditional outsourcing, but instead it shall buy the output service. For example, the State shall not buy (or build at its own

expense) a power plant, instead it shall buy electricity that meets its needs to provide the service to the citizen.

The graph below illustrates the relation between public sector and private sector:



2.2 Definition and characteristics of Joint projects

The joint project shall be defined, in practice, as any public project with an economic nature, in which the private sector contributes through finance, management, and at least one of the following processes (establishment, construction, development, restoration, preparation, maintenance, rehabilitation, and operation. Moreover, the partnership with the private sector includes outsourcing and management contracts, which are mostly simple and do not involve complexity or require detailed studies, such as partnership projects-based participation in or sharing of risks and consequences.

Theoretically, there is no standard definition of the public-private partnership. However, for the purposes of reaching common and internationally accepted terms, the definition of Organization for Economic Cooperation and Development “OECD “will be used.

The OECD defines public-private partnerships as “long-term contractual arrangements between the government and a private

partner, under which the latter will provide and finance public services using capital assets and share the associated risks”. This broad definition shows that such partnerships can be designed to achieve a wide range of objectives in different sectors such as transport, social housing and health care, and can be organized under different approaches.

The different definitions of PPPs suggest that risk allocation and output identification are the main pillars of PPP.

- **Risk Sharing**

Considering PPP in terms of risk sharing helps to define the partnership as a borderline between the management contracts on one hand and the privatization on the other. Traditional management and operation contracts do not involve any transfer of risks to the private sector, while privatization, especially full privatization (the sale of a public project) transfers all risks to the private sector.

Risk Sharing between the public and private partners is the key element of this partnership, so each party shall bear the risks **it can handle and manage**. For example, the private sector shall bear risks associated with development, design, construction, operation, exploration, inflation and fluctuations of currency or oil prices, while the public sector shall bear environment, regulation and economic development risks. Both parties may bear the risks relating to force majeure, supply and demand, personnel relations, profit and loss and technological development.

- **Output Identification**

The outputs of partnership contract shall be identified through tendering, where the government shall identify specifications to be

obtained from the project without specifying the way of handover. Therefore, the bidder shall have full flexibility in how to obtain these specifications. This allows utilizing all the benefits the private sector can add to the project by making all variables, not just the price, subject to auditing.

Partnership projects differ from the traditional outsourcing in which the government identifies the inputs, so all project variables will be fixed, except the price based on which the project winner is determined.

Moreover, the concept of partnership project financing differs from the traditional procurement, delivery of service and works carried out after ensuring availability of necessary financial provision. In some partnership contracts, the private partner finances the project without including the investment expenses needed for the project in the government expenses the first year, but they are distributed over the contract term in form of payments paid to the private partner. Payments are usually variable according to the size or quantity of the output.

2.3 Joint project

The partnership project is not just a project in which both public and private sectors share implementation. Instead, the joint project, which this Manual seeks to achieve, is of economic nature and reflects risk-based partnership, where the public sector shall transfer a large part of the project financial, technical and operational risks to the private sector.

2.4 Partnership Contract

Partnership projects often involve contractual and financing-complex transactions. Therefore, the contract might consist of a set of contracts, commitments, guarantees and appendices governing the contractual relationship between the government, a partner from public sector (investor of project company), and any other stakeholder such as the guarantor or financing banks or other government entities or local governments on which the project implementation may cause some consequences or tasks and duties. Therefore, the signatories of the PPP contract may be numerous and may vary from a partnership contract to another. In some cases, it may be required to sign a series of contracts and additional memorandum of understandings necessary for the success of the project.

In general, the partnership contract with the private sector aims to ensure or raise the level of services quality or the development of government revenues or anything else by taking advantage of the efficiency of the private sector and its financial, technical and other capabilities. These contractual arrangements may include the simplified form of inputs supplying or various forms of outsourcing, or may extend to the transfer or participation of management or decision-making process or a type or degree of information exchange and coordination. They may also extend to the form whereby the private sector may supply the commodity in the market (privatization). The form of public-private contract depends on the tasks that the private sector can undertake. In order to determine the limits of this public-private partnership, some literature establishes a framework that divides a project of providing goods or service into four tasks:

- Defining and designing the project
- Financing the capital assets of the project
- Constructing the project
- Operating and maintaining the project

These four tasks or phases can determine which of these tasks will be undertaken by the private sector, creating a contractual type between them representing a form of partnership. The Government may entrust the private sector with the second and third tasks or the second, third and fourth tasks. Tasks may be distributed to a different number of partners or the same partner may undertake a number of tasks.

2.5 Justifications for resorting to a partnership between the public and private sectors

A partnership built on a sound basis between the public and private sectors benefits the government by benefiting from the experience of the private sector in several areas, the most important of which are:

1. Strategic aspect:

PPP contracts improve credibility by defining responsibilities and focusing on key elements of the commodity and service that are the subject of the partnership. PP partnership can also benefit the administrative efficiency of government, as financial, human and administrative resources can be redirected to other strategic areas.

2. Administrative aspect:

- Focusing on outputs
- Economics resulting from designing, construction, finance and integrated operation of assets.
- Creative use of assets.
- Management experience.
- Better project description.

3. Economic Aspect:

Economic advantages associated with public-private partnership include:

- Providing a better and larger range of goods and services using the same amount of money.
- Achieving a government savings that can be used to provide other goods and services or invest in other areas.
- Increasing economic growth and long-term job opportunities creation.
- Working efficiently in providing and deploying services.
- Reducing the financial burden on the government budget.

4. Infrastructure Development:

Studies have shown that there is a close relationship between economic growth and infrastructure development, as lack of infrastructure and inefficiency impede faster economic growth. In

contrast, effective infrastructure helps creating jobs, developing human capital, and encouraging domestic and foreign trade and investment, and increasing productivity and growth in business. Infrastructure also contributes significantly to the social development of the State and helps to raise living standards by facilitating access to vital services such as education and health.

5. Benefiting from the experience and advantages of the private sector:

The contribution of the private sector to the provision of economic and social services provides an opportunity for the local economy to employ additional private sector resources to invest in infrastructure for each available (and scarce) unit of public sector resources. This contribution allows us to benefit from the financial and administrative experience of the private sector and opens the door to new markets and technology. Finally, the PPP aims to achieve the most efficient use of available resources, and to implement public policy objectives in the best possible manner and design in a flexible and practical manner, through the following advantages:

- Utilizing the administrative skills and competencies of the private sector in the provision of public services, resulting in high level of services and / or its low cost.
- Public-private partnership reduces the risk to the government of implementing projects and reallocates these risks to the private sector, which has a greater capacity to cope therewith.
- Private sector capital can be utilized, resulting in short- and long-term financial improvements.

- The private sector can maximize the use of the cost of assets and balance capital with operating expenses in a way that the public sector cannot do.
- The private sector can make investments in new techniques and benefit from economies of scale.

2.6 When is partnership with the private sector applicable?

There are several factors and criteria that must be taken into consideration and ensure that the results are in the public interest before considering the implementation of PPP projects. The following are the most important cases and recommended criteria under which a partnership is an applicable option if one or more of them are found:

1. Services and projects cannot be provided through financial resources or the experience of federal entities alone.
2. Private partner participation in risk sharing or risk transfer.
3. A private partner can increase the quality and level of service compared to what federal entity can provide depending on their own capabilities.
4. A private partner can implement services or projects faster than the government does.
5. The participation of the private sector in services provides an opportunity for innovation and invention.
6. There is an opportunity for competition between potential private partners, which reduces the cost of providing public services.

7. Lack of regulatory or legislative barriers limiting private partner participation in service provision or project implementation.
8. Service outputs or result can be easily measured and priced.
9. The cost of the service can be recovered by applying or imposing charges on the user.
10. The use of partnership may lead to opportunities that will increase economic growth.

If none of the above factors or criteria are met, partnership should not be considered.

2.7 Benefits and advantages of successful PP partnership

PP Partnership has many benefits over traditional insurance and procurement methods for the following reasons:

- 1- **Cost savings:** With the partnership, government entities can achieve cost savings in capital enterprise creation, service operation and maintenance, and savings in operating costs and facilities and service systems. A private partner can reduce the cost of operating and maintaining infrastructure and systems through significant savings from labor or mass production (Economies of Scale), innovative technologies, flexibility in procurement and compensation arrangements, or through reducing administrative expenses.
- 2- **Risk sharing:** With a partnership, government entities can share risks with the private partner. Risks may be cost overruns, inability to meet service delivery schedules or times, difficulty in complying with environmental and other legislation, or risk that revenues are insufficient to pay operational and capital costs.

- 3- **Improvement of service levels or maintaining of existing levels of service:** A partnership can bring innovation and creativity to the organization of service provision. A partnership can also introduce new technologies and bring about significant savings that often reduce costs or improve the quality and level of service.
- 4- **Revenue growth:** Partnership can charge user fees that reflect the real cost of providing a particular service. Public-private partnerships also provide opportunities to introduce services through innovative sources of income that cannot be achieved through traditional methods of service provision.
- 5- **More efficient implementation:** Efficiency can be achieved through a combination of different activities such as design and construction, flexibility in contracting and purchasing, faster adoption of capital financing, and more efficient decision-making; efficient delivery of services not only allows users to access services quickly but also reduce costs.
- 6- **Business opportunities:** Partnership projects provide greater business opportunities for the private partner, allowing the sector to innovate, diversify its activities, expand its business areas, and gain experience beyond the traditional procurement system.
- 7- **Economic benefits:** Increased involvement of government entities in partnerships helps to mobilize the private partner, contribute to greater employment, and increase economic growth. Local companies are better able to operate in partnership and can export their expertise and generate additional incomes.

8- Public Interest: Community members benefit greatly when the efforts and experience of government entities are integrated with experiences and resources of a private partner to provide services to the public. Public interest is something that the government seeks and cares for, and can be achieved through partnership with private partner.

2.8 The most important success factors of public-private partnership

The PPP, at the present, is an advanced model for executing works or providing services to the community in innovative ways. Global experience has shown that the success of PPP is based on the following key factors:

- A legislative and regulatory framework, which provides clarity in the procedures and the relationship between the public and private sectors.
- A central body (PPP Higher Committee) that includes cadres concerned with partnership with the private sector and have necessary expertise in the areas of financing, negotiation, contracting and mega projects management.
- Ensuring the right of government entities involved in the project to effectively communicate with the central body to avoid any surprises, obstacles or objections in the later stages.
- Securing a high degree of transparency and governance since the participation costs in partnership tenders, in which the project company shall secure finance, project design and other activities, outweigh the participation costs in traditional outsourcing tenders in which the supplier's activity is limited to price the materials / equipment and the workforce.

- Adding provisions, conditions and clear and inclusive performance measurement standards to partnership contracts to ensure total equality between the service beneficiaries and the public interest, taking into consideration the rights of investors and ensuring the government's ability to monitor the partner's performance and its commitment to the regulatory legislations to the service provision and terms of partnership contract.
- Not granting preferential rights and conditions to any category of the beneficiaries of the service provided by the private partner unless a prior approval of the Competent Authority is obtained and in accordance with the rules and controls pre-agreed between the government and the private partner.
- Preparing an accurate and objective "value for money" analysis that takes into account different scenarios and risks.
- Appropriate selection of private partner (s) based on transparent selection process and thorough scrutiny, ensuring adequate competition in the market through competitive bidding process and ensuring a continuous operational market (avoid monopolies).

2.9 Review of Current Policies, Laws, and Legislation

We have to focus on and explain the importance of the PPP Higher Committee role in studying and reviewing the policies, laws and legislation, and making recommendations to fill gaps that may affect any proposed project which may affect any proposed project. Like any government project, the partnership projects shall comply with the policies, laws and official regulations applicable at the state level (federal and local). To achieve this matter, PPP Higher Committee shall conduct the evaluation process on two tracks:

First Track: Compatibility

- Any government entity wishing to implement a joint project (federal / local) in partnership with the private sector should coordinate with its representative in the PPP Higher Committee to ensure that there is no conflict with the laws, policies, procedures and guidelines in force at the time within its sovereign.
- Government entities concerned with the joint project shall comply with and be subject to all policies, procedures, decisions and legislations issued in this regard.
- If any clarification or technical or legal support is required, the PPP Higher Committee should be consulted.
- If a particular project requires, by its very nature, an exception to any applicable laws, policies, decisions, and legislation (federal or local), the exception must be secured before the PPP Higher Committee gives its initial approval.

Second Track: Gap Analysis:

If there are gaps in policies or decisions / regulations affecting the proposed project, the concerned Government Entity shall do the following:

- Consulting or understanding with the concerned parties (partners) and beneficiaries of the project if it is possible to adopt the project in light of the current policies, decisions and legislation. If it is not possible, this matter shall be discussed by the PPP Higher Committee to reach the possible solutions.
- When identifying a gap in the policies, legislation or decisions, the PPP Higher Committee, in coordination with competent authority(s) (whether Federal or local) shall address such gap, develop proposals and make changes as deemed necessary.

Chapter Three - Types of Partnership Contracts

3. Types of Partnership Contracts

3.1 Introduction

Partnership takes a wide range of forms varying between outsourcing, construction, operation, and transformation and other structures of financial and legal nature rather than technical and technological nature to fit the characteristics of the desired project, as the requirements differ from one project to another. The main common feature between those projects is how far the private sector participates in financing and bearing risks.

The PP partnership involves forming a contractual relationship between one or more Government Entity and one or more private sector partners. Unified development framework. Partnership may also be through the organization of roles between government and the private sector so that each partner has its own role, but they complement each other in a unified development framework.

There is no a standardized public-private partnership approach that can be applied to all cases, but the optimal approach can be achieved in each case separately. This matter depends on the social and political conditions prevailing in each society. The methods of partnership with the private sector, and the degree of its contribution and responsibilities therein, vary according to each method, ranging from service contracts - in which the government takes full responsibility for financing, risk and implementation investments - to complete privatization or sale, in which the private sector bears all responsibilities for the entire construction, operation and management, in addition to the absolute ownership of the project assets.

The following are the most common methods of partnership with the private sector to provide service projects in general:

1. Service Contracts

They are a form of outsourcing contracts and are mostly simple. They are concluded by signing a short to medium term contract (1 to 5 years) between the government entities and the private partner or one or more companies from the private sector, whereby the latter will provide some of the services / tasks specified in the contract in return for a fee to be agreed upon.

This method is widely used in the state and around the world to provide many services in certain sectors such as health and education, waste collection and management or operation and maintenance of sewage pumping stations, etc. These contracts do not require application of the partnership provisions and procedures set out in this manual. Government entities may be granted the power to contract with the private partner after obtaining the initial approval of the PPP Higher Committee, provided that these entities shall submit periodic reports to the Committee on implementation.

Their advantages include providing opportunities due to the competition by contracting with more than one private sector partners, and benefiting from the expertise of the private sector in the technical aspects, which makes government entities focus on their core functions, especially that outsourcing contracts are used primarily to reduce the costs of non-core activities or access to expertise, or the desire to improve service levels and simultaneously reduce costs for shared services. Consequently, service contracts are generally used for support functions and do not include asset rehabilitation.

Because the contract period is short, there is increased competition among suppliers, which encourages performance efficiency and reduced contract costs.

In this type of contracts, the responsibility for financing the capital investments, the commercial risks associated with the operation of the facility, and the operation and maintenance expenses are entirely borne by the public sector. The success of a contract business depends on the experience of the company doing the business. They are usually contracted through traditional procurement methods after approval of the PPP Higher Committee.

2. Management Contracts

They constitute a form of outsourcing based on an agreement through which government entities contract with a private company to manage a public utility / institution or a specific part of the services provided by the Government Entity. In this case, only the operating rights are transferred to the private company and not the property rights. The private company receives for its services. These fees can be linked to profits or the performance of the private company. The government entity is also responsible for operating and investment expenses. These contracts do not require the application of all the terms and conditions of the partnership set forth in this manual. For the purpose of granting flexibility and facilitating the work, the concerned government entities may be authorized to complete the bidding and awarding procedures by agreement between them if the project value is less than 200 million dirhams or does not impose additional burdens on the budget of each entity (self-financing from the approved budget of the entity). These entities shall be accountable to the PPP Higher Committee regarding the partner's obligation to provide the agreed services. At the same time, the relevant government entities can consult the PPP Technical Committee at any stage of the project to ensure the success and sustainability of the services.

This method is used in cases where the government wants to activate losing institutions or ineffective services by introducing private sector management methods to increase the efficiency of operation or financial value of these institutions.

The main advantage of the management contract from the government point of view is that it allows it to retain ownership, and that it can resolve administrative or operational deficiencies by obtaining the best management expertise, while controlling the scope and use of this expertise through the management contract.

The problem of these contracts is that there is sometimes duplication in private administration and public ownership. The contractor does not bear the risk, as the Government bears any losses resulting from the operations. Under the terms of these contracts, the government is obliged to pay the management fees to the private sector in the form of lump sum fees or in the form of a percentage of profits or both or "revenue sharing" or "cost-based coverage" based on unit's cost. Variable payment can be completed by agreeing on a maximum payment to the private partner. The intention behind this matter is to motivate the management company to increase the effectiveness and efficiency of the facility. As noted above, such contracts are executed through traditional procurement methods after obtaining the approval of the PPP Higher Committee.

3. Finance Lease Contracts

It is a contract whereby the owner of assets (government) gives a private company the right to use these assets and retain profits for an agreed period in return for rent. Unlike the management contract, the private company bears commercial risks, which motivates it to reduce expenses and preserve the value of assets, but the

government remains responsible for fixed investments and servicing the debt.

The advantages offered by the leasing to the government include saving operating expenses without waiving ownership, as well as obtaining an annual income without exposure to market risks, as well as the suspension of subsidies and other financial transfers. Leasing also attracts sophisticated technical and management skills and innovative solutions that contribute to more efficient use of assets.

The main problem associated with leasing contracts is that, as long as there is no transfer of ownership of assets, the private contractor contracting with the government has no incentives to increase the value of the assets beyond the limit that guarantees an adequate return on investment during the lease period. This type of contract is therefore suitable for projects that need to increase operational efficiency and do not need expansions or improvements. Such contracts shall apply to the partnership procedures provided for in this Manual.

4. Concession contracts

When the government grants concession contracts to the private sector, it transfers the rights of operation and development to the beneficiary, the private partner. The concession contract may include all leasing specifications, as well as capital expenditures and investments that the concessionaire bears.

Assets are returned to the government at the end of the concession period, which typically ranges from 15 to 30 years, depending on the virtual life cycle of the investments. The revenue of the

concessionaire shall be determined in such a way as to cover operating expenses, debt service and amortization of its investments.

This method has been used successfully in the field of transportation (railways) in some countries. The main advantage of this method is that the concessionaire remains responsible for capital expenditures and investments, thus reducing the financial burden on the state. But for the same reason, many states face difficulties in finding investors because of the large size of some of the investments required by this type of contract.

The main idea in this concession is that a private company will finance, build and operate a new service project in the field of (telecommunications, electricity, water, irrigation, transportation, etc.) for a limited period, where the assets will be returned at the end of the contract to the state. During the concession period, the state regulates and controls the investment process, quality and prices.

In this type of partnership, it should be noted that the contracts clearly define the scope and nature of the services to be provided by the contractor with the government, as well as the powers of the parties during the contract period. Therefore, the Government must ensure that the method and way of managing a private partner is not interfered in order to ensure the success of this method of partnership.

5. Build, Operate, Transfer (BOT)

This method is a form of service provision under the partnership contracts with the private sector, whereby the government, for a limited period of time, grants a private financial consortium - Project Company - the right to design, build, operate and manage a particular project proposed by the government, in addition to the

right of commercial exploitation for a number of agreed years that would be sufficient to enable the project company to recover the construction costs as well as make appropriate profits from the project proceeds or any other benefits granted to the company within the contract. The project ownership shall be transferred in accordance with the terms of the contract or agreement to the donor without charge or for an agreed fee.

This approach has the advantage of transferring construction, operation and management risks to the private sector. In addition, the government benefits from the private sector experience in project management and maintenance and in the transfer of advanced technologies.

This type of partnership requires special attention to the design of bid documents. The bidding and awarding process can be relatively long and complex than other types of contracts, affecting the preparation of development plans related to the implementation of this partnership. It also requires adequate political and economic stability, a specific legal and regulatory environment, monetary stability and other factors suitable for foreign investment. These requirements are non-fixed and changing according to international, regional and local circumstances.

6. Build Own, Operate, Transfer (BOOT)

This method is a real partnership method whereby the government grants an investor or a coalition of private investors the right to establish a service project, financing thereof at its own expense and owning its assets. It grants them also the right of operating and maintaining the project, collecting the consideration for the service provision to pay the financing burdens, and achieving an appropriate surplus for an agreed period. It is agreed that the ownership of the

project assets shall be vested in the government at the end of that time period.

This method differs from the BOT method. BOOT is a prominent application of private projects of public benefit, where the ownership of assets during the project period is exclusive to the private sector, which is not achieved in the previously mentioned types of contracts.

This approach, such as the BOT approach, has the advantage of transferring construction, operation and management risks to the private sector. In addition, investment and financing risks lie entirely with the private sector. During the operation and maintenance period, the project does not subject to the control of government or government entities.

7. Build, Own, Operate (BOO)

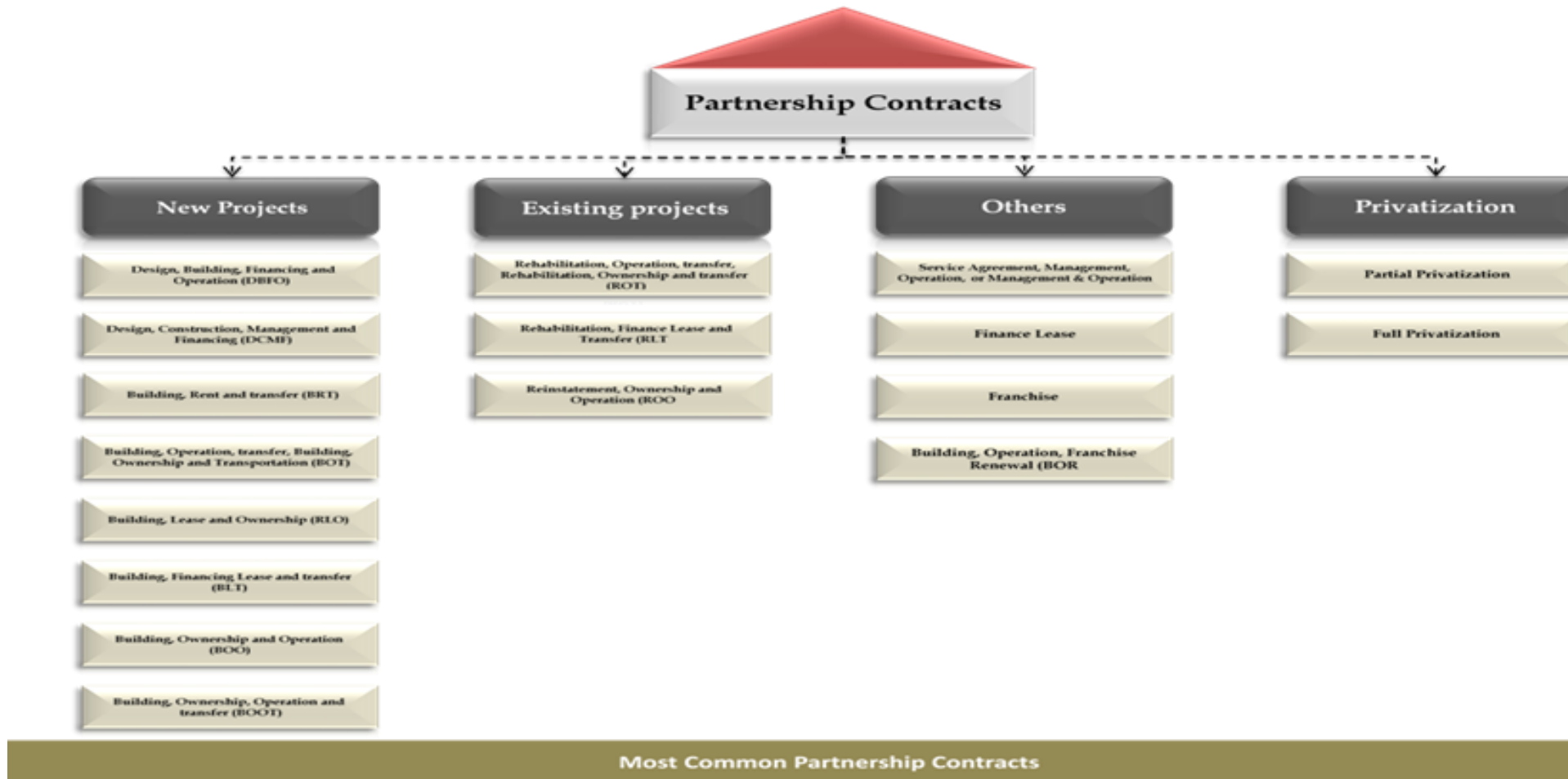
This is a method of full privatization, in which the private sector is given full construction, operation and management responsibilities, as well as absolute ownership of project assets. Operation or management in this manner is not time-bound and there is no obligation on the private sector to transfer assets to the government. This method is used for new projects that have not yet been established. This approach, such as the BOOT approach, has the advantage of transferring construction, operation and management risks to the private sector. In addition, investment and financing risks lie entirely with the private sector. In addition, investment and financing risks are entirely the responsibility of the private sector. As such, it does not constitute investment burdens on the government, and it encourages national and foreign investments.

Important Notes

1. The decision to contract with one private partner or a coalition of partners / investors or to establish a private company for the purposes of project implementation shall be based on the recommendation of the project consultant and the PPP Technical Committee s and shall be approved by the PPP Higher Committee.
2. If there are owned assets or employees of the government entities involved in the project, it is important to ensure that these assets are utilized, that the rights of employees are preserved to the maximum extent possible and are not easily compromised and that they are provided for in the initial project study.
3. The choice of the form or method of partnership on which the project will be implemented shall be based on the recommendation of the project consultant and the PPP Technical Committee s, and shall be approved by the PPP Higher Committee, with importance of study other countries practices of similar projects .
4. The mechanisms and procedures of offering shall be approved by the PPP Higher Committee based on the study of each project separately so as to adopt the most appropriate method that is most beneficial to the state. A specialized company may be appointed to carry out all stages of this phase.
5. The special purpose company established to implement the partnership project shall be subject to auditing by the Audit Bureau and other relevant oversight bodies of local governments that are involved in the project. The company shall also appoint an external auditor.

3.2 Most Common Types of Partnership Contracts

Most common types of Partnership contracts based on contract subject:



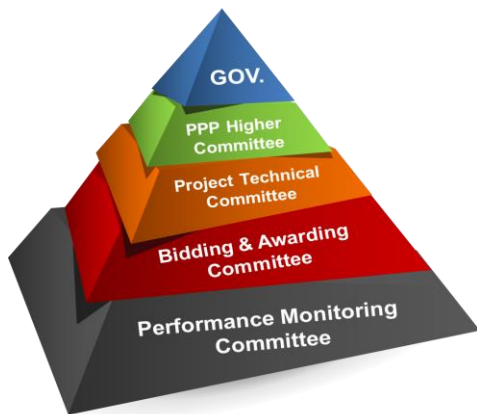
Chapter Four - Institutional Structure of Joint Projects Management

4. Institutional Structure of Joint Projects Management

To ensure the success of federal / local partnership projects with the private sector in the State and to promote transparency and governance, initiatives in the State are studied and approved according to the structure shown below:

4.1 Government

The Government is represented by the following authorities:



- 1- The Cabinet, representing the Federal Government.
- 2- The Executive / Advisory Council, representing local governments

In order to enhance the confidence of private investors and encourage them to participate actively in federal / local joint projects, the government shall play its role in terms of giving initial approvals to study initiatives and then adopt good ones for implementation. Following are the most important responsibilities of the government:

1. Formulating general policies for partnership projects with the private sector and issuing decisions aimed at encouraging the investment environment to activate the partnership system with the private sector.
2. Nominating its representative to the membership of the PPP Higher Committee, who meet the agreed conditions and qualifications.

3. Studying the joint project and deciding whether or not to implement it. In this regard, it may seek the assistance of any specialized committee, body or experts as it deems appropriate.
4. Granting final approval on the bidding requirements and specifications document including guarantees and arbitration clause.
5. Nominating its representatives to the Board of Directors of the Project Company in case of its participation in the project.
6. Authorizing the project company to collect the fees and allowances of the joint project and determine those fees and the mechanisms of sharing thereof between all concerned parties.
7. Delivering annual reports on joint projects and studying future joint projects.

In view of the importance of the time factor for partnership projects, the timelines for the completion of the above-mentioned tasks by Governments shall be documented in the memorandums of understanding signed between the Federal Government and the rest of local governments and the importance of the commitment of all parties to those deadlines shall be emphasized.

4.2 PPP Higher Committee

First: Committee Formation

The PPP Higher Committee shall be formed of well-informed and influential members to ensure synergy and effective communication between the concerned government and government entities directly involved in the joint project. For this purpose:

1. Each government shall nominate its representative in the Committee.
2. A resolution shall be issued by the Cabinet regarding the committee formation, the chairman and members nomination, membership period, periodic and non-periodic meetings, assignment of duties and work mechanism.

Second: Committee Functions

The Cabinet resolution on the formation of PPP Higher Committee sets out its detailed functions. The functions of PPP Higher Committee include, but are not limited to the following:

1. Be the main and only point of contact for all federal / local partnership projects with the private sector.
2. Act as a point of contact between the government entity(s) involved in the project and the level of government to which those entities belong.
3. Point of contact between the various joint committees concerned with the study, implementation and control of projects.

4. Develop model contractual guidelines and provisions for partnership contracts and develop general principles, best practices and standards to encourage the development of partnership with the private sector.
5. Receive joint initiatives and projects (federal / local) that can be implemented in partnership with the private sector from the relevant government entities and raise them to the appropriate level of government as stipulated in this manual or what the government considers appropriate.
6. Propose general policies for projects and initiatives of strategic importance to the national economy.
7. Make recommendations to the government on issuing decisions aimed at activating the partnership with the private sector and encouraging investment.
8. Follow-up with the government on obtaining its views and decisions on project initiatives with the private sector.
9. Take decisions on the formation of various technical committees.
10. Announce the suitable projects offering in suitable method and choose the method of procurement (offering and award) and the mechanisms and procedures for their implementation.
11. Submitting drafts of specifications, conditions and contracts, including guarantees, fines, penalties, grievance procedures and arbitration to settle disputes for the government to study and take appropriate decisions.

12. Document and archive feasibility studies, technical reports and investor evaluation reports (qualifications or offers) and save a copy of the contract.
13. Assist the contracting authorities (government / private sector) in obtaining the necessary licenses and approvals.
14. Sign or ratify the partnership contract in accordance with the powers agreed upon.
15. Review the reports of technical committees, consultants and project auditors and take appropriate decisions.
16. Establish a database of partnership projects.
17. Attend annual government meetings and present achievements, proposals and recommendations on joint projects.
18. Submit progress reports to the government.

4.3 PPP Technical Committee

Importance of the PPP Technical Committee:

Partnership projects are usually of great value and long term and involve complexities, overlaps and many technical requirements vary from one project to another. Therefore, there must be a permanent technical committee to provide technical support, coordination and cooperation with various government entities on one hand and investors from the private sector on the other hand in relation to the study, analysis and evaluation of partnership projects. The existence of a technical committee is a cornerstone of the accumulation of necessary experience at the national level.

Formation of PPP Technical Committee

The Joint PPP Technical Committee shall be formed for each project by a decision issued by the PPP Higher Committee. It shall include the competent organizational staff / units at each level of government (e.g. the Federal Government Technical Office) and / or representatives of each local emirate government as decided by the Emirate to study technical, financial, Legal, environmental matters, ... etc. and provide technical support to the PPP Higher Committee and Management of technical relationship with investors.

For ensuring the Government ability to study and analyze initiatives and deal with private investors, the PPP Technical Committee shall include consultants from professionals and experts in the field of studying and analyzing strategic projects recommended to be implemented under the partnership contracts with the private sector. It shall include also members with technical experience and competencies in the financial, technical and legislative analysis field to enable them to participate effectively in all stages of the project from its beginning as an idea until its financial closure.

For the purpose of ensuring that the PPP Technical Committee performs its work to the fullest extent, it may contract with any consultancy firms or individuals specialized in the partnership field who have experience and competence in the drafting and preparation of partnership contracts, and then discuss the details of the contract with all concerned parties and seek to overcome all obstacles till signing of the partnership contract by the parties involved in the project.

Based on the UAE strategy aiming to encourage investment and its belief in the importance of the role of partnership with the private sector in the development of infrastructure and the implementation of major strategic projects, all concerned government entities will work to create an attractive investment environment and provide all the facilities and incentive packages for the success of partnership projects with the private sector. The PPP Technical Committee will be the active focus for the study of development projects and initiatives.

It shall be noted here that the factor of development of federal revenues and diversification of their sources is not an end in itself to apply or implement developmental and strategic projects under partnership with the private sector.

Tasks and duties of the PPP Technical Committee

- Determine the technical requirements to be provided by the government entities for any partnership project such as feasibility study, determination of sustainability and cost-to-cost and other.
- Study the joint projects and initiatives and discuss the feasibility of using PPP model, then prepare a report with recommendations to the PPP Higher Committee for study and decision.
- Study projects and initiatives proposed by Government, evaluate economic and technical feasibility and make appropriate recommendations, including the most appropriate type of partnership to implement the project.
- Prepare or review legal studies of projects to ensure that there is no conflict arises between laws and regulations in force at the federal or local level.

- Develop and unify the concepts of partnership projects and set (standard – technical) criteria to implement the same pursuant to the applicable laws and preparing the preliminary feasibility studies through selecting competent and qualified consultants.
- Approve the terms of reference for the work of consultants contracted by the government entities involved in the partnership project and assist them in these procedures.
- Supervise the preparation of detailed feasibility studies as well as the offering of partnership projects with the private sector in coordination with the concerned government entities.
- Technical coordination with local government technical entities in cases requiring so.
- Launch the procedures of selecting the private partner by announcing a public invitation for those who compete to win the joint project.
- Determine the qualification criteria and provide candidates with the necessary information and instructions.
- Receive the qualification applications and submit the qualification report for the technical office.
- Communicate the qualification results to the candidates.
- Conduct a dialogue with qualified candidates and financing bodies with a view to achieving an integrated vision to determine the technical requirements, practical means and the best financial structure to achieve the joint project.

- Prepare the bidding requirements document in its final form and all its annexes, and communicate the same to the qualified candidates in the manner determined by the PPP Higher Committee.
- Coordinate and provide technical support with the PPP Higher Committee, the Bidding and awarding Committee and the concerned government entities to complete the procedures of studying, evaluating and awarding the project to the winning partner and supervising the establishment of the project company in cases requiring so.
- Study the financial market mechanisms and assist in providing financing at appropriate prices.
- Identify the risk matrix of projects and control systems necessary to control or minimize their impact to lowest possible level.
- Prepare, supervise and review the risk distribution study between the parties to the partnership contract.
- Prepare standard forms of the contracts, which contain the main terms and conditions to be met and submit the same to PPP Higher Committee for approval. In addition, revise the contracts before signing thereon by the stakeholders.
- Setup timeline for executing PPP projects including follow up mechanisms and KPIs.
- Follow up on Project(s) progress and provide necessary technical support for government entities all time.

- Prepare a semi-annual / annual report on the proposed development and strategic project and submit the same to the PPP Higher Committee, then submit it to the government for taking appropriate decisions.
- Review/ evaluate projects that are nearing completion and submit proper recommendations concerning them to PPP Higher Committee.

4.4 Bidding and Awarding Committee

Under a decision issued by the PPP Higher Committee based on the nominations of each of the concerned government entities, a joint (federal / local) committee to carry out the tasks of bidding and awarding joint projects of partnership shall be formed. A committee shall be formed for each project separately and shall comprise the competent employees / organizational units at each level of government (e.g. the Purchasing Organizational Unit) and / or representatives of each local government of the Emirate as decided by the Emirate.

Following are the main tasks of the Committee:

- Provide technical and administrative support to the Joint PPP Technical Committee.
- Prepare the bidding requirements document and preliminary specifications and submit the same to the PPP Technical Committee.
- Complete the collection and preparation of documents necessary for the announcement and offering of the project.

- Prepare responses to investors' inquiries in coordination with the PPP Technical Committee and then inform them to investors.
- Assist in reviewing and evaluating proposals received in coordination with the PPP Technical Committee.
- Submit the preliminary recommendations of the PPP Technical Committee on awarding the best bid from investors, which in turn shall be submitted to the PPP Higher Committee.
- Assist in reviewing the terms of the contract and submit comments to the PPP Technical Committee.

4.5 Performance Monitoring Committee

A (federal / local) joint committee shall be formed by a decision issued by the PPP Higher Committee based on the nominations of each of the concerned government entities to carry out the tasks of controlling the implementation of the joint projects of partnership. The committee shall be formed for each project separately and shall include representatives from each level of government (e.g. the Federal Government Technical Office and the Department of Finance of the Government of Dubai) or any other representatives of each local government of the Emirate as decided by the Emirate.

Public-Private Partnership (PPP) is an essential factor for delivering sustainable development projects by contributing to national, regional and foreign investment. The adoption of the principles and mechanisms of good governance and transparency in the process of delivering projects listed under the PPP an important pillar for the project's success.

The right of government entities to control the efficiency of operation shall be explicitly stated in order to ensure the agreed quality standards at all stages of the project. Determination of the entities entrusted with control functions from within and outside the concerned government entities is necessary to prevent duplication or excessive number of entities that carry out control, which may lead to obstruction of work. In this context, and to ensure the maintenance of performance level and quality standards can be controlled on two levels (double): **The first:** This type belongs to the government entities that own the project as an entity with sufficient knowledge and experience in the projects, and is carried out at all stages.

The Second: This type is made through the Project Control Committee as an independent party whose main task is to ensure that the private partner adheres to the quality standards and outputs agreed upon in the contract, provided that its role does not cause any obstacles, but that it always aims to facilitate procedures and encourage investors without compromising the interests of the government.

The Committee shall submit its reports to the PPP Higher Committee. In order to carry out its tasks, the Committee shall coordinate with the PPP Technical Committee and other experts and technicians, whether from government employees or the private sector.

4.6 Government Entity

The Government Entity role is essential in all stages of the project. In case there is an initiative or idea for a joint project (federal / local) that can be implemented in partnership with the private sector, the minister / head of the Government Entity directly concerned with the project shall submit the proposals to the PPP Higher Committee for consideration and give preliminary or initial approval.

Based on initial approval, the Minister / Head of Government Entity directly concerned with the project shall submit the studies and all relevant documents and initial recommendations thereon to the PPP Higher Committee for consideration and completion of the appropriate procedures.

As required, and as deemed appropriate by the Minister / Head of Government Entity, the following internal committees / teams may be formed in the concerned Government Entity to prepare, follow up and supervise the study and implementation of the partnership contract within the limits of their respective powers.

- A. Steering Committee
- B. Technical committee / project team (technical, financial, legal).
- C. Bidding and awarding Committee.
- D. Independent consultant to prepare initial studies - optional

The government entity and its team shall perform the following tasks:

- Submit proposals for possible joint projects under the partnership contracts to the PPP Higher Committee.
- Prepare the preliminary studies dealing with the technical, economic, legal and financing aspects of the joint projects, including the extent of investor interest and the possibility of attracting the necessary funding. A comprehensive study of the project and any related sub-projects shall be prepared and no fragmentation of projects shall be made in order to ensure the success of the project, reduce investment costs and increase the return on investment in coordination with other government entities that may be involved in the project.
- Submit preliminary studies on joint projects to the PPP Higher Committee for taking necessary deciding thereon.
- Form the project steering committee and other internal committees after obtaining initial approval.
- Assist in the preparation of analytical and detailed studies of the project, including the bidding requirements document in full coordination with other government entities and the PPP Technical Committee.
- Play a coordinating role and technical support to the PPP Technical Committee when studying the bids of investors or in the stage of negotiation made by the PPP Technical Committee with the best bidder.
- Signing or ratifying the partnership contract in accordance with the agreed powers.
- Following up and monitoring the project implementation and evaluate the outputs and submit periodic reports to the PPP Higher Committee.

4.7 Private Sector

It shall be represented by the investor (s) who have expressed interest in the project to the winning partner of the project, which may be a company or an alliance of several private companies entrusted with the execution of the project in accordance with the terms and conditions of the signed contract and the terms and conditions adopted in bidding requirements document.

4.8 Project Management Bureau (optional)

In the case of large and complex projects requiring qualitative experience, a specialized company may be appointed to manage the project, including the management of the project announcement process, the offering process, the receipt and evaluation of bids. This matter shall be assessed and decided by the PPP Higher Committee after taking approval of the Government.

Chapter Five - Project Life Cycle - Phase I

Project Proposing & Preparation

5. Stage I- Project Proposing and Preparation

5.1 Introduction:

This chapter outlines the guidelines relating to the phase of proposing and preparing PPP initiatives and proposals. As discussed above, the provisions below and those stated in the subsequent chapters are for indicative purposes. Thus, the government entities and PPP Higher Committee are required to review such provisions and peruse to other procedures or practices that may be recently applied or more appropriate in any phase of the project life cycle.

Any Government Entity, individually or jointly with another Government Entity, may submit its proposals for projects, initiatives or ideas that can be implemented under partnership contracts with the private sector to the PPP Higher Committee. The PPP Higher Committee, in turn, will study the proposed project and assess the extent of its implementation through a partnership and the interest of the private sector and its conformity with the priorities of the government. Some proposals may require submission to the Government for obtaining its initial approval. In case the idea or initiative of the project is originated from one Government Entity, that entity shall address the PPP Higher Committee directly, and identify other government entities that may be a party to the project. In all cases, one of the federal entities must be a party to the project to be within the competence of the Higher Committee.

The private sector can also submit an idea or proposal for the implementation, management or operation of a project through the partnership directly to the government entities or the PPP Higher Committee, provided that the proposal shall be formally submitted. In this case, the following conditions shall be met in

the project idea or proposal submitted by the private sector before any further action is taken:

- A. The project shall not be included in the list of partnership projects under study.
- B. Project idea is an innovation in the design, development or management of a project.
- C. The project idea shall not conflict with the state development programs.
- D. The proposal shall present a new and sustainable economic project to provide public service or develop existing services.
- E. The proposal shall be consistent with the development strategy of the State.
- F. The proposal shall not add any additional financial burdens to the concerned government entities and may not benefit from partnership projects that are based on a direct offer of guarantees, assistance or other forms of government support.

The PPP Higher Committee will also discuss and study the proposal through the PPP Technical Committee.

The PPP Technical Committee shall submit a detailed report on its recommendations on the project. In so doing, it may ask the government entities or the investor to respond to its inquiries or provide thereof with any additional studies, data, documents or information.

The PPP Higher Committee shall address the concerned government entities or the investor regarding their recommendation on the idea of the project.

If the value of the project exceeds the approval authorities of the PPP Higher Committee, it shall submit the proposal to the government for consideration and taking the appropriate decision and then in turn shall communicate that decision to the concerned government entities or the investor.

If it is decided to add the proposal to the joint projects program adopted by and announced by the PPP Higher Committee from time to time, a project committee shall be formed from the members representing the government entities that are parties to the project. As appropriate, the Committee may also select financial, legal and technical consultancy offices to assist and support the project technical committee.

The government entities involved in the project shall form working committees / teams to assist and support the PPP Technical Committee of the project in its work. The working committees/teams shall include specialized staff, each in its field of work, from the employees of the concerned government entity or any of the (federal / local) government employees. Private sector experts and consultants may be hired to determine the nature of the project and the business interest.

5.2 Projects submission to the guidelines stated in this manual

Not every project implemented by the government entities in partnership (in the federal/local level) with a private sector partner may be required to comply with the guidelines

contained herein or the internationally acceptable procedures / practices of partnership contracts with the private sector. The project shall meet the following conditions in order to be considered as a PPP project:

- The project value shall exceed 200 million dirhams, except the projects of strategic nature that are classified under the scope of partnership projects performed with the private sector based on a recommendation of the PPP Higher Committee, which shall be submitted to the government. If the (Federal/local) PPP project value is less than 200 million dirhams, or the project doesn't meet PPP terms, it shall be implemented in the manner approved by the PPP Higher Committee or by agreement between the concerned parties. PPP Higher Committee shall be responsible for monitoring and submitting periodic reports on these projects to the Government.
- The private sector shall finance, wholly or partially, a public project of an economic nature.
- The private sector shall implement at least one of the following processes: construction, development, restoration, outfit, maintenance, rehabilitation and operation, and shall bear part or all of the risks arising from its inability to implement or failure of the project. In other words, the private partner shall accept bearing the losses arising from the unsuccessful or unsustainable project.
 - ❖ The powers of acceptance, approval and monitoring on joint projects shall be as follows:
 - A. If the value of the project is less than AED 200 million, the relationship will be direct between the PPP Higher Committee and the Ministry of Finance (at the federal level) and the Dubai Department of Finance if the Emirate is a party to the project and any entity chosen

by the rest of the emirates to represent them if they are parties to the project.

- B. If the value of the project is AED 200 million or more, the PPP Higher Committee will present it to the governments for initial approval of the project idea and final approval after completing the necessary studies. The reports of completion and performance control and operation shall be presented to governments for review and decision-making, as appropriate.

For the purpose of adopting a clearer and more detailed list of powers, we suggest that governments shall sign agreements of understanding after approving this manual to enhance the applicability of this manual to define frameworks, facilitate procedures and expedite implementation.

Based on the forgoing, the availability of the above conditions/criteria makes the project to be implemented by the (federal / local) government entities compulsory subject to the guidelines and procedures contained in this manual. Therefore, the implementation of a joint project by any Government Entity under a partnership contract without following the procedures set out in this manual makes that project subject to invalidation by any interested party for exceeding the limit of authority and hold officials in those bodies accountable.

5.3 Project Preparation & Proposal

1. The Minister/Chairman will represent the concerned Government Entity in the proposing joint projects in all official corresponds relating to the project.

2. Proposals, ideas and initiatives shall be submitted via a formal request/letter or on a special form, if available, to the PPP Higher Committee, which in turn, after studying the same, shall take the necessary based on its value. All the preliminary studies and necessary documents of this stage shall be attached. It is very important that the request shall include confirmation by the concerned government entities that the proposed partnership project represents an integrated project as a single unit, and not subject to fragmentation.
3. The PPP Technical Committee shall study, analyze and evaluate the request and audit the documents attached thereto. Communication, coordination and cooperation with the government entities involved in the project shall be made satisfy the deficiencies, if any, in order to develop a preliminary assessment of the project. It is not necessary at this phase for the Government Entity to submit a detailed and comprehensive study. However, it is required to cooperate with the PPP Technical Committee for briefing the project elements and inputs, completing its documents and preparing a preliminary study for a summarized and focused initial evaluation of the project's feasibility in order to:
 - A. Analyze needs, project objectives and anticipated results, public service expected to be provided, the project site and availability thereof, timetable for the awarding process, and anticipated completion period (basis and standards of the anticipated period calculation shall be stated), main technical and financial challenges that may hinder the completion, and results of any conducted

studies related to the proposed project with the concerned entity or any other entity.

- B. Determine the sector's needs in both of services and/or infrastructure.
- C. Ensure the project's conformity with the policies and strategies of the concerned sector.
- D. Assess the cost, study the social and environmental impact and include the benefits of the project's green growth and climate change.
- E. Determine the technical and operational dimensions of the project's idea through the initial analysis to the following:
 - ✓ The project's engineering and technical aspects.
 - ✓ The possibility of managing the project's operational aspects.
- F. Determine the financial and economic dimensions of the project's idea through the initial analysis of the following:
 - ✓ The anticipated revenue and financing costs, calculation of returns on capital and Internal Rate of Return.
 - ✓ The project's total cost (capital + Operational Costs + maintenance costs) on the basis of standards applicable in the concerned project, including value for money, quality/cost and analysis of comparative cost if the project is implemented by the government.
 - ✓ Determine the cash flow and potential economic benefits from the project.

- ✓ Scope of the private sector's interest in the project.
 - ✓ Risk matrix (probability of occurrence, impact on the project and mechanisms of management).
4. Upon completing the studies and documents, the PPP Technical Committee shall refer the proposed project file to the PPP Higher Committee to provide its preliminary comments within 30 days. If the project is to be submitted to governments for study and opinion, the deadline shall be 60 days.
 5. Upon receipt of the comments, the PPP Technical Committee shall coordinate with the concerned federal entity to take the necessary corrective actions and complete documents to re-submit the request to be approved by the competent entity based on the project value.
 6. Based on the preliminary studies, documents and inputs and recommendations of the PPP Technical Committee about the proposed project, a deliberation and discussion shall be conducted as for the project's viability to be implemented by virtue of a partnership contract, the private sector's interest in such project and whether the same conforms to the government's priorities.
 7. Based on the discussion result, the competent authority shall issue a decision either to reject or approve the project and proceed with studying the detailed feasibility and other studies.
 8. If the project is approved, the PPP Higher Committee shall add the same to the platform the joint projects program announced by from time to time on its website or through

periodic publications issued thereby. This platform includes the following:

- Projects to be added to the joint projects program.
- Projects on which initial approval resolutions were issued by the concerned authority.
- Projects approved to be implemented in partnership method.
- Projects for which the procedures to select the private partner had begun.
- Projects on which the PPP contracts were signed.
- Projects that have been started and its completed phase(s).

5.4 Feasibility Study Template

The feasibility study template determines the manner or method to prepare and assess the feasibility of the partnership project. The feasibility is fundamental in achieving value for money for the joint projects with the private sector and determining the sustainability. Therefore, it is essential to study the business status and ensure the same prior to taking any decision to use the partnership approach with the private sector.

The feasibility study template focuses on assessment of the value for money and the possibility of implementing the project, subject to:

1. Public sector comparator (PSC).
2. Public sector comparator modified to contain risk.
3. Main reference model for partnership (to be compared with the Public Sector Comparator)

4. Reference model for partnership modified to contain risk.
5. Sensitivity analysis is an important factor for measuring value for money.
6. Ability of the project implementation.

The assessment of feasibility assists the Technical Bureau to complete four critical tasks as follow:

- ✓ Establish a measure for the internal service provision costs (Public Sector Comparator).
- ✓ Determine the extent of considering the partnership option to balance its potential benefits over costs.
- ✓ The public sector comparator assists in evaluating which bid makes better value for money.
- ✓ The assessment of feasibility assists to find a systematic strategy for risk management to optimally distribute risks before negotiating with the private partner.

The feasibility study shall be prepared and assessed on a project basis. Each project has a different ability to provide value for money.

The process of developing the public sector comparator and reference model for public- private partnership is a huge task. The implementation of this process requires consideration of hiring experts from the private sector in th e event of non-availability of these experiences with the government employees.

Development of the base public sector comparator model

In this part of the feasibility study, a base public sector comparator model, without calculating risk, shall be developed.

The public sector comparator shall represent the total cost to implement the project by conventional methods, i.e. by the government, and by using one of the approved methods of procurement. The model shall observe all types of cash inflow or outflow, such as:

- Direct costs.
- Indirect costs.
- Revenues.

All the accounting processes of costs and income shall be supported by documents attached to the public sector comparator to support assumptions and analysis.

Calculation of direct costs

Direct costs are those costs that can be customized or linked to a particular service. Such costs may be calculated by the following:

A. The recent public sector projects to provide the same service or infrastructure.

B. If there are no projects recently carried out for comparison and measurement, then the best estimates shall be made based on the costs of similar projects in neighboring countries.

Direct costs shall be classified according to the following categories:

A. Capital costs.

B. Maintenance costs.

C. Operational Costs.

Calculation of Indirect Costs

Indirect costs are the costs of resources from the Federal Entity and have no direct relation to the project. In general, they are expenditure costs, for example:

- Costs of human resources, administrative support necessary for internal implementation of the project, including the PPP Technical Committee
- Costs of accounting services.
- Costs of legal services.
- Costs of technical support services such as information technology, systems and electronic programs.

Revenue

The partnership projects that provide services may generate revenues that are considered cash flows. The accurate estimation of this flow is necessary when developing the public sector comparator and the reference model for partnership.

Since the partnership project extends for years, it is necessary to estimate the revenue growth percentage over the project's life.

Model assumptions

All the assumptions made for the development of public sector comparator model shall be clearly identified. The model shall usually cover several areas such as:

- Inflation percentage. The percentage of inflation on all the anticipated future cash flows shall be predicted.

- Deduction percentage: Means the deduction made on future cash flows based on the present values through application of certain deduction percentage. The Government Entity shall consult with the entities responsible for the management of public funds at every level of government.
- Consumption: It is not put within the public sector comparator models since those models are calculated on cash flows, not on other accounts.

Definition of Public Sector Comparator Model

All project costs over the project's entire period shall be anticipated, but these costs occur at different times. Thus, the project's cash flows (inflows and outflows) shall be reduced based on the present value. The net present value of the cash flows shall be calculated based on the above-mentioned costs. It is necessary to consult the financial professionals or any other consultancy companies at this phase to develop this model if the Government Entity does not have such experiences.

An example of Public Sector Comparator Model is shown in the table below:

Year	Capital Cost	Maintenance Cost	Operational costs	Indirect costs	Revenue	Total	Discount factor	Reduced flows

Total									
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Development of Public Sector Comparator Model modified to contain risks

This section outlines the public sector Comparator Model modified to contain risks. This model shall be calculated to contain such risks that are often overlooked by traditional methods in the public project implementation. This method is equal to the base public sector Comparator Model in addition to the risks costs. The risks and costs thereof shall be obtained from the risk assessment model.

An example of Public Sector Comparator Model modified to contain risks is shown in the table below

Year	Capital Costs	Maintenance Costs	Operational Costs	Indirect Costs	Revenues	Modification for risks	Total	Discount factor	Reduced flows
Total									

Development of PPP Base Reference Model

Under this section of the feasibility study, the PPP base reference model, without calculating the risks costs, shall be developed. The base reference model represents the output costs, assuming that the private sector shall implement the project.

By comparing the public sector comparator with reference model for PPP, the concerned Government Entity is able to evaluate whichever gives the best value for money, whether the service provision by the government? Or the private partner?

The reference model for PPP shall be obtained using the same output specifications, such as those that were used for the base public sector Comparator Model.

Whereas this model is a theoretical model in which the concerned Government Entity assumes the private sector's role, it shall be known that it is impossible to get accurate costs by 100%.

The following steps shall be taken to develop the PPP base reference model:

- Identifying the structure and financing sources of the PPP project.
- Developing the basis for payment mechanism.
- Calculating and unifying all costs.
- Developing the Model assumptions.
- Defining the PPP base reference model.
- Describing the results of the PPP base reference model.

Identification of the Partnership Project's Structure and Financing Sources

In this section, the following points shall be determined:

- The relationship between the concerned Government Entity and the various parties from private companies.

- Proposed financing sources, such as:
 - ✓ Borrowing (loans) or issuing bonds
 - ✓ Contributions of concerned governments.
 - ✓ Share returns.
 - ✓ Costs and main conditions of debt financing

Calculation and Unification of all Costs

The categories of costs covered in this section shall be the same costs in the public sector Comparator Model. The main difference is that the reference model for PPP is expected to take into account the innovation, creative design, construction, and operational competencies expected from the private partner. Such competencies shall be defined herein and used as a basis to calculate the following sub-sections (They shall be the same as those used in the base public sector Comparator Model mentioned above, including direct and indirect costs and revenues).

Model Assumptions

The PPP base reference model shall be developed based upon the same assumptions that have been developed for the public sector Comparator Model, stated above, including inflation rate, discount rate and consumption.

Definition of the PPP base reference model

The base reference model shall use all the costs previously determined without hedging costs of risks. The model shall be used in the same way used by public sector Comparator Model since all cash flows (inflows and outflows) shall be reduced by using the net present value.

An example of PPP base reference model is shown in the table below:

Year	Capital Costs	Maintenance Costs	Operational Costs	Indirect Costs	Revenues	Modification for risks	Total	Discount factor	Reduced flows
Total									

Development of the PPP reference model modified to contain risks

The PPP reference model modified to contain risks is equal to the base PPP base reference model in addition to the risk costs (note that column of modification for risk in the table below)

The PPP reference model modified to contain risks shall distinguish between the transferable risks (risks that can be transferred to the private sector because it is more suitable to manage these risks) and residual risks (risks that the government proposes to manage by its own).

An example of the PPP reference model modified to contain risks is shown in the table below:

Year	Capital Costs	Maintenance Costs	Operational Costs	Indirect Costs	Revenues	Modification for risks	Total	Discount factor	Reduced flows
Total									

Sensitivity Analysis

This section determines the extent of flexibility of the base public sector Comparator Model and the PPP base reference model towards changes in the assumptions on which the model is developed.

The concerned government entities concerned with the project shall test the main variables sensitivity in order to determine its impact on the value for money and the possibility of implementing the project. This matter aims at checking whether the value for money will continue to be present if any of the main variables changed (for example, if the inflation rate or the Operational Costs is higher than assumed).

The main variables may include the following:

- ❖ Project Terms
- ❖ Inflation rate.
- ❖ Discount rate.
- ❖ Construction cost.
- ❖ Total operation Cost
- ❖ Expected level of demand for the service.
- ❖ Finance terms
- ❖ Estimated Revenue.
- ❖ Any other costs or assumptions have been developed.

The best example for the sensitivity analysis of PPP reference model is when the upper and lower values of discount rates are checked. If both values of discount rates support or reject the project's value for money, the presumed or estimated values

may be considered reflective of the changes. If not, the project shall be further examined.

Demonstration of the ability to carry out the Project

This section is intended to measure the ability to carry out a PPP project. In order to do so, the following steps shall be taken:

- Determine the budget allocated to the project.
- Compare the PPP reference model modified to contain risks with the budget allocated for the project.

Determination of the project-allocated budget

The overall project budget shall be estimated by studying similar projects. If the budget is not known in advance, it may be obtained from the costs of public sector comparator model since the public sector comparator model is used in the traditional government requests.

Comparison of the PPP reference model modified to contain risks with the budget allocated for the project

This section shall show the ability to carry out the project by comparing the budget with the PPP reference model modified to contain risks. Based on the comparison results, two possible cases shall be found as follows:

First: If the costs of the PPP model or the net present value are less than the budget, there shall be ability to carry out the project.

Second: If it is not so, and there is no ability to carry out the project, there are two options:

- Waiving the project, or
- Modifying the output specifications to place the project within the limits of the ability to carry it.

Initial Examination of the Value for Money

This section is intended to provide an initial examination of value for money. This actual examination is defined as the RFP phase.

The initial examination of the value for money shall be conducted by comparing the public sector Comparator Model modified to contain risks with the PPP reference model modified to contain risks. The net present value resulting from both models shall be compared. The model that comes with less value shall be considered the one that gives greater value for money.

If both net present values are close to each other, other specific factors such as quality and performance shall be studied to select the best model for the project.

In general, the tests of ability to bear the financial burden and value for money shall be made at four critical phases during the project development and implementation, namely:

1. At the time of preparing the project's initial feasibility study when seeking to obtain the approvals on the project,
2. Upon receipt of bids to make sure that the preferred offer passes the exams.
3. Before awarding the contract to ensure that there is no adverse effect on any value for money or financial burden as a result of the modifications made during the dialogue, discussion or change in funding terms
4. Before the implementation directly, during revising previous estimates to reflect the output specifications and

transfer the proposed risks and costs in the date of signing the contract,

5.5 Formation of the Project Committee and its functions

Based on the initial approval - from the competent authority according to the value of the project - the idea or initiative of a joint project (federal / local) and the directives of the PPP Higher Committee and follow-up of the PPP Technical Committee , and based on the prior coordination and understandings reached between the various parties that lead to formulate a joint vision and strategic plan for the implementation of the project, the project committee shall be formed by a team, each according to its competence, from within the concerned government entities or from outside as needed. This project committee shall prepare an integrated feasibility study on the joint project, which address the technical, economic, legal and financial aspects, including the extent of investor interest and the possibility of attracting the necessary funding.

Government entities that prepare preliminary studies for joint projects shall communicate with the departments concerned with of public money management at the government level to which they belong (Ministry of Finance at the federal level and financial departments at the local level). The importance of coordination and consultation with the Public money management bodies of the concerned governments in the initial stages is in studying the financial burden and the future impact of the project on the general budget of governments and the state and ensuring that adequate funding is available throughout the project implementation period.

The project committee shall be assisted by a team of experts and specialists specialized in legal, financial and technical consultations, and the body supervising the organization of the sector, if any, and any entity or person that some aspects of the joint project may fall under its powers.

5.6 Project Consultant

In all cases, consultants and specialized experts from the private sector may not be appointed or hired except on the recommendation / approval of the Higher Committee. The reason behind this matter is that it is necessary to make sure that the experts to be hired from the consulting companies are not available in the PPP Technical Committee or any of the government entities.

A. Importance of having consultants for the project

The PPP project awarding completion depends mainly on the good organization and preparation by the government entities and its ability to take advantage of expertise and competences in the PPP Technical Committee and to hire specialized consultancy services.

The consultant selection has a significant impact on the perception of potential investors for the presented project, whether in terms of the extent of their interest or willingness to provide the expected price. The consulting firms' importance is attributed to fact that the joint projects are complicated projects requiring skills and experiences specific to the project nature and such experiences may not be available at the government entities or the PPP Technical Committee . The specialized consultants provide skills and experiences required for the success of bidding and awarding process. The close cooperation between

the consultants on one hand and the PPP Technical Committee and the Project Committee team on the other hand plays a significant role in developing the skills of the government employees.

Consultant hiring reduces falling into costly mistakes that can be avoided, as they are aware of the best local and international practices and implemented similar joint projects.

Participation of the private sector and the extent of its interest in investment depend on the confidence of investors in the State in general and in the contracting government entities in particular. The consulting firms have an impact on the private sector's decision for investment, since hiring of well-known and reputable consulting firms supports the credibility of awarding process and enhances the investors' confidence.

The private sector judges the State based on previous experiences. If the State proves its dependence on transparent and fair selection procedures in the early phases of the project, i.e. when selecting consulting firms, this supports and enhances the investor's confidence in the awarding process.

Contracting with well-known and reputable consultants supports the credibility of the awarding process, as the consultants having distinctive reputation are not ready to involve their names in projects that cannot be implemented; a matter that satisfies the investors as for the project's integrity due to the independence of such consulting firms.

In light of the foregoing, the benefits resulting from proper planning and preparation of the bidding and awarding process and the success of the joint project in the long term may exceed the consultants' fees incurred by the State for once.

B. Timing of the project consultant appointment

Upon the decision of the PPP Higher Committee or the competent authority in the concerned federal entities and after the formation of the project committee, consultants from the private sector shall be appointed, provided that they are experienced, efficient and competent in the field of the project. It is worth noting that it is better that the transaction advisor shall be appointed before the other consultants; due to its role in determining the required skills of the other consultants and drafting RFPs directed to consultants, based on his experience in implementing similar projects.

C. Project Consultancy Team

The joint project consists of several diverse elements and requires a wide range of disciplines at the preparation phase and during the awarding process. Thus, each project requires a different mix of consultants. However, there are some fixed skills within the projects, which are provided by financial, legal and technical consulting firms.

The project consultancy team consists of the transaction Advisor, known as the financial consultant, and legal and technical consultants, all of them are cooperating within a single frame under the direct supervision of the PPP Technical Committee and Project Committee based on the project value.

1. Project transaction Advisor (transaction Advisor)

The transaction Advisor plays a pivotal role in awarding joint projects and managing to sign the PPP contract. It serves as a central point of accountability for the proper and timely completion of work by consultants. Furthermore, it plays the

role of mediator between the Project Committee and private investors interested in the project.

The existence of an active consultant experienced in the area of the proposed project has many positive implications and effects, including:

- Benefitting from its local and international experience in all matters associated with the various phases of awarding joint projects in the concerned sector, identifying performance indicators and monitoring completion.
- Protecting the federal government from making costly mistakes that can be avoided
- Obtaining the services of the best local and international practices in this area.
- Strengthening the trust of local and international investors to participate in the proposed project
- Transferring experience and knowledge to the staff of Technical Bureau and the federal government.
- Serving as a central and pivotal point of accountability and be liable for completing the project professionally and timely.

One of the preliminary duties that may be assigned to the transaction Advisor is to study the possible forms of PPP to implement the joint project and to recommend the best form in the light of imposed restrictions and objectives envisaged by the State from the project. The transaction Advisor may assist in designing the awarding process, identifying the required tasks and linking the same with a schedule. He may also assist the Project Committee in the selecting the consulting firms, recommend the firms having the necessary expertise, and identify things to be studied and thus develop the scope of work

and assist in the evaluation of the proposals submitted by the consulting firms.

The core duties of the transaction Advisor are as follows:

- Attracting the attention of the private sector to the joint project and designing the same in such manner that enhances its eligibility for financing and successful implement. Such duties require skills relating to structure of financing transactions, preparation of financial models, studying and assessing risks, and conducting negotiations. The transaction Advisor shall be aware of the commercial logic and analysis of markets and ways of attracting private financing.
- Studying the impact of any changes in the project on the private sector's trust and interest, and also playing a leading role in the selection process of the private partner, negotiation and financial closure.

Contracting with the project's transaction Advisor may be divided into two separate phases, namely:

First stage: This stage is intended to complete the feasibility study in accordance with the PPP contracts at such level that enables the competent entities of making the right decision to move forward with the joint project or not. If the project implementation is approved, the project's transaction Advisor shall proceed with the second phase.

Second stage: This stage is intended to prepare for the selecting the private partner and taking the relevant procedures, including preparing all the necessary documents and instruments. This division of stages allows the government to

terminate the contract with the transaction Advisor upon completion the feasibility study if it is decided not to proceed with the partnership project.

2. Legal consultant

The role of the legal consultant begins with studying the compliance of the joint project details with the laws and regulations applicable in the State and therefore the viability of the project to be legally implemented, and provision of appropriate solutions that shall overcome any obstacles. Furthermore, the legal consultant shall assist in drafting documents (Request for Expressions of Interest (REOI), Pre-qualification Document) and revising the same in terms of legal perspective. The main role of the legal consultant is to draft PPP contracts and subsequent contracts and ensure that such these contracts reflect the final agreement resulting from negotiations with the private partner.

Legal consultant plays an important role in finalizing the contract by ensuring that that contract satisfies the precedent conditions to be enforceable. This matter requires enjoying an experience in the local legal framework and international best practices followed in the PPP contract drafting and negotiation.

3. Technical Consultant

The primary role of technical consultant is to identify the outputs envisaged from the joint project and develop their technical specifications and the method of linking them with entitlements of the private partner. It also evaluates the potential technical solutions in the joint project design phase, proposes alternatives, and bears the responsibility for studying and analyzing the technical proposals submitted by the competitors.

Technical consulting team consists of engineers with technical experience in the technical aspects of the project in question. This matter requires specialization or high experience with the subject of the project in the concerned sector, ability to identify operational and investment requirements and familiarity with the technical aspects. Preferably, this experience shall be of a wide geographical reach because the technical studies are based on specific characteristics of the project in question and the lessons learned from similar projects that the Technical Consultant contributed in its implementation.

The technical consultant tasks require certain skills, including implementing engineering designs, estimating and calculating costs and quantities over the project life cycle, planning and predict demand activity, assessing assets, developing performance criterion and identifying investment requirements.

4. Other Consultants

The consultancy team formation shall be depended on the nature of the joint project and human resources in the PPP Technical Committee , Project Committee and government entities. In addition to the above-mentioned consultants, the nature of the proposed project may require hiring other consultants specialized in areas to be determined as appropriate. Examples of these consultants are as follows:

1. Environmental Consultant

Some environmental tasks are often entrusted to the technical consultant. However, in some joint projects, especially infrastructure projects, which its implementation may result in serious environmental consequences, it is necessary to prepare a detailed study of the environmental impact on the state. This matter requires hiring a consultant specialized in the environmental matters. Despite the winning bidder could take it upon himself studying the environmental impact due to the requirements of some funders, the need for environmental consultant remains imperative since it sets the minimum environmental standards to be observed by partners when designing technical solutions, which include, but are not limited to, green building and sustainability. The environmental consultant evaluates the extent to which these solutions satisfy the objective environmental conditions.

2. Public Relations Consultant "Marketing"

Hiring public relations consultant aims at disseminating information about the project in order to involve all stakeholders and ensuring their support of the joint project on one hand and informing the private sector of the proposed project on the other. Thus, the work of a public relations consultant targets two groups of the public, namely public opinion and private sector.

As for the public opinion: Public relations consultant may, in order to gain its support for the project, resort to organize public consultancy meetings with stakeholders such as civil society organizations to view the project details and goals and to listen to their opinions and concerns with respect to the project impacts on them. It may also resort to the media, where it can

organize dialogic sessions with the concerned Government Entity and Technical Committee, or publish newspaper articles or present short documentary films describing the project parameters and targets thereof.

As for the private sector: The public relations consultant tasks aim at promoting the joint project and attracting the attention of potential investors. These tasks may include roadshows addressed to the investment community, and surveys of investors' opinions in order to measure the level of interest in the joint project.

5.7 Methodology of Awarding Consultancy Services

Approving the proper methodology of the project consultant appointment supports the possibility of hiring the consultant best suited for the project and enhances the project success and achievement of its goals. The Project Committee shall be responsible for approving the consultant appointment and it may assign to the Government Entity any tasks it deems appropriate to be carried by the entity under its supervision.

There are three ways to appoint the project consultant, namely:

A. Open international competitive bid

It is defined as an open invitation to more than one consultant (which gives it the competitive nature) from more than one country (which gives it an international nature) to submit proposals for consultancy services in a specific project. It is the best way for appointing the consultants due to its transparency and the creativity resulting from submitting creative action plans and innovative ideas that may not be taken into account. It also promotes consultants' trust in the government. On the other

hand, it may appear that the awarding method through open international competitive bidding is expensive and requires a longer time and larger team to organize thereof, but this cost and effort may be negligible when comparing thereof with the cost resulting from the selecting an inappropriate consultant and its implications for the joint project failure.

B. Tendering

It is one of the competitive bidding types and it is not only characterized by inviting all consultants interested or qualified to do the work, but also it is targeted to a specified number of consultants who may be local or foreign.

The method of Tendering is less costly than the open international competitive bidding due to the savings resulting from not publishing the invitation in the local and international newspapers, where the registered or well-known consultants are directly notified.

This method should be used in awarding the consultancy services if there is a limited number of the consultants specialized in providing the envisaged services and have a good track record.

C. Direct Agreement - Mutual agreement

It is an invitation directed to one company to submit a consultancy services bid for a specific project and the contract is signed after negotiation.

In general, the time and cost factors are the most important incentives to resort to this method. It allows hiring a consultant quickly and at a lower cost than the cost of organizing the awarding process through an open international competitive bidding or Tendering. However, this method misses the

opportunity to compare the technical and financial bids with alternative bids. It may cause the government to be subjected to strong criticism such as lack of transparency, may encourage corruption and bribery and may constitute a violation of financial regulations relating to contract deals.

Accordingly, it is preferred to depend on the open international competitive bidding or Tendering when appointing the project consultant. The awarding process shall be linked with a real schedule, and the Time limits specified therein shall be observed.

5.8 Consultant Bid Assessment Mechanism

The bids assessment mechanism primarily depends on the level of significance given to cost by the State. The bids are assessed by one of the following methods:

A. Pure Technical Assessment Method

The bid assessment depends on the technical competency according to a points/weight system agreed upon in advance and followed by a contract value negotiation. In this case the method is known as “Quality Based Selection”. If there is a fixed budget for the consultancy services, the method is called “Fixed Budget Selection”. The government shall have the right to decide whether to disclose the financial cap allocated for these services or not.

B. Joint Technical and Financial Assessment Method

In this method, the technical and financial elements shall be taken into consideration based on specific weights. This method has various forms, including what is called “Least Cost Selection with Technical Hurdler”, in which the final assessment depends on the classification of the financial bids submitted by the consultants

who obtained the minimum technical score, e.g. 70 points out of 100 points.

The other form of the technical and financial assessment is what is called “Quality and Cost Based Selection”. In this form, a set of points are calculated as the average of the technical and financial points based on the weights as the average points of each of them: for example, a weight of 80% may be allocated to the technical points against 20% for the financial points, or 90% for technical points against 10% for the financial points depending on the financial element.

Those two forms may be integrated by calculating the total points based on their technical and financial weights for the bids that get the minimum technical score.

C. Pure Financial Assessment Method

In this method, the bidder winning the consultancy contract is the one that proposes the least price. Although the assessment is fast and easy in this method, the bids submitted shall not include the proposed working team or the resources to be provided by the consultant. This method does not encourage the experienced and highly skilled consultants to participate.

The bids assessment method shall be selected based on the types of consultancy services required according to the project nature and any financial limits imposed on the joint project study budget. Thus, it is difficult to recommend a standard assessment method for all projects, but it is preferred to take the technical aspect of the consultancy bids into consideration, including the experiences and skills of the work team. For that reason, the joint technical and financial assessment method is used in awarding contracts through an open international competitive bidding or

by Tendering. The technical aspect of the consultancy bids is very significant due to the difficulties that the contracting government entities may face in estimating and imposing penalties on the consultant if it fails to carry out its duties according to the required specifications and conditions. The contract termination and contraction with another consultant shall result in incurring additional administrative costs and delays the joint project awarding process.

5.9 Project Consultant Appointment Procedures

The procedures detailed below shall be applied to appoint the transaction Advisor, the legal and technical consultants and any other consultants. It is not necessary to make all these procedures at the same time. After that, the committee/federal entity shall take the decision regarding the contract form, whether to contract with an individual consultant or with an alliance of consultants includes the transaction Advisor, legal consultant, technical consultant and/or another consultant.

As set out above, it is preferred to contract with the transaction Advisor before proceeding with appointing the remaining consultants due to the important role it plays in this process. The appointment of the transaction Advisor shall commence when the PPP Higher Committee or concerned entity, as appropriate, decides the bidding and awarding method to be approved.

Then, the Project Committee in coordination with PPP Technical Committee shall draft the terms of reference document that details the expected objectives of the joint project and its conformity with the government program. The terms of reference shall be detailed and clear in a manner promoting the quality of

the consultants' bids without preventing or limiting the consultant's ability to provide new and innovative ideas.

A. Terms of Reference Document

The terms of reference document content vary depending on the nature of joint project. In general, the document shall include the following main parts:

- **Project Background**

The terms of reference shall include an overview on the project background, including the political environment, economic position, concerned sector status and related indicators, sector policy and needs, project legal and regulatory framework, project background and objectives, any initial studies carried out to date and any non-confidential information listed in the project proposal form.

- **Work Scope and Plan**

This section includes a description of the consultant duty, the expected period of the contract, and a schedule explaining the significant events relating to reporting and decision-making.

- **Skills and Experiences**

This clause explains in detail the special skills and experiences required from the consultancy companies and work team members.

- **Consultancy Services Awarding Method**

This clause identifies the method followed in awarding the required consultancy services, whether through an open

international competitive bidding or Tendering. The PPP Higher Committee and Project Committee may take decision whether to announce the list of the consultancy offices invited for bidding or not. It is necessary to clarify the mechanisms, procedures and policies to be followed to complete this process.

- **Payments Regulation and Schedule**

The consultant fees may be structured as follows:

1. On the basis of a lump sum fees in consideration for the completed works and the provided reports. These fees shall be due, for example, on the completion the project study, bidding requirements document or the contract draft. Another payment shall be paid after approving the outputs agreed upon and accepting it in its final form.
2. On the basis of daily fees, where the wage is hourly or daily fixed.

It is better to depend on the lump sum fees method in which the fees shall be due on work completion and accepting them in their final form, due to the incentive this method gives to the consultant in order to achieve the objectives in each main phase of the joint project awarding process and on the successful process completion.

The payment regulation may set out what is called “Success Fees”, which are paid to the consultant, especially the transaction Advisor on the process financial completion and signing the PPP contract. The success fees shall usually be a percent of the PPP contract value to be paid together with or instead of the lump sum fees for the completed works.

- **Professional Fees and Petty Expenses payment Mechanism (e.g. travel and materials expenses)**

The professional fees shall be according to the payments specified in the contract and became due when the reports and works are completed and accepted by the committee/Higher Committee/Project Committee. These fees shall be paid under an invoice provided by the consultant, explaining the due amount.

The contract often includes an advance payment called advance fees. The purpose of this payment is to enable the consultant to form the work team and it shall become due once the contract is signed by both parties. In this case, the consultant shall provide an unconditional bank guarantee, which is equal to the advance payment value.

The petty expenses are those relating to the consultant work team, printing, communications, travel, accommodation, etc. There are two methods of for paying such expenses:

1. **Reimbursement Method:** In this method, the expenses are paid for compensating actual expenses based on the original and approved invoices provided by the consultant. The total value of all submitted invoices shall be within a cap to be agreed upon with the consultant and included in the contract. It is preferred to identify and explain this cap in the terms of reference, or to request the consultant may be required to identify the maximum value of the petty expenses in its bid. If they included in the bid, they shall not constitute a part of the assessment criteria without being included in the bid's assessment standards. In both cases, the consultant shall

get a prior written consent before incurring such expenses.

2. Including them in the professional fees. In this case, the professional fees agreed upon in the contract shall include all petty expenses expected by the consultant throughout the work phases without detailing them. This method is the best one.

- **Conflict of Interest**

The consultant shall not have any personal interest in the project. The consultant, its subsidiaries or any work team member shall not be entitled to provide advice to any potential private partner nor to execute any services, directly or indirectly, to any Government Entity which is a party to the joint project, as these services may constitute an interest conflict.

- **Bidding Rules**

This article shall identify and explain all rules and procedures to be followed in the bidding process in terms of the deadlines, mechanism and place of submission, any details relating to the review sessions or the Contact and Information Canter, if any, and the way to inquiry about any subject. This article also includes the submission requirements, such as the requirements of providing financial bid and/or technical bid depending on the assessment method to be followed and the approved models of the technical and financial bids.

- The technical bid gives consultants the chance to prove that they have the skills and experiences required to perform the required duties. It also allows them to suggest the

amendments they deem appropriate to the proposed terms of reference to be in conformity with the project and the plan and mechanism of work. The technical bid shall include information on the consultant office, which states the related experience, the proposed work team members, their skills and experiences and the role of each of them in terms of effort and time (Man-day). The proposed work team shall include local persons because of their importance in understanding ways of dealing with the local authorities.

- The financial bid shall include details of professional fees and, sometimes, the details of the petty expenses and the cap of the success fees. The contract total price shall be clear and identifies whether it includes the applicable taxes or not.

- **Bids Assessment Method and Standards**

This article identifies the bid assessment methodology and the significance/weight given to the technical aspect of the bids. It also identifies the weight distribution details and approved mechanisms for technical and financial aspects. In addition, it provides the points model followed to calculate the technical points.

- **Contract Draft**

The contract draft shall be attached to the terms of reference to inform the consultant of the contractual clauses and to allow them to submit any comments in order to save time in negotiation.

B. Invitation/ Announcement Writing

Having completed drafting the terms of reference and obtaining the approval of Higher Committee/Project Committee on the clauses mentioned therein, the letter of invitation shall be written.

This letter shall include the project outlines, the consultancy duties the Government Entity seeks to secure, and the periods for expressing interest, obtaining the terms of reference document and submitting the bids. This document shall also identify the method of contacting for any other inquiries.

The invitation letter shall be sent in the same date to all consultancy offices decided to be invited for tendering. If the open international competitive bidding method is approved, the announcement shall be published in local and international newspapers and the Ministry and on the internet and other channels that are agreed upon.

C. Inquiries

The Project Committee shall prepare a list includes the names and addresses of consultancy offices who expressed their interest to participate in the bidding and requested to review the terms of reference document. It may decide whether to disclose that list or not. The communication with the Project Committee shall be in writing, and the committee shall reply to all received consultations and inquiries in the same way. The Project Committee shall circulate any issued clarifications or information to all participating consultancy offices in order

to keep all parties informed with all awarding procedures without prejudice to the right of any participant.

The deadline for receiving inquiries and replying thereto shall be at (XX) before the bid's submission date set out in "Bidding Rules" clause set out in the terms of reference.

The Project Committee may hold a review session if it received any essential inquiries requires doing so. The representatives of the participating consultancy offices shall attend this session. In this session, the Project Committee shall highlight the main characteristics of the terms of reference, identify the project vision and objective, and state the challenges that may face the execution process. The review session shall provide to the project committee members, who will assess the bids, the chance to meet the participants, introduce them to each other and promote transparency and competition among participants.

D. Receiving Consultancy bids

The team, Committee or the assigned entity shall be responsible for receiving, recording, and keeping the consultancy bids if received by hand. In the event of electrical receipt, the technical bids shall be opened first in the presence of the team members, and after assessing the technical bids, the financial bids shall be opened.

When receiving bids, the work team shall ensure that the bids are submitted as set out in terms of reference document and that they are completed according to the followed awarding mechanism in terms of the number of copies and the supporting documents. It shall also ensure that the financial

bid is separated from the technical bid if the joint technical and financial common assessment method is approved.

The work team shall not open the envelopes containing the financial bids and shall keep it in a safe place until such time as they are opened.

E. Consultancy Bids Assessment

Transparency in the bids assessment is the cornerstone to successfully complete the contraction. To ensure that transparency, the bids, especially the financial bids, shall be opened in a public session in the presence of representatives from the applicant consultancy offices.

In order to enhance transparency, the entity responsible for assessing the bids shall strictly comply with the assessment rules set out in the terms of reference, especially in respect of application of the financial and technical elements weights, and the points model followed in points calculation, in compliance with the terms of reference document.

The Project Committee shall identify the way of putting technical points, whether by consultation between the committee members and then unanimously approving the points, or each committee member shall put the points it deems appropriate, then an average is approved, or by following any other agreed way. The experience of the PPP Technical Committee can be used in the evaluation process of consultancy proposals.

After finishing assessment, the Project Committee shall identify the best consultant whose bid has obtained the best

points, and consequently it shall be the bid that meets the competence standards and the required resources.

F. Committee Approval and Contract Negotiation and Signing

After identifying the best consultant, the Project Committee shall submit the assessment results, the bidders ranking and its recommendations regarding the best consultant to the PPP Higher Committee for approving thereof and to commence with negotiation within minimum limits due to the negotiation force of that preferred consultant has. This negotiation may relate to some notes on the contract clauses reviewed by consultants as part of the terms of reference document or may focus on the reports to be prepared by the consultant or on the fees according to the approved awarding method.

The Government Entity shall not incur any liabilities towards the preferred consultant or any other bidder invited for negotiation, unless the contract is signed.

If the negotiations fail to reach an acceptable contract, the Project Committee shall end the same and invite the next consultant for negotiation. The best consultant shall be notified in writing with the reasons behind the negotiations termination upon starting the negotiations with the second consultant. The Project Committee may not reopen the previous negotiations with the first consultant.

Upon successful completion of the negotiations, the contract shall be duly signed with the best consultant or the second consultant in case of failure to contract with the winning consultant. The Project Committee shall notify other non-winning bidders.

Chapter Six- Project Life Cycle - Phase II

Project Study and Design

6.Phase 2 – Project Study and Design Phase

6.1 Introduction

This chapter provides the instructions and guidelines relating to the project study and design phase in accordance with the international best practices. Like any other project, investment decision taking shall be supported by an in-depth and thorough study of the project.

As previously stated, the Project Committee shall, in cooperation with the work team and the concerned Government Entity, prepare an initial study of the joint project. This study shall cover the technical, economic, legal and financing aspects, including the investors' interest and the ability to attract the necessary financing. The Project Committee shall submit to the PPP Higher Committee a report stating its recommendation regarding the project.

6.2 Project Study Objectives

The main purpose of the project study is to consider all associated factors, to:

- Identify whether the joint project will meet the required need, describing in details the project targeted service and its nature.
- Study the project implementation viability in terms of technical, legal, environmental, social and financial aspects and sustainability based on the international experiences. As for the technical aspect, the required outcomes, operation criteria, used technology and maintenance are analyzed and identified in addition to studying the site. as for the legal aspect, the project implementation viability is evaluated through analyzing its legislative, regulatory and contractual framework. The project environmental and social impacts are main factors in relation

the project implementation viability. The project environmental impacts and social consequences on the relevant persons and communities shall be identified in accordance with the legal provisions in force in this respect. The most important and main part on which the joint project study focuses is the project implementation viability in financial terms. This part includes several pivots relating to the investors' interest, possibility of obtaining financing from banks and State ability to meet the financial liabilities associated with the project. The financial study shall include an estimation of the expected revenues and costs, including the capital costs, operational costs and maintenance costs throughout the entire project period. The financial model shall be developed after estimating the revenues and costs. This model aims at calculating the current net value of cash flows and the project internal return rate throughout the project period. Thus, the model measures the joint project safety and financial sustainability.

- Develop the best design for the project by comparing various patterns available for the private sector partnership and identify the most appropriate project structure after carrying out a comprehensive analysis of the available options and alternatives in all technical, legal, environmental, social and financial aspects. Since the risk sharing is a fundamental element of the joint projects, this study identifies the best distribution of the financial, technical and operational risks between the partners based on an accurate analysis and evaluation of such risks, their mitigation means and distribution method.
- Highlight the strategic and operational importance and benefits expected from the joint project.

- Explain the extent of the project consistency with the policy developed for the sector by the government.
- This study constitutes the cornerstone in the project preparation process. Compliance with the principles and guidelines set out in this manual when preparing the study will enable the decision maker to get the required and sufficient information for taking the appropriate decision; whether to proceed with the project implementation or not.

It shall be noted that the project study details, dimensions and structure differ from one project to another. The study sections set out in this manual are general and for guiding purposes only, and may not apply to some projects that may require studying other aspects.

Project Study Features

This study constitutes the basis for a very important investment decision taken by the State. Therefore, it shall be characterized by the following:

- Adequate detail in all parts of the study.
- Necessary accuracy in collecting and analyzing information.
- Full documentation of data and assumptions
- Approving the actual assumptions according to the analyses.
- Inclusiveness in addressing all project aspects, including the strengths, weaknesses, opportunities and obstacles that may affect the success of the project.

6.3 Project Study and Design Sections “The Study”

The project study and design shall include at least the following sections:

A. Detailed Study of Need

The detailed study of need aims at identifying the gaps in public services, and analyzing their type and volume in details, considering the suitability of the proposed project to meet that need, and identifying the project’s best parameters to meet that need.

The gaps mean any failure in provision of public service in terms of:

- The provided service Quality;
- The provided service Quantity; and/ or
- The service non-existence or non-provision of at all.

Naturally, the Government Entity concerned with the project shall provide a detailed explanation of the now existing gaps and deficiencies when proposing the joint project. This explanation shall constitute part of the file submitted to the PPP Higher Committee, stating “high level” initial details about them. To ensure verifying the data set out in file, the PPP Technical Committee and the project consultants, who assist the Project Committee and the work team in preparing this study, shall carry out a comprehensive analysis of the need as follows:

First: Project Suitability to State Strategic Objectives

The State vision and the desired services shall be studied from the State perspective and policies for the sector development as well as the State strategic objectives and priorities. The proposed project shall be analyzed in terms of its conformity with these priorities and its contribution in executing the sector policy by studying and analyzing the following main aspects:

- The project scale and its impact on State budget and local government budgets.
- The expected outcomes of the project.
- The expected schedule for service provision commencement.
- Level of demand for the service and society need for it.

Second: Readiness for launching and keeping up with the project

The ability of the concerned government entities' work team to proceed with the project shall be ensured if the project is approved, and its implementation shall be supervised throughout its period. Thus, the readiness shall be evaluated at two levels.

The first level relates to the competency of the team launching the project up to the contract-awarding phase. It shall be ensured that contracting with all required consultants is completed and that the Project Committee members and the work team are aware of the sector conditions and ready to allocate the required time to the project. **The second level of readiness** shall be

evaluated later as it relates to the post-awarding phase, where the government levels readiness to allocate a work team for following up the project implementation shall be ensured. The readiness evaluation scope shall extend to cover the general financial aspects. Coordination shall be carried out with the entities responsible for managing the public fund to make sure that state budget can cover the financial liabilities resulted from the project.

Third: Project Parameters suitable for Bridging the Existing Gaps

After ensuring the project alignment with the strategic objectives of the Government Entity and readiness to launch the project, follow up its implementation and meet the financial liabilities, the proposed project outputs, the minimum required specifications and the related performance evaluation indicators control shall be identified. An initial list of the public and private properties, where appropriate, which the project needs and the partnership pattern expected to be approved shall be developed.

B. Technical and Practical Implementation Viability Study

This study includes analyzing the technical aspects of the joint project in terms of obtaining the required outputs as reached in the above-mentioned study of need, and identifying the criteria of operation, used technology and maintenance. The study also includes reviewing the outlines of the project's potential engineering designs and their implementation viability by comparing them with the approved constructional standards and measures in the state and their conformity with the relevant laws.

On the other hand, the site (s) shall be technically studied by carrying out a terrain analysis through the topographic studies and an analysis of the soil nature and its underground components by studying the technical geography (or what so called geotechnical study).

C. Legal Aspect Study

This study is based on an analysis of the legislative, organizational and contractual framework for the joint project. The purpose of this study is to consider the potential legal structures of the project based on the international best practices of the similar projects, and to recommend the best legal framework in terms of conformity with the applicable laws and regulations in the state (in the federal or local level). This study is the essence of the legal consultant/work team duties, who shall carry out a detailed review of all related legislations and their effect on the project, any regulatory requirements relating to the project, and the required permits and the method of obtaining it and their impact on the project schedule. The study shall cover the taxes (if applicable) that will be imposed on the project company. If the legal consultant found any conflict between the applicable laws and the international practices in a manner that may affect the investors' attractiveness, it shall suggest the legislative amendments, which would put the project on a par with similar global projects.

When preparing the legal study, attention shall be given to the main articles and provisions to be included in the PPP contract, so that the legal consultant/work team shall put the outlines of the PPP contract in addition to scrutinizing the

phases of the private partner selection, the consequent establishment of the project company and the possibility of the state involvement. It shall prepare any decrees relating to this phase such as the acquisition decrees and fee collection decrees that determine the name of the party to which the fees are collected and in which account they are deposited. This matter aims at identifying and anticipating any obstacles that may hinder or delay the selection procedures and work commencement in order to take them into consideration when evaluating the project implementation viability.

If the project relates to existing facilities and the Government Entity seeks to enter into partnership with the private sector for developing, restoring, preparing, maintaining, rehabilitating or operating the same, the study then shall include any existing contracts related to the project, whether there they are employment, supply, lease or maintenance contracts, and identify whether those contracts will be assigned or transferred to the project company/private partner or will be terminated.

The joint project site may come first in the investors' considerations. After studying and evaluating the site technically within the study of the technical and practical implementation viability, the legal study shall highlight the ownership of the land on which the project will be established. This phase includes carrying out comprehensive investigations regarding the site ownership and any obstacles that may hinder its availability, and accurately identifying the expected schedule to acquire it. The Higher Committee/concerned government entities shall coordinate

with the concerned authorities in the local governments to make the arrangements required to acquire the land on which the project will be established according to the applicable procedures in this regard.

In some cases, the site provided by the government to the project company shall not be limited to the land only, it may include also other assets such as existing facilities, fixtures and equipment. Accordingly, this point shall be taken into consideration when preparing the study, determining the mechanisms of their inventory, the revenues of their leasing or using by the investor/project company, and the procedures for the delivery of such assets and their subsequent control.

D. Environmental Impact Assessment Study

Pursuant to Article No. 4 of the Federal Law No. 24 of 1999 on environment protection and development, as amended by Federal Law No. 20 of 2006 regarding “environmental impact assessment”, it states that *“without prejudice to the provisions of the above article, the agency shall, in coordination with the competent authorities and other relevant entities, conduct the environmental impact assessment of the project and the establishment to be licensed. No project or establishment shall start the activity before obtaining the license aforementioned in the previous article including environmental impact assessment.”*

When studying the environmental impact assessment of the joint project, it is necessary to ensure that the initial environmental examination and the environmental impact assessment studies are carried out for projects that may threaten the environment due to its scale, nature, impact or

activities. The study shall include the sustainability standards and factors, the climate change and reduction of carbon emissions to support the green development projects.

The environmental impact assessment study is defined as a study aiming at identifying, estimating and evaluating the impacts of the proposed project on the environments, and identifying the measures of mitigating the negative impacts and increasing the positive impacts on the environment and natural resources. The study shall be carried out before deciding to approve or reject the project.

The environmental impact assessment study shall include many basic information, including, but not limited to, policies framework, legal and administrative frameworks for the project, description of the project surrounding environment, description of the project potential environmental impacts and analysis of the project alternatives, if any. The most important pivot in this study may be the one relating to the “Environmental Management Plan”. Environmental Management Plan is defined as “a set of mitigation measures, monitoring and control means and institutional procedures taken during project establishment and operation and would remove or mitigate the negative environmental impacts to be at levels locally acceptable, if any, otherwise to be in compliance with the UN standards.

It is expected that the environmental impact assessment study in this early phase of the joint project shall be limited and on high level. The environmental impact assessment study shall be carried out upon a request of Ministry of Environment and after obtaining the Cabinet approval for

implementing the joint project. The responsibility for following up on the environmental impact assessment may be transferred during the project implementation phase to the private partner. This study usually requires sufficient time for developing the baseline upon which the project environmental impact shall be assessed and the appropriate steps needed to minimize negatives, if any.

The environmental requirements shall not be limited to compliance with the environmental legislations and to obtaining the approval of the environmental authorities, but they shall include the necessity to comply with the global measures in some cases based on the funders or guarantors request.

E. Study of Social Consequences

This study includes identifying the joint project social impacts on the relevant societies and residential communities surrounding it and assessing any consequent negative impacts. The study also analyzes the project impact on other ongoing or planned development works in the area. The project impact on the State Emiratization policies and programs relating to protecting the government interests and national objectives shall be studied. Therefore, the study shall include, but not limited to, indicators for the job Emiratization in the private partner or a list of the jobs to be Emirati zed to ensure that the Emiratization process is not stumbled, while raising the service quality and reducing the cost for the government.

F. Financial Study

The first step in the financial study is to evaluate the expected costs and revenues of the joint project in order to build the financial model based on them, and to identify the financial integrity of the joint project within various assumptions. The financial study shall include the following sections:

❖ Estimated Cost Study

This study shall include studying the capital costs, maintenance costs and the operational costs.

Capital costs include, but not limited to, the costs of design, raw materials, building and construction, machines, fixtures and equipment. The capital costs also include the labor and management costs in the construction phase, including the financial, legal and technical services and the project management, as well as any costs relating to compliance with the legislative and regulatory rules and limitation of risks relating to the construction phase.

Operational costs are associated with the operation phase in the joint project life cycle. These costs aim at ensuring the work organization to procure the service, and include the labor expenses (including wages, salaries, employees dues, due pensions, insurance subscriptions, employees training and development, annual leaves, traveling, and any expected costs to lay off the excess employees), the raw materials, consumables, direct management costs and insurance. Any costs relating to minimizing risks in the operation phase and

complying with the legislative and regulatory rules shall be calculated.

❖ Project revenue

According to the project nature, we shall distinguish between two forms of the potential partnership. The first form is known as “Government Pays”, in which the private partner provides the service to users free of charge in exchange for obtaining payments from the concerned Government Entity. The alternative form is known as “User Pays”, in which the service is provided in exchange for fees to be paid by the users. In both forms, the concerned Government Entity is one who will pay the private partner. When the government assigns the private partner/the project company to collect fees, it shall do that task in the name and for the account of the government. Therefore, such money shall not be subject to retention, deduction or set off because it belongs to the public sector.

The revenue prospective varies depending on the concerned entity. For the government entities, the project revenues consist of the fees collected from the users and depend on the imposed fees and the level of demand for the service. It shall be noted that the government is the one that shall identify the fees without any intervention by the private partner. As for the level of demand for the service, it is difficult to estimate it accurately, especially if that service was not available before and thus there is no historical information explaining the pattern of consumption. Therefore, this matter may require involving specialized consultants to carry out field tests and market study. The expected project revenues depend on the approved assumptions in terms of the project ability to issue

invoices and collect fees and the fee suitability to the consumers' ability to pay.

For the private partner, the revenues consist of the dues and payments it receives from the government for carrying out the works assigned thereto under the PPP contract. The private partner dues and payments structure often depends on main components:

First: Fixed component for the service and project availability (availability-based fee), where the concerned government entities regularly pay fixed amounts to the partner after ensuring that the service is provided at the level, quality and standards agreed upon in the PPP contract.

Second: Variable component depending on the amount of the provided service or the production quantity (Output based fee) or demand for service. Thus, the partner payments shall be, to some extent, associated with the project revenues through the variable component (output-based fee). It shall be noted that the importance of this variable component in the private partner payments relatively reflects how the demand risks are distributed between the government and the private partner. For example, if the project company payments depend only on the project and the service availability, i.e. on the fixed element (availability-based fee), the government shall solely bear the responsibility for all demand risks. In such case, the contract shall be a management contract or a management and operation contract.

Third: Incentives and rewards: These incentives and rewards will be paid to the private partner if it provides distinguished services in terms of its efficiency, quality and exceeds the agreed

standards of quality and performance or reducing the operation costs.

Fourth: Fines and penalties: On the other hand, the dues and payments structure shall include fines and penalties to be imposed on the private partner if it fails to provide the service with the agreed quantity or quality. In addition, there shall be clear provisions ensuring the government right to review the prices and to make changes in the services and their relationship with the payment mechanism and the amended price.

In all cases, the private partner dues expected throughout the project period shall ensure recovering the total costs necessary to meet the required output specifications. The financial model aims at verifying this matter based on the current net value of the cash flows, and thus identifying the joint project implementation viability and sustainability in terms of attracting financing and the investors' interest.

In light of the involvement of more than one government level in the project, and in order to facilitate and expedite the procedures and determine the body responsible for any obstacles or delay in meeting its obligations, it is preferable for the federal entity to establish the project company with or without the contribution of the private partner. Government entities' contributions to the company's capital represent each entity's share in the project. The establishment of the project company facilitates the work of bidding and awarding, granting guarantees and contracting, and later making payments to the private partner and sharing revenue and management of bank accounts and funds. The sustainability of the project company is guaranteed more than the direct contract between the government entities and the private

partner, as the government entities are subject to dissolution or merger, which may affect the activity and operations of the project.

❖ Financial Model

This model aims at measuring the joint project financial viability (credit validity and eligibility), financial sustainability and financing sources. The financial model focuses on the calculating the current net value of the cash flows and the internal return rate of the project throughout its period based on the total expected cost and the private partner payments. A suggested structure for the project shall be designed, which explains the relationship between the government, the private partner and/or the single purpose vehicle established by the investor especially for implementing the project, the lenders, shareholders, suppliers, subcontractors and other stakeholders.

This suggested project structure shall include the financing structure, the appropriate returns for the shareholders rights, the debt finance costs and its main conditions (including, for example, debt service coverage ratios, if any). The development of the best capital structure for the project is an essential part of this analysis, as it directly affects the ability of the project financing.

The revenues overestimation and complacency in cost estimation are the most common deficiencies when preparing the financial model. Therefore, we shall depend on actual assumptions, as they are the main elements of the financial model and affect the cash flows at various levels according to their nature. The assumptions shall be explained in details due

to their significant impact on the conclusions in relation to the financial sustainability of the joint project.

We mention here for example the growth variable in demand that affects the project revenues and the private partner payments in the event that they are linked with the production quantity through the variable element (output-based fee). The other variables affecting the cost elements include the inflation rate that affects the labor and raw material cost or the assumption of the equipment and fixtures consumption rate, which is reflected on the cost of some assets replacement and the maintenance cost.

The assumptions followed during preparing the financial model shall be in line with the way of distributing risks between the government entities and the private partner. This matter constitutes the core of the joint projects. The most important assumption in the financial model relates to the finance, its structure between debt, capital and its cost, i.e. the deduction ratio rate used to calculate the current net value of the cash flows. The deduction ratio shall be calculated based on the appropriate the government bonds return (to be selected at the evaluation time and based on the project period), plus an appropriate risk margin to identified by the project consultants.

The financing structure is an essential element as it directly affects the financing viability. The financing viability and the investor interest to participate in the joint project capital depend on the calculation of the current net value of the cash flows. The internal return rate (IRR), which shall exceed the required hurdle rate, shall be calculated. The current net value

of the project shall not be less than zero, taking into consideration the deduction ratio approved by the investor.

Calculation of some financial ratios shall assist in evaluating the financial institution readiness to fund the joint project. We recall, for example, the annual ratio of debt service coverage that evaluates the private partner/project company ability to serve the debt from its annual cash flow. This ratio shall be calculated based on the net operational income of the project over the year divided by the project debt service over the year. Another example is the loan life coverage ratio, which represents the number of years required to cover the loan and depends on similar calculation. This ratio is considered on the basis of the whole loan period, i.e. the expected operational cash flow divided by the existing debt in the calculation date.

The financial model shall be sufficiently flexible to accommodate modification of the main variables and to analyze the financial model sensitivity based on them, where the impact of these variables on the current net value of the project and IRR shall be measured.

The following are some variables that may be important in considering the sensitivity:

- Project period.
- Inflation rate
- Construction cost
- Total operational costs
- Demand for service level
- Finance conditions

Accordingly and for various scenarios based on various assumptions of the main variables, the financial results of the financial model - whether at the level of IRR or the current net value of the cash flows or through calculating some financial ratios - shall explain the joint project viability to attract financing from financial institutions and the potential investors interest to participate in the capital. The financial model also helps in evaluating the need to guarantees and financial support to promote the joint project credit worthiness.

It may be useful in this phase to test the market reaction regarding the assumptions adopted in preparing the financial model. This matter shall serve as an evaluation of the project reality and determinants. We can achieve this goal by holding workshops, lectures and field presentations and requesting evaluation notes from the potential investors. The transaction Advisor shall carry out this test in cooperation with the PPP Technical Committee and project committee.

❖ Risk Matrix

A risk matrix shall be prepared for each project individually. This matrix identifies the joint project risks and their occurrence probability, and assesses their financial impacts, their mitigation methods and distribution on the party(s) who can manage them. The following is a guiding list of the most common risk categories to be taken into consideration in details when preparing the risk matrix.

Guiding List of Risks	
Risks related to the project (investor and lenders may manage)	Risks not related to the project (investor and lenders cannot manage)

them to some extent)	them in whole or in part)
<ul style="list-style-type: none"> • Completion risks (engineering and constructional work cost/ Time-cost Control). 	<ul style="list-style-type: none"> • Political risks (confiscation, political turmoil, currency transferability to other currencies or to abroad, etc.)
<ul style="list-style-type: none"> • Operational performance risks (Technical and operational experience). 	<ul style="list-style-type: none"> • Contractual and regulatory risks (failure to meet the contractual undertakings, such as pricing formulas).
<ul style="list-style-type: none"> • Market risks (Size and price tariff) 	<ul style="list-style-type: none"> • Macro economy risk (Fluctuations risk, such as changes in the macro economy balance in relatively short periods, exchange rate, inflation rate, etc.)
<ul style="list-style-type: none"> • Financial risks (financing Cost) 	<ul style="list-style-type: none"> • Legal risks (legal sovereignty, effectiveness of the judicial system and regulatory procedures and arbitration).
<ul style="list-style-type: none"> • Environmental risks (Previous and future obligations, project delay, exceeding the planned cost) 	

The financial model reflects the risk distribution approach by two methods: by amending the deduction rate or by explaining the impact of these risks on each cost element. The second method may be preferred due to its focus on each cost risk and clarification of the financial impact of each risk. This method also ensures more accuracy as some risks have an impact in specific phases over project period and their impact may decrease or increase in the future during the project implementation. This matter would provide a realistic image of the project in terms of size, cost and safety, financing probability and sustainability.

For more information on the risk distribution matrix, please refer to appendix (2).

G. Study of Impacts on Public Finances

The purpose of this study is to assess the joint project impacts on the state public finances, where it compares the project revenues that will be credited to the accounts of the concerned entity, along with the cost the governments will incur throughout the project life cycle.

Studying the project impact on public finances depends on calculating the expected net value of amounts incurred by the governments after taking into consideration the revenues, if any, and the costs. The schedule of these payments shall be analyzed, and they shall be compared with any other dues from the treasury, whether they are resulting from other joint projects or any other source.

As a general rule, these payments shall be within the limits of the financial endurance, i.e. they shall be within the limits of the governments' budget and accepted by the treasury accounts of each government in light of the government financial priorities.

If it is found that the government is not able to meet such financial liabilities, the Project Committee may amend the output specifications, without prejudice to the targeted benefits from the project, aiming to decrease the project costs on the general balance sheet.

- **State revenues from the joint project**

The joint project may generate revenues in the governments' treasury accounts if it relates to the state main public utilities such as electricity, water, transportation, etc. by imposing fees on users for using the service provided by the joint project. These fees shall not be the followed rule in all joint projects as there are some project types that do not provide direct service for the user such as a tunnel construction project. Thus, some projects may not generate any revenues in the state treasury. As for the projects which generate revenues in the state treasury such as a power plant establishment project, it is not necessary to generate revenues sufficient to cover the costs incurred by the state. The state may also support the tariff imposed on users if it found that citizens or part of them are not able to bear it.

- **Joint project cost for the state**

The government costs in the joint projects are primarily consist of the payments it pays the private partner/project company for implementing the project. As we stated above, the project

company is not entitled to deduct its payments from the collected fees if the government assigns it to the collection process. The reason behind this approach is that the private partner collects such fees for and in the name of the government, which in its turn pays the private partner/project company according to the provisions contained in the PPP contract. Therefore, the money collected by the project company shall not subject to attachment, deduction or set off because it falls under the scope of public funds. The other costs incurred by the state arise from the state financial support provided to the project. This support may be made by ensuring a minimum of demand and consequently a minimum of revenues. The support may be also in the form of capital support, where the state contributes in financing the project by soft loans.

H. Information Verification and Financial Study Approval

The Project Committee/Technical Committee shall verify that all information set out in the project study is accurate, confirmed and complete as much as possible. In order to do so, the committee may require the project consultants to provide the following:

- Report confirming the collected information reality and sources.
- Details, reality and appropriateness of the assumptions on which the financial model is prepared.
- Explanation of evaluation methodologies of various costs, including the financial assessment of risks.
- Documented confirmation that the financial study inputs are accurate and verified.

- Report confirming achievement of value for money principle for the proposed project, which includes “quality for cost” analysis, and ensuring that the contracting through partnership with the private sector is the ideal way comparing to the remaining methods of purchase.
- Confirmation of financing availability: This confirmation is necessary for meeting the financial liabilities relating to the project.

6.5 Project Study Approval

The Project Committee shall submit a detailed report of the feasibility study results and its recommendation on the proposed project to the PPP Technical Committee , which, in its turn, shall submit that report to the Higher Committee to review and discuss thereof and to take the appropriate decision, whether to proceed with the approval of the joint project or not, in the event that the value of the project is within the limits of its powers, otherwise it will raise to the government to take the appropriate decision thereon .

The Project Committee depends in its recommendation regarding the project study results on the following standards:

- Project technical and practical implementation viability.
- Project consistency with the strategic and sovereign plans of State.
- Project suitability to the legislative, regulatory and contractual framework.
- Project environmental and social impacts and the ability to mitigate thereof.
- Project viability to attract financing from financial institutions.
- Potential investors’ interest and desire to contribute to the joint project capital.
- Project reflections on the state public finance.

6.6 Possibility of reviewing the project study

If any changes or things occurred in a manner that may significantly affect the project implementation decision, the external market, political circumstances or the macro economy, or there is a force majeure that prevents its implementation, the committee may, by the help of the consultant team, update or amend the project study in line with those changes.

If such changes occurred after issuing the approval on the project implementation and before selecting the private partner, and resulted in significant amendment to any assumptions of financial study, especially in respect of risks distribution or the financing conditions, then the Project Committee shall notify the PPP Higher Committee with the details of the suggested amendments and their impact on the project implementation viability at various levels. the PPP Higher Committee may take the appropriate decision regarding such amendments and submit its recommendation, when necessary, to the government to take the appropriate decision.

Chapter Seven Project Life Cycle – Phase III

Preparation for Project Offering and Partner Selection

7. Preparation for offering the project and selecting the partner

7.1 Various Methods of Awarding

The awarding method is the cornerstone of the private partner selection process and plays a significant role in the success or failure of the joint project. Awarding process is not important for the joint projects only, but it also important for any projects carried out by the State through the traditional awarding processes.

Given the importance of the awarding method and the negative impacts on trade due to discrimination between participants, World Trade Organization issued, in conjunction with its establishment agreement in 1994, the Agreement on Government Procurement that came into force in 1996. This agreement constitutes an effective and multilateral framework for the rights and obligations related to the government procurements in order to liberalize the world trade.

This agreement parties are obliged to avoid discrimination against foreign products, services or suppliers in the awarding process. They shall be treated in the same way the local products, services and suppliers are treated. To ensure compliance with the principle of non-discrimination, the agreement stresses on promoting the transparency of awarding procedures in laws and regulations relating to the government procurements.

That agreement states the awarding methods that may be adopted for the government procurement, namely:

- **Open Procedure:** This procedure allows all interested suppliers to submit their bids. It is also known as “Public Tender”.

- **Selective Procedure:** This procedure allows only the qualified suppliers to submit their bids. It is also known as “Closed Tender”.
- **Limited Procedure:** This procedure allows only the suppliers invited for bidding to submit their bids, and it is also known as “Limited Practice”.

In line with the Agreement on Government Procurement issued by World Trade Organization, the European Union issued awarding rules allowing three methods:

- **Open Procedure**
- **Restricted Procedure:** In this procedure, the bid submission requirements are discussed with participants after their qualification. Then, the bidding requirements document is issued. Some clarifications may be issued later. After submitting the bids, dealing with participants shall be stopped and no negotiations shall be made thereafter. The winning bidder shall sign the PPP contract based on the bid it submitted.

This method is adopted in franchises awarding in states such as Italy and Spain, and it is characterized by its speed and reduced cost for participants. It is the preferred method for awarding in those states because there are concerns that post bidding negotiations may involve corruption.

- **Negotiated Procedure:** This method is adopted in awarding the complicated projects. The bidders may submit various solutions for the required service and it may not be easily to identify the method of bid assessment in advance. This matter requires discussing bids with bidders after submission. However, **inquiries** and requests for

clarification shall not lead to material amendments in the submitted bid basics. It is assumed that the detailed negotiations include all bidders. This awarding method reflects to some extent the rules developed under Agreement on Government Procurement issued by World Trade Organization that allows negotiation. The scope of inquiries has been extended with the application of this method. The concerned entity selects the best bidder after submitting initial bids by three bidders. This step is followed by negotiations leading to submitting the two best and final bids by two bidders (This may be followed by a last round in which the last and final bid is submitted). Accordingly, detailed and extended negotiations would be made with best bidder before awarding the contract thereto. This awarding method is not significantly different in UK. However, some European countries, especially those who have strict laws in respect of the traditional awarding methods, expressed some concerns in terms of the transparency of this method due to the high level of negotiation carried out after bidding, a matter that prompted the European Union to introduce a new awarding method in 2006, i.e. the Competitive Dialogue method.

- **Competitive Dialogue:** This method is characterized by the dialogue carried out with the qualified bidders. The purpose of this bilateral dialogue is to discuss the PPP contract form and the technical outputs of the joint project. Bidding **requirements** and specifications document is developed based on the results of this dialogue. The project committee may conduct a dialogue with bidders after issuing bidding requirements document to address any matters may arise in

the PPP contract, a matter that may require amending the project requirements before bids submission. This method differs from the negotiated procedure method as it has a limit for negotiation after submitting bids, where the dialogue in this phase shall be limited to replying to the inquiries and requesting clarifications that may be required by the bidder.

- Due to the complexity of the PPP contracts, especially in infrastructure projects that constitute the majority of the joint projects implemented by virtue of PPP contracts, the competitive dialogue may be the most appropriate way to select a partner from the private sector.
- In view of the participation of more than one party from more than one level of government (federal / local) in the joint project, the technical and financial complexity that may accompany the project and for the purpose of ensuring the transparency and governance of the bidding and awarding process, the PPP Higher Committee, upon beginning the bidding and awarding stage, shall issue a decision to form the bidding and awarding committee for each project separately. Its members shall be employees of the concerned government entities (director level and above) to manage and implement the bidding and awarding process. No member of this committee may be a member of the project committee or any other committee that may constitute a project to avoid conflicts of interest. Moreover, the PPP Higher Committee shall issue clear instructions for each project on the basis of the mechanisms, tools, procedures, and method of implementing the process of offering, receiving, evaluating and awarding the bids and the role of

each government entity involved in the project. In some cases, the PPP Higher Committee may resort to appointing a specialized company to review or finalize the bidding requirements and specifications document, manage the offering process, evaluate bids and make recommendations for awarding.

7.2 Invitation for interest expression and prequalification

The international best practices recommend starting the project offering process with invitation for interest expression and then the competitor prequalification.

In the cases requiring to do so, the PPP Higher Committee shall send invitations for interest expression to potential investors from the private sector to know to what extent the private sector interests in and desires to implement the project before taking any procedures for offering thereof. The project offering shall be made by announcing the project in various mass media. This announcement shall include a brief of the project, its objectives and the proposed implementation site, if any, method of sending the interested parties' reply and any other information or conditions relating to the project. Then, the project committee shall consider the replies to invitations for interest expression, which are submitted by the private sector. Based on this consideration, it shall be decided whether the persons interested in competing for the project implementation shall be invited for pre-qualification or not.

After getting a positive and encouraging result from assessing the replies to invitations for interest expression, which are received from the potential investors from the private sector, the prequalification phase shall commence. This phase aims at

making the project offering process more efficient for both parties by ensuring the participation of the appropriate candidates only in the final bids submission. The qualification conditions shall be logical, effective and do not impose unjustified restrictions reducing the level of competition. Preferably, the qualified bidders shall not less than three bidders.

The prequalification procedure ensures the following:

- Verifying that the private partner has the technical and financial qualifications enabling it to implement the project sufficiently and effectively and to meet its entire obligation under the contract.
- Avoiding wasting time in the final bid submission phase, which is basically a long phase, by excluding the inappropriate parties.
- Filtering the participants to get a reasonable number of final offers, a matter reducing the costs and efforts made in the assessment process.

A. Prequalification Document Preparation Procedures

The Bidding and Awarding Committee shall prepare, in cooperation with the Project Company, Technical Committee and the consultants, the prequalification document. This document provides the candidates with the required information and instructions regarding the prequalification process, and identifies clearly any evaluation standards and the process method. Moreover, it explains any special requirements and requires candidates to introduce themselves by providing the appropriate information.

B. Prequalification Document Contents

- Terms and conditions of the prequalification documents issuance.
- Objective of the prequalification document issuance
- Information about the project including, but not limited to:
 - ✓ Detailed description of the project, including the project overview and background and the need for it.
 - ✓ Specific legal requirements and related legal controls
 - ✓ Matters relating to the land, if any, human resources or any other assets to be provided by the government entities.
 - ✓ Specific performance standards
 - ✓ Specific financing standards
 - ✓ Summary of the expected risk distribution
 - ✓ Conditions of membership in alliances
- Project bidding process - used Means, method of application and deadlines, etc.
- Project phases and schedule
- Explanation process and memorandums
- Changes in the alliance formation
- Participation in more than one alliance
- Bid bond
- Participant instructions, including but not limited to:
 - ✓ The submission application form, including the obligatory elements to facilitate the assessment process
 - ✓ Late submission of the prequalification application

- ✓ Participants status and formation
- ✓ Communication policy
- ✓ Additional information
- ✓ Announcement of the ongoing legal procedures that may affect the alliance formation
- ✓ Reasons of exclusion from qualification.
- ✓ Details of communication with the Bidding and Awarding Committee.
- ✓ Information required from the participants
- ✓ Alliance abilities and strengths
- ✓ Proposed alliance formation and structure, along with clear identification of member's role.
- ✓ Participants skills and experiences in similar and identical projects
- ✓ Current workload of the alliance members
- ✓ Strength of undertakings between the alliance members and debtors, if any.
- ✓ Market and financial rank.
- ✓ Shares and ownership (if any)
- ✓ Implementation viability
- ✓ Compliance with and ability to abide by the project schedule
- ✓ Ability to borrow, increase the capital and giving guarantees
- ✓ Ability to manage projects
- ✓ Ability to manage risks
- ✓ Evidence on understanding the project main requirements and complexities.
- ✓ Previous relationship with the State

- ✓ How to apply quality assurance regulations
- ✓ Methodology in the partnership projects
- Assessment process, which include information about:
 - ✓ Assessment methodology
 - ✓ Assessment standards

C. Prequalification document announcement and distribution

The Bidding and Awarding Committee shall announce, through the means decided by the PPP Higher Committee and agreed upon between the various government entities concerned with the project (such as Internet, Official Gazette, the audio-visual media, the most widely circulated local and international newspapers), to launch the pre-qualification process and invite interested parties, regardless whether they previously expressed their interest or not, to receive the prequalification document. The purpose of the announcement publication in popular and widespread newspapers and magazines is to attract the international investors.

The announcement shall include at least the following:

- Brief description to the project
- Project objectives
- Type and period of the PPP contract
- How to obtain the prequalification document and the period identified for that.
- How to submit the prequalification application and period set for submission. Sufficient time shall be given to meet all these requirements.

The project announcement may be followed by an open session to offer the project and motivate the private sector interest, provided that no information not included in qualification document shall be deliberated.

D. Application Receipt and Opening

Interested persons shall send their applications in the manner specified by the Higher Committee. The Bidding and Awarding Committee shall open the prequalification applications on the specified day after the expiry of the last time for submitting the prequalification applications during a session identified in the prequalification document, in presence of the work team and the applicants' representatives. In this session, envelop contents and shortcomings shall be recorded, if any. Then, the list of the prequalification applicants shall be posted on the website.

E. Application assessment and candidate notification

The Bidding and awarding Committee, assisted by the PPP Technical Committee and the consultant, if any, shall study and assess the received qualification applications and shall submit a reasoned report to the Higher Committee. Such report shall include a suggestion of the qualified and unqualified candidates' names. The application assessment shall be divided into two phases. **In the first phase**, the application formalities shall be verified, where the qualification documents required from each participant shall be verified in terms of validity and accurate compliance with the prequalification document requirements. Any participant fails to comply with the requirements shall be excluded.

In the second phase, an assessment table identifying the main categories and sub-categories of all assessment criteria shall be prepared. These categories shall be given relative weight according to their importance. According to that table, a mark will be given to each candidate, and the candidates exceeding the minimum mark shall be qualified. If the candidate qualification application includes a number of companies (alliance), **the assessment of these applications shall be carried out based on assessing the qualification and abilities of each member of the alliance and define whether they jointly meet the qualification criteria and requirements or not, where application consideration shall be carried out according to the role of each alliance member in the project.** The assessment criteria and the relative weight of each of them shall be developed during the preparation of the prequalification document. The assessment criteria shall depend on the information required from the participants. Therefore, this information shall be clear in prequalification document to help the candidates to concentrate in on their application and not to list any additional or unnecessary information. The assessment criteria vary depending on the project and shall be carefully developed for each individual project to attract an acceptable number of participants. If the criteria are strict, they may limit the number of the qualified participants and vice versa.

The Bidding and Awarding Committee shall, in cooperation with the PPP Technical Committee , prepare a reasoned report on the qualification application assessment process and its results based on the conditions set out in the

qualification document. The Bidding and Awarding Committee shall submit this report, which includes a suggestion of the qualified and unqualified candidates' names, to the PPP Higher Committee to take the appropriate decisions thereon. The PPP Higher Committee may take the report recommendation as it is, ask the Bidding and Awarding Committee to provide clarifications, or to amend its decision. The Bidding and Awarding Committee shall formally notify each candidate the result of its qualification, whether negative or positive.

7.3 Dialogue phase

The Bidding and Awarding Committee shall discuss the project technical specifications and financial structure and the contract form with the qualified candidates before issuing bidding requirements and specifications document. This dialogue shall facilitate the identification of the project technical requirements and the specifications of the service to be provided by the private partner for preparing the bidding requirements in conformity with the project requirements. This dialogue also motivates the qualified candidates to find innovative solutions for the project. The qualified candidates may suggest additional activities complementary to the project, which would reduce the cost incurred by the Government Entity. This stage also helps to ensure the comprehensiveness of the project and the absence of any fragmentation or sub-projects or complementary projects should be taken into account in the current project.

Where necessary, the Bidding and Awarding Committee, assisted by the PPP Technical Committee, shall conduct a dialogue with the qualified candidates and funders to reach a comprehensive

conception to identify the technical requirements, practical means and financial structure to achieve the joint project. This matter represents an opportunity to obtain the views and comments of qualified candidates on the points and issues that the Bidding and Awarding Committee needs to develop in order to create an integrated concept of the joint project.

a) Dialogue Preparation

The dialogue shall be carefully prepared by providing the main information accurately and formulating the questions relating to the issues to be discussed clearly. Hiring experienced consultants, especially in the more complicated projects, may increase the dialogue effectiveness and credibility. In such case, it shall be ensured that the consultants are impartial and have no interest in any specific result.

During dialogue preparation, care must be taken to include the following in the dialogue:

- Equality and non-discrimination between the qualified participants, especially non-discrimination in providing information between a qualified participant and another, giving it an advantage over others.
- Transparency, a matter that requires documenting the dialogue properly in respect of the adopted methodology and the points to be discussed. The writing communication with participants may help in the transparent documentation of the dialogue process.

b) Invitation for Participating in the dialogue.

The dialogue phase starts officially with inviting the qualified candidates to participate in the dialogue. This invitation shall

explain the committee targets for that dialogue and identifies how to conduct the dialogue. That invitation shall also identify:

- Concerned schedules.
- Dialogue main points and issues.
- Restrictions that participants shall be aware.

In addition, it is a good practice to hold a public session for all qualified candidates, during which the dialogue methodology shall be explained and the important matters are reported. This session gives the participants a chance to require clarifications about any matter. This matter ensures equality between all participants in dialogue to obtain the same information with the same way. This session would help all participants in planning the various dialogue courses by bringing the appropriate work team for attending it and, if possible. Documents shall be distributed as an agenda to detail and explain the matters to be discussed before any session.

c) Dialogue Structure

There is no specific way to conduct the dialogue. The dialogue may be executed by inviting the qualified participants for an open day to get their opinions, holding individual meetings with each individual participant, or asking the qualified participants to fill a survey form. The Bidding and Awarding Committee may detail the process and any related procedure meets its requirements. All participants shall be treated in a transparent and non-discriminating way that ensures equality in treatment.

d) Dialogue Closing

Upon completing the joint project conception from all technical, financial and legal aspects with the Bidding and Awarding Committee, the Committee shall notify the participants of dialogue closing and seek to complete the bidding requirements and specifications document. At that point, there will be no room for further discussions.

7.4 Preparation of Bidding Requirements and Specifications Document

The project committee, assisted by the Technical Bureau, shall prepare bidding requirements document that includes the PPP contract draft, the project data, bidding procedures and the project financial, technical and administrative elements.

a. Bidding Requirements and Specifications Document Parts and Sections

Bidding requirements and specifications document constitutes the basis of the private partner selection process. It put the rules upon which the awarding process is based, so it shall explain the project main data, its financial, technical and administrative elements, the bidding method, bids assessment method, and the PPP contract draft to be signed.

The Project Committee shall prepare bidding requirements document for each project, consisting of two parts:

Part 1 shall include three sections as follows:

- ❖ Section 1: Project data, including:
 - All project components and elements.

- Project technical and legal framework.
- Service specifications expected from the project.
- ❖ Section 2: Bidding Procedures, including:
 - Project site visit procedures.
 - Virtual Data Room access procedures.
 - Conditions and way of bidding and submitting the required documents.
 - Forms of the technical and financial proposals and quotations.
 - Assessment criteria and methods
 - Procedures of announcing the winning bidder.
 - Time limits of each phase.
- ❖ Section 3: Financial, Technical and Administrative Elements of Project, including:
 - Establishment of the project company and ownership of its shares.
 - Financing Structure.
 - Minimum technical and financial requirements.
 - Mechanism of Fees Collection and Depositing.
 - Mechanism of Revenue sharing between different parties.
 - Method of calculating, assessing and estimating the value of using government assets or human resources.

Part 2 consists of the PPP contract draft and its attachments.

The bidding requirements and specifications document preparation depends on various sources of information varies depending on their parts and sections: Section 1 related to

Project Data depends on the results of the due diligence study carried out by the consultant team during the project study and design phase. Section 2 details and explains the logistic procedures and instructions relating to the bidding and bids assessment methods. This section is a model section has the same core in all projects, but it varies in terms of the time limits, bids assessment elements and their weights. Section 3, relating to the project design and its financial, technical and administrative structure and the identification of the minimum requirements, and part 2 of the bidding requirements are for each individual joint project and depend primarily on the results of the dialogue conducted with the qualified participants.

b. Part 1 of Bidding Requirements and Specifications Document: General Conditions

Section 1: Project Details

This section focuses on the results reached in the studies carried out by the concerned government entities and consultancy team during the project study and design phase. These studies discuss deeply the project technical, legal, environmental and social aspects. This section includes a comprehensive and clear list of all definitions used in the bidding requirements and specifications document, which shall match the definitions set out in the PPP contract draft. Examples of components of this section include the following:

❖ All Project Components and Elements

This part includes a general brief and background on the project and all details relating to its elements, including the

expected services, the characteristics of their market and the initial estimations of demand for them. Moreover, it includes information about the site, characteristics of the surrounding geographical area, the project land area, any existing facilities on this land, which will be used by the project company, and any other assets may be provided by the government entities and the method of disposing thereof.

❖ **Project Technical Framework**

This part outlines the project technical aspects, including the project scale, the technology expected to be approved and the technical features of any assets that the government may put at disposal of the partner/the project company such as facilities, plants and equipment. It includes also the technical characteristics of the project site such as the terrain shown in the topographic study as well as the soil nature and its underground components as set out in the geotechnical study. The technical and legal framework explains the assets that will be devolved to the government after the PPP contract expiration and their technical condition in terms of productivity and effectiveness. These assets shall be in an acceptable technical condition, a matter that requires the project company to carry out a regular maintenance and replacement works. The technical condition of those assets shall be identified by determining their remaining life or working life and comparing it with the standards followed in the relevant field.

The technical framework includes also requirements according environmental and social **legislations** and

regulations as well as the procedures to be followed by the partner/project company to obtain the approval of the concerned entities. In this regard, this framework briefly explains the initial environmental inspection results and any information relating to the environmental impact assessment, if conducted, and identifies the requirements expected by the project company in respect of this subject.

❖ **Project Legal Framework**

This part explains the regulatory and legislative framework of the joint project, where it refers to the relevant laws and regulations. It also highlights any licenses and permits to be obtained, and gives an overview on any existing contracts with third parties and the status of these contract after the contract awarding. The project legal framework includes any legal matters relating to the site, its ownership and the expected way to provide it, as well as the details of granting/acquisition procedures, including the expected timetable of their implementation.

❖ **Project envisaged Services and their Specifications**

The services envisaged form the project are the outcomes upon which the awarding is carried out under PPP. These services shall be identified by the government in the project study and design phase in light of the need analysis. Therefore, they are supported by information presented in this part of the bidding requirements and specifications documents. This paragraph identifies also the specifications of these services representing the corner stone of the PPP contract, as they constitute the basis of the service level agreements.

The service good quality positively affects all concerned parties to the PPP contract. On one hand, this matter benefits the government, which in turn will remain responsible for service provision under the PPP contract towards the society members who are seeking to obtain a service level meets their requirements. On the other hand, the project company depends on meeting the required service specifications in order to secure its entitlements and to avoid penalties resulting from the low service level. In addition, the lenders benefit also from the good quality of the provided service as they aspire to providing a good service generating sufficient returns to pay the debt service.

The required service specifications shall be based on applicable objective criteria in compliance with the best practices in similar projects. Internationally acceptable measurement units shall be used to measure these service specifications, e.g. specifications of International Organization for Standardization (ISO).

Section 2: Bid Submission Procedures

These procedures include, but not limited to, the following:

❖ Project Site Visit Procedures

This part includes all details and arrangements relating to the field visits made to the project site. These visits are arranged with each potential partner separately according to a specific timetable, where the site is visited and the investor can enquire any matter. The visit may include holding a meeting with the management members and staff if the project is in place and the PPP is aiming at

development, renovation, preparation, maintenance, rehabilitation and/or operation. A proper time shall be allocated for these filed visits, noting that those visits are optional and therefore some potential partners may opt to not make them.

❖ **Procedures of Virtual Data Room entry and communication with the Bidding and Awarding Committee.**

The Virtual Data Room contains all data and documents relating to the project. The bidders depend on these data and documents to carry out their due diligence study and prepare their bids. The Bidding and Awarding Committee and Project Committee and work team shall collect this information from various sources, including the studies carried out by the consultancy team, in order to provide a complete scope as much as possible to bidders about the project and its components and to facilitate the bid preparation and awarding. Although the Bidding and Awarding makes its best endeavors to provide correct information, it does not guarantee that the documents and data available in Virtual Data Room are correct and the bidders shall verify their accuracy, correctness and completeness. The bidding requirements document shall clearly indicate that there are no guarantees for the correctness of information listed in the Virtual Data Room and that they are merely outcomes of the investigation procedures taken by the Project Committee with the assistance of the work team and the consultancy team. It is very important for the bidders to fully verify the information accuracy before submitting their bids, as the

failure to achieve any of the assumptions may delay the financial closure and threatens the entire awarding process.

This part also includes the procedural rules relating to the Virtual Data Room, including the way of accessing the information, the time limits and any fees for Virtual Data Room use (if any), as well as any document required to be signed by the bidders, including Non-Disclosure Agreement.

As the Virtual Data Room is also considered a mean of communication between the bidders and the Bidding and Awarding Committee, this part details the way of communicating therewith to ask questions and the method to be followed by the Committee to reply to and provide the bidders with clarifications, answers, timetable and deadlines for this process.

Finally, this part also identifies the maximum deadlines to receive the bidders' observations and inquiries regarding the PPP contract or any other documents related to the project.

❖ **Conditions and Method of Submitting Bids and Required Documents**

This part of bidding requirements document includes the procedural details as well as the terms and conditions relating submitting bids. The requirements are identified in terms of the submission place and deadline (date and time), in addition to the method of submission, including but not limited to:

- Number of electronic copies and any copies may be required.
- Bid validity period.
- Number of envelopes to be submitted and how they are marked, in case of manual submission.
- Initial bonds and guarantees in terms of their conditions, and values.
- Information and obligations required from the bidders.
- Documents required to be submitted and their details in a clear and specific manner.
- Rules to be followed if any modification occurs in the structure of the company alliance previously qualified.
- Rules and procedures for the withdrawal or apology of any of the members of the alliance, which will ensure that the alliance maintains the strength and eligibility that was essential in the qualification and transition to the stage of preparing bids. For example, the alliance may be requested to suggest a member instead of withdrawing member during a specific deadline, and then reassess the alliance based on the same criteria approved during the prequalification.

▪ **Technical and Financial bid Models**

This part of the bidding requirements document identifies the formal models of technical and financial bids, which are issued by the Project Committee and bidders shall use to submit their bids.

▪ **Technical bid Model**

The technical bid model developed by the Project Committee in cooperation with the PPP Technical Committee aims at clarifying

the submitted solution at three levels: technical level, legal level and financial level.

- **Technical Solution Model**

The Project Committee requests under this model all information and details relating to the technical solution that the bidders chose to adopt, including the developed designs, the approved method to submit the outcomes, the operation methodology, the plans of meeting the required performance criteria, the expected service quality and its development throughout the contract period, the measures to be adopted for ensuring the services continuity/sustainability and quality, the suggested maintenance periods (including any replacement of assets), the suggested management team and its structure, the anticipated number of the company staff and their regulation, safety plans, and the plans followed to comply with the follow up and reporting requirements.

This information is clarified in tables, some of which are empty and shall be filled by the bidders. This model contains also the draft of Level of Service Agreement for all service elements. The form and content of the Level of Service Agreement differ from one project to another, but in all cases, it forms an integral part of the technical solution and the PPP contract to be signed later.

- **Legal Solution Model**

This model aims at providing the Project Committee with all details relating to the private partner/suggested project company, in the event of winning the contract. Under this model, the Project Committee requests information about the project company structure, the incorporation agreements to be adopted

as well as information about the alliance members and their respective undertakings. The model contains also enquiries aims at ensuring compliance with applicable laws and regulations, including, but not limited to, the environmental legislations.

▪ Financial Solution Model

This form is very important, as it constitutes the cornerstone of the financial bid. The Project Committee aims, through this model, at standardizing the method of information provision in order to facilitate the comparison between the submitted models with each other as well as the comparison between the submitted models and the financial model prepared by the Project Committee in the project study and design phase. The financial solution model differs depending on the projects. Therefore, we will provide below the outlines of this form content, which shall be reviewed and updated according to the nature and specificity of each project.

As for the form, the financial model development requires using computer programs. From this point, the Project Committee identifies the programs that may be used and requests to submit the form in two formats; hard copy and soft copy with an explanation of the method of amending the inputs according to the approved scenarios and assumptions.

As for the content, the Project Committee identifies the project commencement date to be approved in the financial models submitted by all bidders as well as the time basis to be approved (monthly, bimonthly or annually) and the discount rate to be used.

The Project Committee requests the details of the financial database approved for the financial model development, which includes the capital expenses, operation and maintenance costs,

the expected revenues and tax transactions (if any), which are used in calculating the net current value of revenues.

The approved assumptions are a fundamental pillar to develop these expectations; therefore, the bidder shall detail them.

The project financing structure is the cornerstone in the financial model. So, the bidder shall detail the elements of that structure in terms of type and level of debt financing and share financing, financing plan, schedule of the financing assumptions in which all sources, amounts and uses of financing, terms and conditions, main costs, margins and fees are identified.

The Project Committee may request clarification for any possible contribution by the alliance members in the equities and its percentage. This shall include the details of equities, shareholders' loans, source of money, the financing amount each shareholder committed, and the date of their contributions. The debt financing details shall be identified, including its cost, fees, margin, payment schedule and interest capitalization grounds.

The bidder shall identify risk distribution method upon which the financial model depends, and the bases and costs relating to measures to be taken for hedging risks. It shall also explain the basis of risk pricing.

The Project Committee may request the bidder to calculate some financial rates and proportions and include the same in the financial solution, including internal rate of return, the return on capital, debt-to-equity ratio and debt service coverage proportions.

▪ **Financial Bid Model**

It should be noted that the financial bid is limited to the price requested by the private partner to provide the required services. This price represents the project cost in the government budget. This bid does not include any details in contrary to the financial solution that list in details all financial information and constitutes a part of the technical bid. Under this model, the Project Committee identifies the form to be adopted by bidders in submitting their financial bid, such as the method of scheduling (monthly or annually), adopted currency, the foreign exchange rate, value conversion into alphabetical characters, and the approach that the committee will take if the bid value written in letters differs from the value written in figures. In addition, the Project Committee shall identify through this model any documents to be attached to the financial bid and their details. These documents include, but not limited to, the initial insurance and its form (letter of guarantee), the issuing entity (approved bank or any bank working in the state), format and term, provided that it shall be unconditioned and payable; the good performance bond required from the winning bidder and its value; and any other guarantees that may be required by the project committee, such as insurance against delay in the service commence and insurance against maintenance obligations. The bidders shall identify the insurance cost as a separate item from the financial bid.

❖ **Assessment Rules and Methods**

This paragraph of bidding requirements document is of a paramount importance in terms of the role it plays in promoting

the transparency of selecting the winning bidder. Under this paragraph, the Project Committee identifies the rules it will follow in evaluating the submitted bids.

The bid assessment is based on the joint technical and financial assessment method. There are various patterns of this method, which varies from one project to another. These patterns include something called “Least cost selection with technical hurdle”, where the final assessment focuses on the classification of the financial bids of the bidders getting the minimum technical score. The bidders are equal in terms of the technical aspect, and thus the financial bid plays the main role in identifying the winning bidder. Points may be given to bidders if their technical solutions are distinctive, for example in respect of innovation. Such points shall be added to the score given to the financial bids. These points are called “Brownie Points”.

The other pattern of the joint technical and financial assessment method is called “Quality and Cost Based Selection”. In this pattern, the total points are calculated as the average of the technical bid points and the financial bid points based on the weights allocated to each of them. For example, a weight of 60% may be allocated to the technical points against 40% for financial points or 70% against 30% depending on the importance given by the Project Committee to the technical bid. These two patterns may be integrated together by calculating the total points according to the technical and financial weights for the bids getting the minimum technical score.

In this paragraph of bidding requirements and specifications document, the Project Committee identifies the followed assessment method and the relative weights allocated to each of

technical and financial bids. The committee may also identify the extent of disclosing the point allocation details. This matter promotes transparency. However, it should be taken into consideration that disclosing the detailed method of point allocation may lead to adapting the bids to meet the assessment criteria, a matter that may result in providing bids do not achieve the best value for the project.

❖ **The Winning Bidder Announcement Procedures**

This paragraph identifies the details related to steps followed to announce the winning bidder.

The contract shall be awarded to the bidder providing the best bid according to the Project Committee assessment and the PPP Higher Committee approval. The Bidding and Awarding Committee shall inform all candidates with the selection process result.

This paragraph details the method to be followed by the Project Committee to announce the winning bidder. This method may be a public session to which bidders are invited, a press conference held for this purpose and/or an announcement posted on the website or any other appropriate way.

❖ **Deadlines for Each Phase**

This paragraph of bidding requirements document shall be in the form of a schedule explaining the expected date of each entitlement and the specified deadlines, starting from entering the data room till announcing the winning bidder. This schedule may depend on intervals between the entitlements instead of specific dates.

Section 3 of Part 1 in Bidding Requirements Document: Project financial and technical elements

This section focuses on the results reached in the dialogue between the Project Committee and the qualified candidates within their effort to keep the project in line with the international best practices and the investors' expectations, a matter that contributes to the project success.

❖ **Project Company Establishment and Shares Ownership**

If the joint project nature requires establishing a company “project company”, the applied details to be followed by the winning bidder in relation to establishing the company shall be included in the bidding requirements document. In some cases, government entities involved in the project may consider establishing a company / institution / body representing the interests of the governments related to the project. This solution may be best in terms of facilitating contracting procedures, paying liabilities / contributions / revenue collection / revenue sharing/ project governance/implementation oversight / accountability/ decision-making and continuity of the project ownership by the government away from any government restructuring. In all cases, the decision to establish the project company, whether with or without the participation of the private partner of its capital (purely governmental) is up to the government and the PPP Higher Committee based on the best practices and recommendations of the PPP Technical Committee , experts and consultants.

The Project Committee shall identify the deadline for submitting the project company statutes to the Project Committee, which in turn verifies that these statutes comply with the applicable laws

and the bidding requirements document in preparation for raising them Higher Committee for approval. This paragraph also includes any requirements relating to the project company form, whether the concerned governments will participate in its establishment and its contribution in its capital, and the number of the government representatives in the company board and the votes they have in respect of some strategic matters and the basis of the distribution of revenue.

The Project Committee may develop a suggested draft for the project company statute and submit it to the participants as part of the bidding requirements document to make their comments based on the previous meetings and discussions made during the dialogue with the qualified candidates, a matter that accelerates the awarding process and prevent any surprises.

In this paragraph, the Project Committee seeks to make sure that project company complies with the corporate governance. For this purpose, the committee is entitled to require the participants to provide a detailed plan for the company governance to be applied and the obligations of each party.

❖ **Financing Structure**

The purpose of this part of bidding requirements document is to ensure the bidders' commitment to provide financing. The Project Committee requests details about the financing sources such as the equities and debts. It may impose a specific financing structure that limits the debt financing, or may identify a specific range for the debts to equity ratio, provided that the project company shall not exceed such ratio, and relate this condition with a deadline to be identified by the Project Committee. The financing structure differs from one project to another, so the

Project Committee depends in its requirements in this regard on the results reached in the dialogue made with the qualified candidates before issuing the bidding requirements document, ensuring that these requirements are in line with the bidders' expectations and the international practices and experiences.

❖ **Minimum Technical, Legal and Financial Requirements**

This paragraph of bidding requirements includes the minimum technical and financial requirements to make sure that the submitted bids meets the expected objectives of the project.

At the technical level, the requirements relate to achievement of the required outcomes, appropriateness of the design, development and operation elements for the targeted service specifications, the bid conformity to the standard followed specifications, achievement of the technical safety elements, the use of proven technologies, easiness of the project operation and maintenance, the environment protection and the expected quality of services and their conformity with the performance standards and indicators identified in the bidding requirements and specifications document, and the availability of sufficient measures to ensure their continuity.

At the legal aspect, the requirements relate to the structure of the alliance submitting the bid and its legal status and the legal status of the companies participating therein (including any bankruptcy record or conviction of committing crimes), the conditions of subcontracting, the suggested amendments to the PPP contract draft, and any increase in the risks resulting from these amendments in comparison with the risks matrix prepared in the project study and design phase.

At the financial level, the requirements include an accurate and comprehensive financial model based on assumptions and scenarios required by the Project Committee. The financial bid shall explain all forms and conditions of financing, explain the method followed by each party/Project Committee to manage the risks, and meet the minimum requirements and conditions of financing.

In this paragraph of bidding requirements document, the Project Committee identifies the requirements that shall be met by the bids to comply with the conditions. These requirements vary from one project to another. In most cases, these requirements are divided into two types, the first type is obligatory requirements that shall be met, and the second type may be deviated in a limited way according to the provisions of the bidding requirements and specifications document to provide acceptable bids. It shall be noted that these requirements shall not limit or kill the spirit of innovation nor be cumbersome to a level that would lead to excluding strong bids without reasonable grounds in an early phase due to not meeting one of these requirements.

c. Part 2 of Bidding Requirements Document: PPP contract and its attachments

Partnership contract consists of a set of contracts, undertakings, guarantees, appendices and any related agreements that govern the contractual relationship between the government and the partner/the project company and any other concerned party such as the guarantors, funding banks, international organizations, the state concerned authorities and institutions, public institutions or the private partner awarded the joint project.

There is a set of things shall be identified in the PPP contract, and thus, the federal government may develop standard contracting provisions, which shall be general provisions taking into consideration the internationally acceptable general matters and provisions. These standard provisions aim at developing a clear perception of the method to be followed by the PPP Technical Committee and the government entities in dealing with the PPP contracts, especially in relation to the type of risks involved in these contracts and how to transfer them, reducing the negotiation period and consequently reducing the cost incurred by the parties involved in the project. It shall be noted that those standard provisions shall not constitute ready-to-sign contract forms, but other things specific to each sector or project shall be taken into consideration, including, but not limited to, the private partner dues structure and their payment mechanism.

The structure of dues to be paid to by the partner/the project company from the government varies depending on project. These dues may be in exchange for providing services, may be based on availability charge, or may be a structure combining both forms. On the other hand, fees may be imposed on users for benefiting from services in some joint projects, while the service may be free of charge in other projects. This matter depends on the joint project's nature.

If the services are provided to users in exchange for fees, these fees shall be approved by the Concerned Authority in the government.

Therefore, the relationship between the investor/project company and concerned Government Entity is a direct relationship. The project company provides the public service

without collecting its dues from the beneficiaries to its own account, and the government collects fees through its employees or systems. However, the project company may be authorized to collect the fees of the joint project on behalf of the government according to the mechanisms approved by the Higher Committee. Thus, the money collected by the investor/project company shall not be subject to retention, deduction or set off because it is a public property.

The PPP contract draft constitutes an integral part of the bidding requirements document. However, drafting the PPP contract does not mean that it may be subject to significant amendments because the draft outlines have been agreed upon with the qualified participants during the dialogue period, taking into consideration the international best practices. Accordingly, the bidders' notes shall be limited to revising some matters in the draft. Discussing the PPP contract wording with the qualified partners significantly contributes to accelerating the contract signing after awarding the project to the winning partner.

Hereunder some of the standard articles that may be included in the PPP contract:

1. Works that each party shall do or refrain from doing it, and rights and obligations of each party.
2. The project technical, environmental, financial and economic requirements and the associated obligations of each party.
3. Contract term, provided that this term shall not exceed (suggested 30 or 35 years)
4. Financing basics and mechanisms
5. Details of all dues that will be paid to the private partner in exchange for performing the works agreed upon in the

- contract, the mechanisms of calculation and payment, mechanisms of price review, the service price and change in service requirements.
6. Security and safety requirements and the basics of their supervision, inspection and assessment.
 7. Measurement and Assessment indicators of Private partner performance (KPI)
 8. Reports to be prepared by the private partner and their submission dates.
 9. Risks distribution among parties, as well as the measures and procedures to be followed to reduce those risks.
 10. The mechanisms and procedures of addressing the impacts resulted from the technical and technological developments/ upgrades and their effect on the project implementation, the service price, investor rights, etc.
 11. Rights of government intervention and the cases leading to that intervention, and the government right to request changing the management.
 12. Procedures of complaint and grievance and their consideration mechanisms, arbitration and contract termination
 13. The controls obliging the investor/ partner to use the Government Entity employees, as well as identifying the Emiratization ratio therein (to be identified depending on the nature of each project)
 14. Explanation of the obligations relating to the intellectual property rights of each party and ensuring that the private partner shall transfer knowledge and experience to the government authority, including providing an integrated and organized program for training and qualifying the government employees, focusing on UAE nationals in order to be able to manage and operate the project after the expiration of the contract with the private partner.

15. Guarantees and securities provided by each party.
16. Moneys, properties and assets owned by the government, which will be at the disposal of the private partner throughout the project period to be able to perform its obligations, in addition to the rights and obligations of the private partner in respect of those assets and moneys.
17. Mechanism and time of transferring the joint project to the government or its representative.
18. Penalties, fines and actions that may be imposed on the private partner in the event of violating its obligations under the contract.
19. Procedures of securing the continuity of the project and works contained in PPP contract works upon its expiration or termination or if the private partner violates its obligations under the contract.
20. The rules applied in the state for dispute resolution, including mediation and arbitration.

7.5 Approving Bidding Document and share it with Qualified Candidates

- After completing discussing and revising the bidding requirements document, it shall be approved initially by the project committee.
- The Project Committee shall submit the final copy of the bidding requirement document to the PPP Technical Committee for approval and then the same shall be submitted to the PPP Higher Committee for final discussion and revision. Thereafter, the PPP Higher Committee shall be approving the document or attaché thereof to the project file and submit them to the governments to decide thereon approve thereof.
- The government approval on the bidding requirements and specifications document shall include an enforceable

provision regarding approving the PPP contract draft, including the articles and clauses relating to dispute settlement and arbitration. Accordingly, if any dispute arises between the private partner and the government, these clauses shall apply. On the other hand, the government approval on the bidding requirements document shall give the green light to commence the procedures of bidding, selecting the private partner and the contract awarding.

- The Bidding and Awarding Committee shall then inform the qualified candidates with the bidding requirements document in any way approved by the Higher Committee/Project Company, then the candidates shall prepare their technical and financial bids according to the rules set out in the bidding requirements document.
- A non-refundable participation fee may be imposed to be paid by the qualified candidates to get the bidding requirements and specifications document. This mechanism enables to measure the continuity of the qualified candidates' interest and seriousness in participation and submitting bids.

7.6 Bid Preparation Phase

The qualified candidates who obtained/sold the bidding requirements document shall prepare their technical and financial bids in this phase. For this purpose, they may access the documents in the Virtual Data Room and may carry out field visits to the joint project site, provided that this matter shall be made according to the rules and time limits set out in the bidding requirements and specifications document.

The Data Room constitutes a point for communication between the bidders and the Bidding and Awarding Committee. The Bidding and Awarding Committee shall provide the bidders with clarifications and answers to the asked questions after presenting

thereof to the project committee and consultants or to the PPP Technical Committee , if necessary. The Bidding and Awarding Committee shall be transparent and impartial in communicating with bidders. All correspondences exchanged with the bidders shall be in writing, and all clarifications and answers shall be distributed on all bidders, provided that the questions shall be explained without disclosing the identity of the bidder who has asked the question. Excluded from this procedure are the questions relating to the technical solution because it represents an ownership right of each bidder. Therefore, they shall not be distributed on other bidders. During that period, the bidders may be required to provide their observations regarding the PPP contract draft or any other documents such as the bylaws of the project company (if they are drafted and suggested by the project committee).

7.7 Bids Receipt and Opening

The bid submission shall be limited to those participants qualified by the Project Committee and got the bidding requirements and specifications document from the project committee, whether directly or through their representatives. Bidding requirements document may not be given to any other entity.

The bids shall be submitted according to the mechanism and in the place and time set out in the bidding requirements document. The time may be in the form of a deadline or a specific date. Preferably, specific date and time shall be defined for submitting the bids, as approving a deadline opens the door for some participants to submit their bids in different dates, a matter that prevents receiving the bids in a public session in the presence of by all bidder in case of submission of bids will be manually.

The Project Committee may opt to receive and open the bids in a public session to promote transparency. The bidders' representatives are invited to submit their bids in a specific date and time. Then, the Project Committee shall receive the bids in their presence. The Project Committee may verify that the bids are completed during this public session in terms of submitting the required documents, especially the bid bond. If any bid is incomplete, the Project Committee shall take the appropriate decision, whether to reject it or give its bidder an additional period to complete the shortcomings.

In case of not holding a public session for receiving the bids, the concerned team/entity shall take the necessary arrangements to receive the sealed envelopes containing the bids and keep them in a safe way till the date identified for opening them.

If only one bid is received, the Bidding and Awarding Committee shall report this matter to the PPP Higher Committee through the Ministry in order to take the appropriate decision in this regard. In all cases, the Financial and Economic Committee reserves the right to cancel, postpone or terminate the awarding process at any time before awarding the contract at its sole discretion for any reason and without incurring any obligations or costs towards the participants in the process.

7.8 Bid Assessment

A. Technical Bid Assessment

The Bidding and Awarding Committee shall open the received technical bids and may request the bidders to submit the required clarifications, complete the shortcomings and confirm the

obligations that may be included in the bid within a specific period.

The process of assessing the submitted technical bids shall start with an initial preparatory phase in which the Bidding and Awarding Committee verifies that the bids are complete and the minimum requirements and conditions are met.

The Bidding and Awarding Committee may verify the bid completeness during the public session of bid opening or may carry out this process in a closed session. Along with the completeness verification, the Bidding and Awarding Committee shall transfer the technical bids to the project committee and, if necessary, to the PPP Technical Committee to study the technical offers shall consider the technical bids, including the technical, legal and financial solutions, to make sure that they meet the minimum requirements set out in the bidding requirements document. It is prohibited at this stage for any of the project committee team to communicate with any of the bidders or vice versa to ensure transparency and to avoid any suspicions about any communication.

The Bidding and Awarding Committee may request the bidders to confirm their technical and financial obligations and provide clarifications regarding any ambiguities in their technical bids or any attached document. It may also request them to complete any shortcomings, whether documents or other information, within a specific period it sets. This procedure aims at not excluding bidders for any reasons that may not be material, such as a minor shortcoming in the financial security value or providing a security with the same value in different currency, because they

may be serious competitors and have the required abilities and desire to implement the project.

During requesting clarifications and the inquiries by the Bidding and Awarding Committee, the questions and replies shall be in writing. The question shall refer to a specific item of the bid and shall not suggest any amendments to the bid. The answer or reply shall be accurately checked before accepting it as a clarification. If the reply includes an amendment to the bid, it shall be excluded and its contents shall be ignored.

Upon the expiration of the period set for completing the shortcomings and providing clarifications, the technical bids non-conforming to the requirements contained in the bidding requirements and specifications documents shall be rejected and the its financial bids shall be returned to the bidders without opening or disclosing them pursuant to the principle of transparency.

The complete technical bids that meet the minimum requirements set out in the bidding requirements document shall be analyzed and assessed. The Project Committee, assisted by team appointed by the PPP Technical Committee and the consultants, if they appointed, shall assess and compare the remaining technical bids. The technical bid normally includes the technical, legal and the financial solutions and shall be assessed according to its sections.

First: Technical Solution Assessment

The technical solution assessment is divided into two main parts: preparation phase and the operation phase, i.e. the phase of service provision. Technical bids will be assessed by the Project

Technical Committee, supported by the PPP Technical Committee and the project consultant, if any, as follows:

- **Preparation Phase Assessment**

Hereunder the considerations on which the technical solution assessment may depend during the preparation phase:

- ❖ Design quality, safety, cost efficiency and practical and innovative nature.
- ❖ Design level and cost-estimation accuracy
- ❖ Social and environmental impact and compliance with the environmental legislation.
- ❖ Ability to provide outcomes, reports and schedules
- ❖ Integration of design, preparation, maintenance and operation according to a clear program.
- ❖ Quality management, safety and security systems suggested by bidders.

- **Operation Phase Assessment**

The technical solution assessment in the operation phase shall depend on the following:

- ❖ How the suggested performance targets and measurement systems exceed the minimum specifications and the operation methodology.
- ❖ Quality of the services suggested to be provided to the end users and their conformity to criteria and performance indicators set in the bidding requirements document.
- ❖ How the philosophy of asset management and maintenance supports the project objectives.
- ❖ Quality of the suggested management structure and the personnel system.

- ❖ Quality of the safety plans, including the use of the known and proven techniques.
- ❖ Integration of the PPP project with the existing services.
- ❖ Quality of the management system suggested by bidders.
- ❖ Compliance with the environmental legislations.
- ❖ Adherence to the follow-up and reporting requirements of the concerned government entities.
- ❖ Easiness of the project operation without complications or with the least possible complications that may be overcome easily.
- ❖ Quality of the suggested installations and facilities, and their conformity to the specifications set out in the bidding requirements document, and the availability of sufficient measures for maintaining them and ensuring their continuity.

Second: Legal Solution Assessment

The legal solution assessment shall depend on the strength and stability of the special purpose vehicle or the “project company” suggested by the bidders. This matter is reflected in the structure suggested by bidders for that company, the incorporation agreements between them, the level of obligation and undertakings of each alliance member and each member contribution in the equities. The assessment is done by the legal consultant.

The legal solution assessment also focuses on the suggested amendments to the PPP contract draft and the project company bylaw (if drafted by the Project Committee) and the resulting increase in risks and the method of their distribution and management.

Third: Financial Solution Assessment

The financial solution assessment is the most complicated one because it requires a complete understanding of the project costs throughout its period and the relevant alliance's structure and financing. Hereunder the considerations that the financial solution assessment shall depend thereon:

- ❖ The project total cost in terms of the limits on cost affordability.
- ❖ Reality of operational and capital expenditure, including the assessment of whether the quality management system costs are calculated in the financial model or not.
- ❖ Cost-effectiveness of the services, installations and facilities to be provided through the project.
- ❖ Strength of the financial solution, including its sensitivity to changes in operation and maintenance costs, currency rate fluctuations, inflation rate, interest rate and cash flow forms.
- ❖ Strength of the financing structure.
- ❖ Level and nature of equities in the financing structure.
- ❖ Level of compliance showed by the debt providers and equity owners as well as the terms and conditions associated with providing this financing.
- ❖ Level of incurred risks and the extent of deviation from the requirements detailed in the bidding requirements document.
- ❖ Cost, level and nature of the suggested guarantee (insurance) coverage.
- ❖ Nature and significance of risks, their occurrence possibility and their distribution method.

The Project Committee shall give points based on the relative weights previously identified for each section, and then the

technical assessment score shall be calculated. Based on the followed assessment method, the Project Committee shall identify the accepted technical bids.

b. Financial Bid Assessment

The Bidding and Awarding Committee shall open the financial bids associated to the accepted technical bids. The financial bid importance is limited to the price that shows in general the project cost to be incurred by the government. The price shall be audited in light of the submitted financial solution and its compliance with the submitted financial model shall be ensured, taking into account the achievement of value for money and sustainability throughout the life cycle of the project

7.9 Bidder Classification

The Bidding and Awarding Committee shall open the financial bids related to the accepted technical bids, and then submits a report to the Higher Committee. In that report, the Project Committee shall classify the bidders according to the technical and financial assessments, and shall attach thereto its recommendations regarding the detailed bid.

The Bidding and Awarding Committee shall include in that report a table detailing the scores of each bidder in the technical, legal and financial solutions and the score of the financial bid.

7.10 Contract Awarding

The contract shall be awarded to the bidder submitting the best bid (technically and technologically) according the assessment made by the Project Committee and (Value for money) based on the Biding and Awarding Committee after obtaining approval of

the Higher Committee. The Bidding and Awarding Committee shall notify all bidders of the selection process result.

If the PPP Higher Committee decides not to make any negotiations with the best bidder or the best two bidders, the contract shall be awarded to the best bidder based on the assessment result. The selection process results shall be serviced to all assessed bidders.

7.11 Negotiation with the best bidder

The Bidding and Awarding Committee, in coordination with the consultants, if any, may negotiate with the best bidder or, if the bids are close in scores, with the best two bidders to enhance the bid from the technical and/or financial aspects. For this purpose, it may follow a set of transparent, public and fair procedures.

The success negotiations shall be concluded with contract awarding, selection phase completion, and commencement of the joint project implementation.

Negotiation Methodology

The negotiation process shall be preceded with preparatory steps, where the Bidding and Awarding Committee shall prepare an agenda and schedule for the negotiation commencement and conclusion. Such period shall be included in the bid validity period and the negotiation goal shall be to enhance the contract conditions, the technical bid and/or the project cost and guarantees based on some data available to the committee after viewing the content of all submitted bids.

7.12 Negotiation Results and PPP Contract Signing

If the negotiations with the best bidder or the best two bidders result in enhancing the bid from the technical and/or the financial aspects, the Bidding and Awarding Committee shall submit to the PPP Technical Committee a detailed report on the negotiation process and the final clauses and conditions agreed upon, and recommend approving the contract signing. The PPP Technical Committee shall make a final analytical review and then submit this report to the PPP Higher Committee for review and approval, in case the project is within its powers, otherwise it will be submitted to the government for approval.

7.13 Establishment of the Project Company (Special Purpose Vehicle “SPV”)

The private partner shall (if the project nature requires so, or if the partner's individual ability is not trusted) establish the project company according to the relevant laws applied in the state.

A representative of each government that is a party to the project shall be appointed to be a member of the Board of Directors to represent it throughout the period of its participation in the company in addition to members representing the private partner.

The board of directors shall be selected by the general assembly. The concerned Federal Entity shall be represented throughout the period of its contribution in the company by at least one director to be appointed by the Cabinet.

The winning bidder shall be responsible for establishing a company dedicated to implement the project only. This company shall have a legal personality separate from the parent company

personality. The advantages of establishing such company include obtaining financing from potential funders for the project because there are no potential risks or burdens threatening its future work as it is a new company with a legal personality separate from the personality of the parent company or partners, and the government is a party therein or partner therewith in the project to be financed.

For promoting the private partner guarantees towards the government, the private partner and the project company shall be obliged to provide sufficient guarantees for implementing the project as agreed upon with the private partner.

7.14 Guarantees in Joint projects

The approach of granting guarantees shall cover the life cycle of the project (initial decision-making, design, negotiation, collection and management of state guarantee once implemented). The guarantees, undertakings and obligations agreed upon by the parties for the implementation of the joint venture are also important to be clarified, defined and separated by the partnership contract. Guarantees are provided by several parties such as the project company, the private partner and / or government entities. The PPP contract shall identify the mutual guarantees between the Federal Entity and the project company and/ or the private partner.

7.15 Guarantees Provided by the Government Entities

The Government Entity may, in coordination with the entities responsible for managing the public debt, and according to the applicable legislations in the state, allow the private partner to contract with banking institutions to fund the project. In such

case, the private partner shall be solely responsible for all liabilities arising from that procedures. In most cases of partnership, no bank guarantee is provided by the state.

The State may grant guarantees for several considerations. The main considerations are summarized below:

1. Political Considerations with a view to:

- ✓ Build confidence in the partnership program, and persuade investors to involve in partnership projects.
- ✓ Maintain the credibility of the partnership program.
- ✓ Shorten the period of negotiations with the private sector by covering some risks that require lengthy talks.

2. Financial incentives, including:

- ✓ Procuring additional sources of funding from the private sector by enhancing credit quality.
- ✓ Benefiting from new funding sources.
- ✓ Reducing the cost of project capital
- ✓ Execute the project without government funding as financing comes through the guarantee of loans.

3. Project Risks- based on best practices, some projects may require:

- ✓ Guaranteeing the project revenues because it is difficult to predict future demand accurately or in projects that benefit the government.

- ✓ Guaranteeing construction risks in complex projects such as the discovery of old traces during excavation or the risk of geology in large spending projects.
- ✓ Facilitating the financing of projects with emerging technology or risk of obsolescence.
- ✓ Guaranteeing macroeconomic risks such as interest rate fluctuations or the risk of local currency depreciation for the projects where revenues are in local currency and loans are in foreign currency.\
- ✓ Guaranteeing payment of the residual value of assets to be recovered by the government in the event of early termination of the contract or at the expiry of the contract term.
- ✓ Guaranteeing the risks of changing government policies, which are usually borne by the government such as amending laws or standards of service quality or assets confiscation without compensation, etc.

The role of the PPP Higher Committee and the PPP Technical Committee with respect to guarantees:

1. Establish a framework, criteria and controls for assessing the risks covered by the state guarantee (e.g. the government guarantee shall not exceed 5% to 10% of the contract value).
2. Establish an appropriate framework for assessing when an individual program of State guarantees or State guarantees in general can be justified (decision-making framework, eligibility criteria, and appropriate fees when granting a State Guarantee).

3. Determine the justifications by highlighting the precise issues that the State guarantee is intended to address, provided that the achievement of the public interest shall be main factor. Therefore, it must be proved that the incentive behind guaranteeing the project is not to achieve personal or factional gains or to avoid immediate payment, but to achieve the public interest, and that there is no possibility of government intervention in another way that sidesteps the guarantees.
4. Carry out a thorough value-for-money analysis against the proposed state guarantee, to ensure that such guarantee does not change the value for money of the partnership project or risk-sharing.
5. Ensure that state guarantee is the correct form of government intervention compared to investment granting, credit lines, tax exemptions, and insurance.

Value for money and state guarantees

Whereas the guarantee granting is a form of government intervention, State guarantees shall be proved to be:

- A. It is in the public interest. Sound decisions are more likely if the government carefully considers the full costs and benefits of State guarantees.
- B. Optimizes risk transfer: by issuing a State guarantee, the government is changing the allocation of PPP risk and thus this may affect value for money. State guarantees shall maintain private sector incentives to manage the risks that they can best manage.

In determining the value of payment against state guarantees, the following **must be adhered to**:

1. The government policy on guarantees granting must be clear so as not to give the impression that the government grants guarantees in all partnership projects, making it difficult to negotiate with investors in future partnership contracts.
2. Ensuring that pricing of payments against State guarantee includes appropriate risk amounts and covers administrative costs.
3. Determine the government party (s) responsible for payment, its contribution percentage, method and date of payment.
4. Ensuring that State guarantee rates are consistent with State aid and other legislative / regulatory requirements.
5. Ensuring that the guarantee impacts are valid for the project term or upon completion.
6. Determining whether the government intends to become a lender or investor if it makes payments under the guarantee.
7. The mechanism of sharing losses with other creditors in case the guarantee is partial.

7.16 Types of guarantees provided by the government entities.

The guarantee undertakings may be an integral part of the PPP contract provisions, and may be in various forms as follows:

- **Service use guarantee (or revenue guarantee)**

This guarantee is a common guarantee in the PPP contracts used in the transportation sector. Under this guarantee, the government guarantees to the private sector/ project company providing a minimum service use such as the passage of a specific number of cars on a daily basis in case of establishing a Toll Road, or guarantees a minimum daily revenue. If the daily revenues are less than the amount agreed upon, the government shall guarantee paying the difference. The direct beneficiary from this guarantee is the private sector/project company and not its creditors. If the company costs are not managed properly, the project company is likely to fail to pay its debts to the creditors.

- **Guarantee of minimum service fees**

Under this guarantee, the government guarantees to the private partner paying a minimum service fees that it had committed whatever the performance of the project company is. The project company lenders usually make sure that this guarantee is provided to ensure obtaining their debt or part thereof, even if the project company performance is weak or if the PPP contract is terminated for any reason whatsoever.

- **Guarantee of Law and Regulation Amendment**

The private partner usually requests, especially in the states with weak regulatory framework, to provide this type of guarantee. The government provides the protection from any future regulatory policy, provided that the contract shall not be unilaterally changeable.

7.17 Guarantee Impact on Private Sector

When the government provides the guarantees, the following matters shall be taken into consideration:

- The guarantee provision may result in redistributing risks between the public and private sectors in such a way that adversely affects the performance incentives of the private sector.
- The state policy shall be clear in respect of the guarantee provision to avoid giving an impression that the state will give such guarantees in all joint projects, making negotiation with investors in the future partnership contracts more difficult.

The adverse effects resulting from the guarantees that may be provided by the state/ the government shall be mitigated through allowing the private sector to assume part of the risks without guaranteeing thereof, or through providing guarantees for specific matters only.

7.18 Guarantee Provision limitation

The guarantee will be more effective in achieving its purposes if it is limited in terms of scope and time because the need for guarantees changes over time. The PPP program may need broader guarantees in its early phases, but with program maturity, the need for guarantees may decrease or its scope becomes narrower.

At the project level, the need for guarantees is not constant in all project phases. Thus, the PPP Higher Committee shall develop a program for guarantee provision, in which it identifies the

purpose of guarantee provision, method of provision, the decision-making mechanism, and the total value cap of guarantees. This shall be carried out in continuous coordination with the fund management entities to develop and review such guarantees.

7.19 Guarantees Provided by the Private Partner

1. Reasons for Guarantee Provision

When discussing the guarantees in the joint projects, the focus shall be on the guarantees provided to the private partner and the project creditors being the joint project funders. On the other hand, the government may be in need of a performance guarantee because the project company establishment keeps the private partner winning the project due to its experience away from any risks. Accordingly, the private partner losses, in case of project failure, shall be limited to the extent it has obligated when establishing the project company. The government may request, in some cases, the private partner to assume all or part of the project company obligations set out in the PPP contract.

2. Performance Bond

Performance bond is a security provided by the private partner to government, where it commits to execute all obligations and responsibilities of the project company as per the performance criteria set out in the PPP contract. This security usually relates to the project company development and implementation of the project within the identified term and cost.

Chapter Eight -Project Life Cycle – Phase IV Monitoring and Follow Up

8. PPP Projects - Monitoring and Follow up

8.1 General

A joint committee called “Performance Monitoring Committee” shall be formed for each project individually by a decision of the PPP Higher Committee or by agreement between the government entities involved in the project. The committee prepares a detailed work program for the activities and tasks that will be carried out to ensure the commitment of the private partner / project company to implement the project in accordance with bidding documents and contract terms. The Performance Monitoring Committee shall submit periodic reports on the progress of the project to the PPP Higher Committee that in turn submits periodic progress reports on joint projects to the government. The periodicity, content and structure of the reports are determined for each project separately.

Performance Monitoring Committee main role and responsibilities are:

1. Follow up on parties’ compliance with PPP contract terms and conditions. For this purpose, it may request the concerned government entities and/or the project company to provide information and reports on the PPP contract implementation.
2. Provide feedback and comments to PPP Higher Committee and copy thereof to the government entities regarding project status based on available information and reports.
3. Prepare periodic and annual reports for the Higher Committee about projects facing challenges. Also, submit suggestions for promoting PPP model in UAE.

4. Training and developing government employees to enable them to effectively study and keep up with partnership projects.

The Performance Monitoring Committee may hire local and international experts, consultants or audit firms when carrying out any of the tasks mentioned above.

In addition, all PPP joint projects (Federal/local) will be subject to State Audit review.

8.2 Government Entity Role

The responsibility for providing the services to the society members in the joint projects and ensuring their continuity shall be assumed mainly by government entities, because the private sector/project company provides the services in the name of these entities. If the provided services do not meet the criteria required in the contract in terms of quantity, cost or quality, this matter may lead to criticizing the public sector and accusing it of collusion with the project company or negligence in managing the public money. Thus, the government entities shall follow up the PPP contract implementation accurately to ensure applying its provisions and appendices strictly. Therefore, it is necessary to establish a clear institutional structure to follow up and supervise the contract implementation, provided that this structure shall be prepared during the bidding and awarding phase to ensure commencing the contract implementation immediately after approving it without any delay.

The responsibility for monitoring the PPP project implementation shall be assumed directly by the federal entities concerned with the project, as they are present in the field along with the private

partner / project company. The contracting Government Entity, is one that will manage the partnership contract and monitor the implementation of the contractual obligations set out in the partnership contract by the project company till expiration of its term.

8.3 PPP Project Monitoring

The PPP projects shall be monitored on two phases: Preparation phase and operation phase.

1. Preparation Phase

This phase shall start as of the PPP contract approval till completing the project construction, establishment, development, restoration and rehabilitation, preparation and/or maintenance as set out in the PPP contract.

In projects that require this matter and upon the approval of the PPP Higher Committee or by agreement between the government concerned entities, the Performance Monitoring Committee may appoint an independent certifier to assist it in monitoring the joint project implementation during this foundational phase. The independent certifier shall be appointed in coordination with the project company under the provisions contained in the PPP contract or any other contract signed later with the project company. The independent certifier shall monitor the project and submit reports in a fair, impartial and effective way. The independent certifier role shall be of pure technical nature. So, the project committee shall follow up the legal, financial and incidental matters.

The independent certifier duties shall include the following:

- Reviewing and monitoring works and ensuring that they are in conformity with the agreed upon plans and designs.
- Issuing monthly reports and completion certificates after carrying out the necessary tests.
- Identifying delays and defects that require actions by the government to apply the contract conditions.
- Identifying whether the work or service costs are within the reasonable limits and as agreed upon under the PPP contract or not.
- Reassuring the public sector about the project good progress.
- Assuming the mediator role in settling disputes arising between the private sector, project company, the government entities and/ or any funder.
- Making sure that the private partner/project company complies with its contractual obligations in respect of this phase.

The preparation phase shall end when issuing all completion certificates and passing all initial tests and approving them by the PPP Technical Committee and the project company. Accordingly, it shall be ensured that the project company has completed all its obligations under the contract for this phase. After that, the project shall move to the operation phase.

2. Operation Phase

The operation phase shall start from the date of commencing operations and providing service till their completion as set out in the PPP contract.

During this phase, the mechanism of the project implementation monitoring by the Performance Monitoring Committee shall be limited to the technical issues, including:

- Monitoring the private partner/project company compliance with the standards identified for the performance and maintenance.
- Identifying delays and defects that require actions by the government to apply the contract conditions.
- Preparing and submitting a systemized monitoring report.
- Monitor the operations carried out by the private sector/project company in terms of outputs as well as levels and quality of the required services in light of the agreed performance measurement standards.
- Monitor the suggestions relating to the plan of addressing the project company violation of its obligations and imposing penalties and fines.
- Manage the settlement of the existing disputes and the change orders.
- In general, ensure that the project company processes are in conformity with the conditions set out in the PPP contract.
- Provide the project assets and hand over them upon the contract expiration.
- Prepare and submit to the PPP Higher Committee periodic and annual reports on the monitoring operations. Copy of these

reports shall be sent to the government contracting entity to take the appropriate decision regarding them, and also to the PPP Technical Committee in its capacity as the party responsible for following up the (federal/local) PPP projects.

If the project company violates its obligations, the government contracting entity shall, at any time, check, audit, monitor and test the provided services to ensure their conformity with the contract terms. In case of repeating the violation or if there are many complaints relating to the provided service level, the PPP Higher Committee may submit the matter and the suggested recommendations to the government to take the appropriate decisions.

8.4 The PPP Technical Committee Role in Following Up the Joint Projects

The PPP Technical Committee role is limited in respect of the direct monitoring. Its role shall be limited to “follow up” the projects through the completion reports and information about the project progress, which are received from the Performance Monitoring Committee. The PPP Technical Committee shall review and evaluate the reports in terms of the parties’ compliance with the PPP contract. In addition, it shall evaluate the performance of the joint projects and prepare periodic reports on them to draw the learned lessons, focusing on the parties’ compliance with the contract clauses and the effect of these projects on the public finance and the society members.

The PPP Technical Committee follow-up of the PPP projects shall not make it, in any way, responsible for the PPP contract implementation because this responsibility shall be assumed solely by the relevant government concerned entities.

The Technical Bureau shall receive from the PPP Technical Committee , as set out above, the monitoring reports relating to the PPP project on a periodic and regular basis during the preparation phase and the first two years of the operation phase, and on an annual basis thereafter. The Technical Bureau shall be entitled to request any information, documents or reports from the project company. In light of such reports and information, it shall monitor the PPP project implementation. It may express its opinion and provide notes to the concerned government concerned entities and the government, when necessary.

The PPP Technical Committee shall submit annual reports to the PPP Higher Committee about the joint projects and the implemented joint project status.

The PPP Technical Committee shall follow up the PPP projects indirectly through submitting the suggestions and recommendations for developing and motivating the PPP to the PPP Higher Committee, including suggestions to enact legislations promoting the PPP, and training all the federal government employees concerned with the PPP contracts by organizing workshops and conferences for developing their abilities to be able to understand and keep up with the PPP projects and building a qualified staff.

8.5 Contract Term Expiration

Introduction

The nature of the PPP contracts shall be governed by specific time periods, whether they are design/building/operation contracts; design, building and operation contracts; or any other form of the

PPP contracts. To ensure achieving the public interest, the governmentcontraction Entity shall, before the contract expiration date, take the required actions to ensure continuity of providing service to society members.

Best Practices and Suggested Actions

Before a sufficient period of the PPP contract expiration, the government concerned entities shall consider and evaluate all available options and choose the best one in a manner achieving the public interest in order to ensure continuity of the services provided under the PPP contract with the private sector. The following are best practices and actions that may be followed:

- a. Extending the PPP contract with the same private partner.
- b. Assuming the responsibility for the service provision by the government based on the studying and evaluating the human resources and financial solvency of the government concerned entities to ensure the service continuity with the same quality and cost.
- c. Awarding the PPP contract to a new partner.

8.6 Facing Obstacles in Project

Introduction

In the event of facing obstacles in project for any reasons relating to the private partner incompetency and lack of financial solvency, the government concerned entities shall take the required corrective actions, taking into consideration the agreements reached in the PPP contract. In the event of facing obstacles in project for reasons relating to force majeure or matters beyond the control of the private partner, the

government concerned entities and the private partner shall discuss the matter to take the necessary actions for the public interest without causing any damages to any of the contract parties, after obtaining the consent of the Higher Committee.

Best Practices and Suggested Actions

In the event of facing obstacles in project for any reasons relating to the private partner incompetency and lack of financial solvency, it is recommended to take any of the following suggestions or recommendations to achieve the public interest and ensure the project continuity. The following are the best practices and actions that may be followed:

- a. Contracting with a new private partner.
- b. Assuming the responsibility for the service provision by the government based on the studying and evaluating the human resources and financial solvency of the government concerned entities.
- c. Cancelling the project in case the losses or negative effects are less than if it were continued.

8.7 Violation of the agreed obligations

Without prejudice to the government concerned entities right of compensation and imposing the penalties under the PPP contract, the government concerned entities may, by itself or by any other party it chooses, implement the PPP contract if the private partner commits material or serious violations or becomes unable to achieve the required quality levels under the PPP contract, after notifying the Higher Committee/private partner of its defects and defaults in performance and its failure to correct its situation within the period identified in the notice.

8.8 Dispute Settlement

The contractual disputes are a common matter in the PPP contracts for many reasons, including:

- The PPP contracts are long-term contracts. Therefore, disputes may arise in unexpected conditions.
- The joint projects are complicated in their nature.

The relationship between the relevant parties shall be managed effectively in the joint project to facilitate the dispute settlement in the future. Settling the dispute inappropriately may cause damage to this relationship, a matter that may adversely affect the progress of the whole project. So, it is necessary to identify a mechanism for settling disputes arising from the PPP contract. The experienced legal consultants' support must be sought in this matter.

Methods of Dispute Settlement include Negotiation, Mediation and Local Arbitration

The agreed mechanism for dispute settlement is an important element in identifying the PPP contracts risks by the private partner. Therefore, it is necessary to build the relevant private partners' confidence that there is a fair system for dispute settlement in order to urge them to participate in these projects. Preferably, the disputes shall be settled by resorting to any of the available dispute settlement mechanisms which are in compliance with the international practices without resorting to legal proceedings that are long and costly in nature.

Model mechanisms of Dispute Settlement are:

- a. National litigation Method (litigation before the relevant courts inside the state of UAE)**
- b. Arbitration (inside the state)**

This mechanism is more similar to the judicial proceedings as a third party render a judgment in the dispute referred to it. The importance of the arbitration in the PPP contracts lies in the fact that it keeps the rights of the state and the investor at the same time.

As we indicated above, the project bid requirements document states that the PPP contract shall be referred to the Higher Committee/Government for approval. Thus, when the contract is awarded to and signed by the winning investor, no other actions shall take regarding the arbitration clause that shall be valid and binding on its parties.

c. Mediation

Mediation is a mechanism for solving the legal disputes in an amicable way between two parties with the assistance of an impartial third person, who shall direct and facilitate the negotiations and assist in settling the dispute by providing acceptable and reasonable solutions. If the parties agree on a solution, the mediator shall dedicate that solution by organizing a binding contract.

d. Expert Report

This mechanism is often used for specific technical or financial matters or to give a temporary decision, and thus the litigation or arbitration may be a challenged.

Annexes

Annex (1) Types of Partnership Contracts

12			Operation and maintenance	Financing	Title upon contract expiration	Contract period (years)
Service contract, management or operation; or management and operation	Management Contract	Service Outsourcing	Private Sector	Public Sector	Public Sector	3-5
Finance Lease	Lease Contract	Leasing	Private Sector	Public Sector	Public Sector	5-8
Build, Finance Lease and Own	Build, Lease and Own	BLO	Private Sector	Private Sector	Private Sector	25+
Build, Lease and Transfer	Build, Lease and Transfer	BLT	Private Sector	Private Sector	Private Sector	25+
Build, transfer and Operate	Build, transfer and Operate	BTO	Private Sector	Private Sector	Private Sector	25+
Build, Operate and Transfer OR Build, Own and Transfer	Build, Operate and Transfer OR Build, Own and Transfer	BOT	Private Sector	Public Sector	Private Sector	20-30
Build, Own and Operate	Build Own and Operate	BOO	Private Sector	Private Sector	Private Sector	25+
Build, Own Operate and Transfer	Build, Own Operate and Transfer	BOOT	Private Sector	Public Sector	Private Sector	20-30
Build, Rehabilitate, Operate and Transfer	Build, Rehabilitate Operate and Transfer	BROT	Private Sector	Public Sector	Private Sector	20-30
Build, Rent and Transfer	Build, Rent and Transfer	BRT	Private Sector	Public Sector	Private Sector	15-20
Design, Build Finance and Operate	Design, Build Finance and	DBFO	Private Sector	Public Sector	Private Sector	20-30

12			Operation and maintenance	Financing	Title upon contract expiration	Contract period (years)
	Operate					
Design, Construct, Manage and Finance	Design, Construct, Manage and Finance	DCMF	Private Sector	Public Sector	Private Sector	20-30
Rehabilitate, Finance Lease and Transfer	Rehabilitate, Lease and Transfer	RLT	Private Sector	Public Sector	Private Sector	15-20
Rehabilitate, Operate and Own Rehabilitate, Own and Transfer	Rehabilitate, Operate/Own and Transfer	ROT	Private Sector	Public Sector	Private Sector	15-20
Rehabilitate Own and Operate	Rehabilitate Own and Operate		Private Sector	Public Sector	Private Sector	20-30
Modernize, Own Operate and Transfer	Modernize, Own and Transfer	ROO	Private Sector	Public Sector	Private Sector	20-30
Concession	Concession	MOT	Private Sector	Private Sector	Private Sector	25+
Build, Operate and Renewal of Concession	Build, Operate and Renewal of Concession		Private Sector	Private Sector	Private Sector	25+
Full Privatization	Full Privatization	BOR	Private Sector	Private Sector	Private Sector	25+
Partial Privatization	Partial Privatization		Private Sector	Private Sector	Private Sector	Of indefinite period (or as per the license period)

- It is necessary to bear several criteria and rules into mind while selecting the most appropriate types and forms of PPP contracts for the project implementation. The PPP Technical Committee shall submit a recommendation to the PPP Higher Committee that includes, whenever possible, the best two forms of PPP contracts under which the PPP contract in question shall be executed. Furthermore, it is necessary to compare both forms and identify the positives and negatives, risks and opportunities of each form.

Annex (2) Risk Matrix

Contents:

1. Introduction
2. Determination of project potential risks
3. Determination of the consequences resulting from each risk (Measuring them in terms of quantity and expressing them in numbers)
4. Estimation of each risk possibility
5. Calculation of each risk costs
6. Identification of the entity responsible to deal with such risks
7. Development of risk matrix
8. Identification of the strategies aiming at reducing risks and mitigating their effects

1. Introduction

The following is a review of the standard methodology used to develop risk matrix that will enable the government entities sponsoring the PPP projects to evaluate, distribute and manage the major risks involved in the proposed project.

Risk analysis is a fundamental factor and essential component in evaluating the PPP project comprehensive feasibility in the applied study. In addition, the determination and evaluation of risks are a paramount part in defining the value for money.

This matrix will help the government entities sponsoring the PPP to complete three basic tasks:

- ✓ Development of matrix to be used as a guide while preparing a feasibility study for a proposed project.
- ✓ Application of a standard risk assessment methodology
- ✓ Assistance in developing an official methodological strategy for risk management before negotiating with the private partner to rationalize the process of risk distribution.

Risk matrix is always developed or prepared to illustrate the following items:

- a- Description of the risks involving a major threat
- b- Possibilities of each separate risk
- c- Economic effect
- d- The options available to reduce risks and mitigate their consequences
- e- Distribution of risks/distribution of the responsibilities of dealing with risks

f- Determination of the factors that may affect service in terms of its demand, occurrence of human or technical defects or any other organizational obstacles.

It is necessary to review and consider the risks of each project separately because the risk matrix and the risk distribution method differ from project to another.

In general, risks are assessed through seven steps:

The first step: Identification of the risks involved in the project

The second step: Determination of the consequences resulting from such risks

The third step: Estimation of each risk possibility

The fourth step: Calculation of each risk costs

The fifth step: Identification of the entity responsible to deal with such risks

The sixth step: Development of risk matrix

The seventh: step: Identification of the strategies aiming at reducing risks and mitigating their effects.

First Step: Determination of Project Potential Risks:

The major risks of each project must be determined by the following:

- 1- Organizing workshops and brainstorming sessions or forming specialized teams so as to obtain valuable inputs that help to identify the project-related risks. The list of participants in such workshops and session may include:
 - a- Members of the project management team
 - b- The specialized parties having experience in similar projects
 - c- External consultants/ from independent authorities

- 2- Defining the categories of project-related risks that are classified in a standard way codified in a complete risk matrix that contains most of the risks encountered in the PPP projects.
- 3- Defining the important sub-risks in each major category

Second Step: Determination of consequences resulting from each risk (Measuring them in terms of quantity and expressing them in figures)

The effects resulting from risks are characterized by three distinguished factors as follows:

Risk Effect: The effect that the risk causes to the project may come in the form of cost increase, time delay or alike.

Risk Time: The effect resulting from the risk may occur in different times during the project period. For example, the risks related to constructions may appear in early stages of the project.

Level of severity: It is represented in the size of effect on the project. The cost increase may seem high, moderate or low. In addition, it is necessary to define percentage of the size of effect resulting from risks. Capital costs may encounter risks that represent in exceeding the limit of the originally planned value by 20%.

Based on the determined effects, the next steps are taken. Such steps are represented in defining the cash value of such effects or estimating their economic effect on the project, which in turn helps to quantify each risk and express it in figures. To calculate each risk cost, it is important to determine amount of the effects resulting from the risks through expressing them in numbers

Determination of risk elements and their above-mentioned effects require carrying out an intensive research in this regard. It is recommended to organize separate workshops to discuss the effects of risks after organizing the workshop of determining the risks themselves.

Third Step: Estimation of each risk possibility

It is not easy to identify the possibility of risks because possibilities are often based on estimations. Thus, such estimations must be revised whenever there is new information about the risks.

The following are the methods used to identify the possibility of risks:

- 1- Verify whether there is similar projects and identify the risks encountered in such project.
- 2- If there is no information about similar projects, the best available estimates will be used. Such estimates are derived from the experiences of the relevant parties or members involved in the project.
- 3- Tools, methods and software may be used to identify the possibility of risks. In this regard, it is recommended to hire a specialized consultant.
- 4- The possibility of some risks may be classified as low, but their consequences or effects (if occurred) will be serious or high. So, It is important in this phase to assess all risks, including the risks that their possibilities are low.

Fourth Step: Calculation of each risk costs

Each risk cost shall be assessed individually based on several grounds. In order to calculate the cost of each risk, it is necessary to

identify its possibility and level of severity (if occurred) as detailed hereinabove.

Fifth Step: Identification of the entity responsible for dealing with risks:

It is necessary to identify the entity that shall assume the responsibility for each determined risk. The golden rule in this regard is to assign risk to the party that can manage it very well, i.e. the party that is in the optimum position enabling it to handle risks in the best manner. Thus, risks may be assigned either to the government concerned entities sponsoring the project or to the private partner, or both parties jointly bear the responsibility.

Sixth Step: Development of risk matrix

The table below shows a guiding form regarding matrix of the defined and determined risks, their consequences and costs and the entity responsible for their management:

Risk type/category	Risk sub-category	Description	Effect	Consequences	possibility of risks	Cost of risk	Entity responsible for risk management
1. construction related risks	Exceeding the set costs	Increase of the constructions costs estimated in the project's main studies	Additional costs	xx%	xx%	AED	The Private partner
2. Non-availability related risks	Exceeding the time set for completion	Delay means incurring additional costs amounting to xx%	Incurring additional costs amounting to xx%	xx%	xx%	AED	The Private partner

Seventh Step: Identification of the strategies aiming to reducing risks and mitigating their consequences:

The table below contains a distribution matrix of the standard risks that may face the PPP projects. In general, risks vary from one project to another, so, it is necessary to develop a risk matrix for each project separately.

Categories	Description	Procedures of consequences alleviation	The responsible entity
Risk related to the failure to provide services in the manner agreed upon under the contract	The services provided by the private sector may not meet the required conditions or conform to the specifications issued by the government authority responsible for providing the service	<ul style="list-style-type: none"> Putting clear and accurate outputs of the specifications. Monitoring the Performance Imposing penal deductions from the payments released per unit/ for each unit separately 	The private partner
Risks related to the project work completion	<p>The completion of works required under the project may be:</p> <ol style="list-style-type: none"> 1. Delayed, so that it is not possible to start providing services according to the planned schedule. 2. Delayed, unless greater costs are incurred to fulfil the date scheduled to start providing services. 3. Delayed because variations 	<ul style="list-style-type: none"> Monitoring the Performance Providing special insurance coverage (against the delay in the project execution) Appointing an independent and specialized entity to approve the project completion Liquidating damage, construction warranties and other appropriate warranties provided by the private partner as incentives for project completion, unless the Federal Entity sponsoring the project is responsible for the delayed in completion 	The private partner – unless delay is attributed to events of force majeure or the Federal Entity sponsoring the project.

Categories	Description	Procedures of consequences alleviation	The responsible entity
		<ul style="list-style-type: none"> Cases of rescue and providing help. 	
Risks related to exceeding the scheduled costs	The actual costs of the project during phases of design and construction may exceed the expected costs of the project as per its feasibility studies	<ul style="list-style-type: none"> Drafting construction contracts with fixed prices Developing conditions relating to emergency plans Providing alternate credit facilities / liabilities pertaining to rights of additional shares paid in advance and expected in the financial model of basic cases 	The private partner
Design-related risks	The design developed by the private partner may be inconsistent with the specifications of project outputs	<ul style="list-style-type: none"> Preparing clear specifications for the project outputs Verifying design Defining the responsibilities for clear and latent defects Consulting the responsible government concerned entities and keep it informed of work progress (provided that such consultation shall not result in the provision of outputs for specifications by such entity). Referring and appointing independent expert to settle the disputes promptly and effectively. 	The private partner

Categories	Description	Procedures of consequences alleviation	The responsible entity
Environmental risks	<p>Possibility to afford consequences of the losses caused by environmental damage arising from:</p> <ol style="list-style-type: none"> 1. Works of construction or operation (kindly refer to the clause of operational risks) during the project period; or 2. The works performed by the government concerned entities or third party before transferring the responsibility for the project to this private partner. The above works are not attributed to the private partner or the main partners working therewith under subcontracting agreement. 	<ul style="list-style-type: none"> • Bidders must perform due diligence by conducting extensive studies and necessary researches about the project and conditions prevailing in worksite. This matter can be done by considering all financial, technical and contractual aspects and reading all documents, contracts, agreement and information provided by the government concerned entities. • Conducting a survey about the project site at cost price through an independent entity appointed by the sponsoring entity. • Compensating for the hidden environmental pollution that occurs before the project transfer, provided that compensation shall be provided by the government concerned entities according to certain limits (as per considerations of value for money) and for definite period. • Taking the necessary corrective steps to handle the problems of environmental pollution identified 	<p>As for Point (1): The private partner. As for Point (2): the government concerned entities, but the limit of its responsibility is specified as per the considerations of value for money.</p>

Categories	Description	Procedures of consequences alleviation	The responsible entity
		<p>before transferring the project to the private partner. The above steps shall be taken as one of the project's specified outputs.</p> <ul style="list-style-type: none"> • Corrective works shall be controlled by independent entity 	
Risks of exchange rates	The fluctuations of exchange rates may affect the expected value of inputs imported to construct or operate the project	Providing means and tools of protection against financial losses (for example resorting to means of barter)	The private partner
Risks of force majeure or circumstances outside the reasonable control	Unforeseen events beyond the reasonable control of both parties may occur (Whether such events are natural or manmade), in a manner would affect the activities of project construction or operation	<p>Defining the force majeure properly in a manner that excludes the insurable risks (can be covered by insurances) that may be addressed through other mechanisms, such as taking the necessary relief events (relief events)</p> <p>Terminating the project due to the events of force majeure or circumstances beyond the reasonable control of both parties.</p>	<p>As for the insurable risks, they shall be included in risks of force</p> <p>As for the uninsurable risks, they are shared between both sectors. The sponsoring entity may pay a limited compensation upon project completion.</p>
Inflation risks	Actual inflation rates may be higher than the expected ones. These risks become more obvious in the operational phase of the	Introducing amendments to the projects that use the method of payment per units (On the basis of each unit separately) or method of	The sponsoring entity shall afford the increase risks resulting from

Categories	Description	Procedures of consequences alleviation	The responsible entity
	project.	charging users or beneficiaries of the services provided under the project, provided that such amendments shall be linked to indicators.	inflation of the agreed upon rates, and what so exceeds shall be afforded by the private partner.
Risks related to the cancellation of partnership or liquidation and dissolution of the private partner	The company may be dissolved or the private partner may be liquidated.	<ul style="list-style-type: none"> • Establishing a unit with specific purposes to contain the project cash flows/ liquidity. • Providing insurance cover and warranty for the project necessary assets. • The restrictions of private sector regarding indebtedness and credit and finance restrictions. • Obligations of notification regarding the financial data and information and judicial lawsuit or dispute with creditors. • The government concerned entities are entitled to terminate the agreement of partnership with the private sector. • Replacing private partner by another new one by virtue of a direct agreement. • Replacing private partner by 	The private partner

Categories	Description	Procedures of consequences alleviation	The responsible entity
		another new one in the event that there is a liquidity in the market, provided that offering the project again in a new bid.	
Risks of insurances	<p>The following may occur:</p> <ol style="list-style-type: none"> 1. Any risk insurable at the time of signing the project contract under agreed insurance cover may become uninsurable. 2. There are remarkable increases in the rates of insurance premiums 	<p>In the first case, and at the sole discretion of the government concerned entities, coverage shall be provided in the form of self-insurance submitted by the government concerned entities themselves, or the PPP contract shall be terminated if it is not possible to provide insurance, like the termination due to events of force majeure and alike, subject to compensating the private partner.</p>	<p>As for the first case, if the private partner is the one who causes the insurance impossible or fails to provide insurance or fails to prove that there are similar activities will not proceed without insurance (the subject matter of discussion), the private partner shall be held liable for the risk, otherwise the private partner and the government concerned entities shall assume the same.</p>

Categories	Description	Procedures of consequences alleviation	The responsible entity
			As for the second case, the private partner shall be responsible for risk (unless there are reasons relating to regular complexities or reasons attributed to the sponsoring entity)
Risks of Interest rates	There are factors may affect the availability of financial credits and costs of finance	Providing means and tools of protection against financial losses (for example resorting to means of barter) Borrowing at fixed interest rates	The private partner
Risk of latent defects	losses or damage may result from latent defects or deficiencies hidden in the fittings and facilities, including the project assets (kindly compare the addressing latent environmental pollution that occurs before transferring the project responsibility to the private partner - Kindly refer as well to the clause of environmental risks)	Facilities must be, as far as possible, designed and constructed by the private partner unless the project requires handing over the currently existing facilities to the private partner. In such case bidders must perform due diligence through conducting extensive studies and necessary inspection of facilities so that it be possible to detect shortcomings. As	If the private partner (or any main partner works under subcontract) assumes the works of design and fittings, it shall bear the consequences of such risk; Otherwise, the government

Categories	Description	Procedures of consequences alleviation	The responsible entity
		<p>for the procedures and costs pertaining to the detected shortcomings, a prior agreement may be concluded with the private partner about them.</p> <p>The private partner shall immediately report the detected defects</p>	<p>concerned entities shall bear the same, provided that there is no insurance coverage sufficient to mitigate the consequences of such risk. If the government concerned entities' responsibility is limited, reference shall be made then to the considerations of value for money</p>
Maintenance risks	<p>1- The maintenance necessary for keeping assets in a proper condition for providing the required services may require higher costs than those set out in the project prospectations.</p> <p>2- Maintenance may be not conducted at all.</p>	<ul style="list-style-type: none"> • Preparing clear specifications for the project outputs • Applying a system of penalties and performance monitoring • Preparing an operation and maintenance contract includes and satisfies all the requirements of the government concerned entities. • The sponsoring government concerned entities shall preserve its right to replace the private 	The private partner

Categories	Description	Procedures of consequences alleviation	The responsible entity
		partner. <ul style="list-style-type: none"> • Providing a special insurance coverage and warranties in the form of final warranties of maintenance 	
Risks related to supply and demand, service size or market mechanism	Demand for the services provided under the project may be below expectations or the desired rate (for example, absence of the need for such services, expiry or low level of their demand, market competition or the objection of clients to the services provided by the main external partners.	<ul style="list-style-type: none"> • As for the PPP projects in which the payments are made per unit, payment must be based on the availability of service (not on the basis of actual usage government concerned entities) • Applying effective plan with clear objectives to market the services in question. 	As for the projects financed on the basis of payment per unit, the sponsoring government concerned entities shall be responsible for such risk. As for the projects financed by charging fees on the project users or beneficiaries, the private partner shall be responsible for such risks.
Operation risks	All factors that may affect the project operation requirements, including the expected costs of operation, the required skills of	<ul style="list-style-type: none"> • Preparing clear specifications for the project outputs • Applying the system of penalties and performance control 	The private partner

Categories	Description	Procedures of consequences alleviation	The responsible entity
	<p>operation and alike (except for force majeure), such as:</p> <ol style="list-style-type: none"> 1- Labor disputes 2- Employees' capabilities and level of efficiency 3- Acts of fraud and forgery committed by the employees. 4- Shortcomings of the technical field 5- Environmental factors 6- Failure to obtain the approvals required to conduct the necessary maintenance and fulfil the requirements needed in this regard. 	<ul style="list-style-type: none"> • Preparing an operation and maintenance contract includes and satisfies all the requirements of government concerned entities. • The government concerned entities shall have the right to replace the private partner. • Providing special insurance coverage 	
Planning risks	<p>The proposed usage of project site under the terms and conditions included in the agreement of public-private partnership, specifically regarding the establishment of facilities and fittings in the project site, may conflict with the laws and regulations applied in the field of planning and usage of lands, properties or buildings (such as the requirements of cities</p>	<p>The competent government entities must show all unnecessary approvals on the detailed proposal of design, building and constructions in the project regarding the large-scale planning so as to identify such cases in the phase of feasibility study of the project. The above approvals include all approvals relate to the land utilization and identification of areas. The approvals must be</p>	<p>As for any approval on area identification and land utilization, the government concerned entities shall be held liable for the risk, unless the private partner is responsible for selecting the project site.</p>

Categories	Description	Procedures of consequences alleviation	The responsible entity
	<p>planning and urban planning) or with any other requirements or approvals needed under the foregoing; delay or failure to obtain the necessary approvals or even if such approvals are obtained, the project will be executed at a cost much higher than the original costs expected under the project plans</p>	<p>obtained before offering the project in the bid. The private partner shall identify all cases of planning needed in the project and require the competent authorities' approval regarding the proposal of design and constructions of the project, which authorities must take all procedures and precautions and include the same in their work schedule to arrange for the obtainment of approvals from the above authorities. Taking immediate corrective actions regarding the delay of Private Sector's representative, unless the private partner is not responsible for such delay</p>	<p>As for all approvals on any identified planning, design, constructions and buildings, the private partner shall be held liable for this risk.</p>
Systemic risks/ risks related to practical measures	<p>The following may occur: 1- The government concerned entities or any government authorities may take unexpected acts that have a severe negative effect on the expected revenues from the rights of contributing in the project or service of debts and</p>	<p>Determine the risk of the unexpected and unconsidered behaviors and acts that have no other output in the agreement of public-private partnership and determine the risk of the behaviors that result in expropriation.</p>	<p>As for any unexpected discriminatory act or any act results in expropriation of public interest for example, the government</p>

Categories	Description	Procedures of consequences alleviation	The responsible entity
	<p>credit, or in any way results in increasing the costs incurred by the private partner. 2- Expropriation, nationalization or privatization/ transfer to the private sector/ (collectively referred to as expropriation) of the assets acquired by the representative of private partner in the relationship of partnership with the public sector in this project.</p> <p>This risk intervenes with some financial risks (such as changes of tax fees)</p>	<p>Distinguish between the general acts and discriminatory acts that cannot be expected.</p> <p>As for the unexpected discriminatory acts, a special compensation shall be granted.</p> <p>As for the acts that result in expropriation, the project shall be ended and compensation shall be granted.</p>	<p>concerned entities shall be held liable for such risk.</p> <p>As for the unexpected public acts, the private partner shall be held liable for such risk.</p>
Organizational risks	<p>The necessary approval may be delayed or cannot be obtained, or even if such approval is obtained, the project will be executed at a cost much higher than the original costs expected under the project plans. (kindly compare with the method of dealing with the approvals of planning and environmental themes and review the content of risks of planning and environment in this</p>	<p>legal survey/study about the project legal aspects by the government concerned entities during feasibility study phase to identify the above-mentioned approvals.</p> <p>The government concerned entities shall take all necessary actions by coordination and consultation with different competent government authorities prior to the commencement of purchase phase.</p>	<p>If it is possible to obtain any approvals (unlike approvals of operational requirements of the private partner) before concluding the contract and if it was possible to transfer the same to the private partner,</p>

Categories	Description	Procedures of consequences alleviation	The responsible entity
	matrix)	<p>The private partner must perform due diligence to identify the approvals needed to fulfil the operational requirements. Obtaining all necessary approvals before concluding the project contract If it is permissible under the applicable laws and regulations and if so, is practically possible.</p>	<p>the government concerned entities shall be held liable for such risks.</p> <p>As for the operational requirements of the private partner, the private partner shall be held liable for the same.</p>
Risks of facilities and equipment.	Project assets may not be in the agreed condition to be returned them to the government concerned entities upon expiration or termination of the relationship of partnership with the private partner	<p>The private partner must fulfill its obligations of maintenance and repair.</p> <p>The project assets must be checked and revised when the project is about to end.</p> <p>The private partner must provide a guarantee to the government concerned entities. The guarantee may be, for example, in the form of final guarantees of maintenance or deductions from the payments made on the basis of units.</p> <p>Imposing obligations on the</p>	The private partner

Categories	Description	Procedures of consequences alleviation	The responsible entity
Risks of inputs or resources	Shortage of supplies related to the project's inputs or resources (including financial credits) may occur, or there may be inability to provide the supplies needed to operate the project, including the defects related to the level of quality of the available resources.	<p>private partner</p> <p>Concluding supply contracts to fulfil the project requirements, such as the contracts based on direct supply for immediate payment (take and pay).</p> <p>Taking prompt actions of assistance only in the event of shortcomings not falling under the responsibility of the private partner.</p>	The private partner, unless the inputs are obtained from the government concerned entities.
	Risks of liquidating the subcontractor's business or the failure of such subcontractor to fulfil its contractual obligations. These risks may arise in phases of construction and/ or operation.	<p>The main partners working in the project under subcontracts must enjoy the necessary skills, knowledge and experiences and show spirit of responsibility to properly and satisfactorily fulfil the contractual obligations assumed thereby regarding the desired level performance.</p> <p>Obtaining prior consent of the government concerned entities in charge of the project with regard to subcontracting with alternative main partners.</p>	The private partner

Categories	Description	Procedures of consequences alleviation	The responsible entity
		The government concerned entities shall perform due diligence by conducting extensive studies that include reviewing the data of first-class subcontracting partners to make sure that they can overcome the risks they encounter.	
	Changing the applied tax fees (for example, income tax or value-added tax "VAT") or imposing new taxes may result in reducing the expected revenues from the rights of contribution in the project.	If changes result from unexpected discriminatory acts or behaviors, a special compensation shall be granted then.	With regard to tax increase or imposition of new taxes due to unexpected discriminatory acts or behaviors, the government concerned entities shall be responsible for such risk; otherwise, it shall be the responsibility of the private partner.
	The following may occur: 1- The technical inputs of the activities assigned by the government authority to external contractors may fail to provide	The private partner must, from time to time, update the technologies used in the project to keep pace with advances and to fulfil the project specifications and	The private partner

Categories	Description	Procedures of consequences alleviation	The responsible entity
	<p>inputs that comply with the required specifications.</p> <p>2- The technical inputs may not cope with the modern updates and advances in the field of technology (Risk relates to the technical obsolescence of technology or its inability to keep pace with the technical advances)</p>	<p>requirements.</p> <p>Apply penalties in case of the failure to comply with the specification of project outputs</p>	
	<p>The following may occur:</p> <p>1- The services needed to construct and/ or operate the project (such as water, electricity and gas) may not be available.</p> <p>2- Completion may be delayed due to the delayed removal of the facilities existing in the project or changing the site of such facilities.</p>	<p>Providing back-up equipment for emergencies, such as power generators.</p> <p>Entering into contracts of supplies for emergencies</p> <p>Providing a special insurance cover (for delayed completion or insurances for service interruptions or work stoppage)</p> <p>The government entities contracting with the private partner must secure connections outside the project site.</p> <p>In case No.1, prompt remedial</p>	<p>The private partner in the project of partnership with the public sector unless the Federal Entity sponsoring the project is responsible for facilities or it is the facility itself.</p> <p>In the first case and even if the government concerned entities are not responsible for facilities, the responsibility for risk shall be shared</p>

Categories	Description	Procedures of consequences alleviation	The responsible entity
		<p>actions shall be taken to handle cases of interruptions outside the project site regarding the supply of demands (unless the private partner is responsible for such stoppage.</p> <p>In case No.2, prompt remedial actions shall be taken while removing the facilities or changing their sites (unless the private partner is responsible for such stoppage)</p>	<p>between such Federal Entity and the company or private partner in case of non-availability or inability to obtain insurances, provided that such action shall ensure better results in terms of value for money</p>