

## **Resolution No. (30) for the year 2022**

### **For Issuing a Guide Regulating Partnerships between Public and Private Sectors<sup>1</sup>**

The Prime Minister:

Having perused Legislative Decree No. (36) of 2002 with respect to Regulating Government Tenders, Bids, Procurements and Sales, and its amendments;

Legislative Decree No. (41) of 2002 with respect to Privatization Policies and Controls, particularly Article (2) thereof;

The Implementing Regulations of Legislative Decree No. (36) of 2002 with respect to Regulating Government Tenders, Bids, Procurements and Sales, promulgated by Decree No. (37) of 2002, as amended by Decree No. (84) of 2021;

Resolution No. (3) of 2014 with respect to Privatization Policies and Controls; and

Based upon the submission of the Minister of Finance and National Economy,

**the following has been decided:**

#### **Article 1**

The provisions of the Guide regulating Partnerships between public and private sectors attached to this resolution, shall be applied.

#### **Article 2**

1. The Minister of Finance and National Economy shall issue the resolutions, instructions and directives necessary to implement the provisions of this Resolution, including the technical and financial provisions and procedures which shall be considered by Administrative Entities when designing Partnership projects or executing projects by way of Partnership.

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<sup>1</sup> This is an unofficial translation and in the event of any conflict or discrepancy between the English text and the Arabic text, the Arabic text shall prevail.

2. The Ministry of Finance and National Economy shall be responsible for ensuring compliance with the provisions of the Guide attached to this resolution, and the resolutions, instructions and directives issued in accordance with its provisions.

### **Article 3**

The Minister of Finance and National Economy and concerned persons shall – each in his respective capacity – implement the provisions of this resolution, which shall come into force the day following the date of its publication in the Official Gazette.

**Prime Minister**

**Salman bin Hamad Al Khalifa**

**Issued on: 20 Dhu al-Qi'dah 1443 A.H.**

**Corresponding to: 19 June 2022 A.D.**

# **Public Private Partnership Guide**

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# Public Private Partnership Guide

## 1 Preliminary Provisions

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### 1.1 Definitions

In this Guide, the following terms and expressions shall have the corresponding meanings provided hereunder against each unless the context requires otherwise:

**Kingdom:** Kingdom of Bahrain.

**Ministry:** The competent Ministry for financial affairs.

**Minister:** The competent minister for financial affairs.

**Law:** Legislative Decree No. (36) of 2002 with respect to Regulating Government Tenders, Bids, Procurements and Sales.

**Board:** The Tender Board established in accordance with Legislative Decree No. (36) of 2002 with respect to Regulating Government Tenders, Bids, Procurements and Sales.

**Ministerial Committee:** The Ministerial Committee for Financial and Economic Affairs and Fiscal Balance or the Committee formed and regulated by virtue of a resolution issued by the Prime Minister.

**Contracting Administrative Entity:** Entities subject to the provisions of the law.

**Partnership:** a contractual relationship between a Contracting Administrative Entity and an investor established in accordance with the provisions of this Guide and the Partnership contract, and based on mutual Partnership between the parties in assuming risks of, and obtaining benefits from, the project.

**Project Company:** the company overseeing the execution of the Partnership project, whether existing at the time or established solely for the purpose of the project.

**Guide:** this Guide regulating Partnerships between the Public and Private Sectors.

### 1.2 Objectives of the Guide

In applying the provisions of this Guide or its interpretation, the following objectives shall be taken into consideration:

- 1) Enabling the state to implement and operate its public projects efficiently and effectively.
- 2) Benefiting from the capabilities and expertise of the private sector in providing the best services or supplying goods at the lowest costs.
- 3) Reducing the financial burden on the state's general budget.
- 4) Enhancing the transparency and integrity of the procedures of Partnership with the private sector.

### **1.3 Scope of Application of the Guide:**

- a) The provisions of this Guide shall apply to all Partnership projects between government entities and the private sector.
- b) The provisions of this Guide shall not apply to any:
  - 1) Partnership projects between government entities and wholly state-owned companies.
  - 2) Partnership projects of a military, security or confidential nature between the Bahrain Defence Force, the Public Security Forces, or the National Guard and the private sector, or the projects undertaken by such military or security entities which, due to public interest, requires that the provisions of this Guide are not applied.

## **2 Contracting Procedures**

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### **2.1 Procedures for the Invitation to Express Interest:**

#### **2.1.1 Approval of Partnership Projects Before Invitations to Express Interest**

- a) The Contracting Administrative Entity shall submit the Partnership project to the Ministerial Committee for its approval on implementing the project through a Partnership, before sending an invitation to the private sector to express interest in the Partnership.



- b) The Contracting Administrative Entity shall attach to the request submitted to the Ministerial Committee, all the details and documentation related to the Partnership project, particularly, the following:
- 1) The nature of the project and the justifications for executing it by way of a Partnership.
  - 2) Studies related to the economic feasibility of the Partnership, estimated cost and the basis of its calculation, the cash flow, and annual expenditure, if any.
  - 3) Proposed means of Partnership that are suitable for the nature of the project.
  - 4) The initial technical and financial criteria that shall be met by the bidder to implement the project.
  - 5) Draft Partnership contract and its annexes, if any.
  - 6) A statement regarding the human and technical resources required for the project.
  - 7) A statement regarding the means of financing for the project, and the percentage of contribution to be made by the Partnership parties.
  - 8) A statement regarding all the procedures and responsibilities required to fulfil the obligations of the Contracting Administrative Entity or any other governmental entities to implement the project.
  - 9) A timeline showing the milestones for the project implementation.
  - 10) Any information, data or documents requested by the Ministerial Committee.
- c) If the Contracting Administrative Entity is unable to submit any of the documents or data referred to in paragraph (b) of Article 2.1.1, it shall specify the reasons for this in its request.

#### **2.1.2 Invitation to Express Interest - Announcement of the Partnership Project**

- a) The Contracting Administrative Entity shall invite investors to express their interest in the Partnership project by announcing the project by means of public or limited invitation.

- b) The invitation shall contain a brief description of the Partnership project, its objectives and key elements, a summary of the key provisions of the contract and its duration, the duration for expressing interest, the place of submission, the required guarantees, the initial acceptance criteria, and any other data that the Board or the Contracting Administrative Entity deems necessary. The invitation shall also specify whether the successful applicant shall establish a project company, the sole purpose of which is implementing the Partnership project.
- c) It shall be indicated in the invitation to express interest if there are any preferential criteria for Bahraini investors, investors accorded national treatment, who undertake to use national goods or services or to employ Bahrainis.
- d) The Contracting Administrative Entity may follow pre-qualification procedures for investors with the aim of qualifying as many investors as possible.

### **2.1.3 Initial Acceptance Criteria**

Investors who responded to the invitation to express interest, shall meet the initial acceptance criteria stated in the invitation, which shall include, but is not limited to, the qualifications, capabilities, and technical, financial and administrative competencies that would enable the investor to implement the project efficiently and effectively and fulfill all its contractual obligations, including previous experiences in the establishment, operation and management of projects similar to the Partnership project, if any.

### **2.1.4 Initial Acceptance Decision**

- a) The Contracting Administrative Entity shall, after obtaining the Board's approval, decide on the acceptance of investors who have expressed interest in the Partnership project and satisfy the initial acceptance criteria and the conditions outlined in the document for the invitation to express interest.
- b) The Contracting Administrative Entity shall prepare a list of qualified bidders that meet the initial acceptance criteria to submit their proposals upon completion of the initial acceptance procedures.
- c) The Contracting Administrative Entity may opt to accept a limited number of the best investors that meet the initial acceptance criteria, provided that this is mentioned in the document for the invitation to express interest.

### **2.1.5 Formation of a Consortium to Submit Proposals**

- a) Unless the invitation to express interest stipulates otherwise, investors may form a consortium of companies to submit their proposal, provided that the proposal is in the name of the consortium and the investor authorised to represent the consortium or by establishing an independent company to undertake the submission of the proposal.
- b) The consortium shall meet the initial acceptance criteria stipulated in Article 2.1.3 herein. When verifying the capabilities and competencies of the consortium members, such capabilities and competencies shall be considered combined as whole to meet the initial acceptance criteria.
- c) It is not permissible for any member of a consortium of companies to participate directly or indirectly in more than one consortium or to submit a proposal separately from the proposal of the consortium unless the document for invitation to express interest states otherwise.
- d) If a member of a consortium submits a proposal individually or as part of a different consortium, it shall disclose such proposal to the Contracting Administrative Entity and the other Consortium.

## **2.2 Requests for Proposals Procedure**

### **2.2.1 Request for Proposals Document**

- a) The Contracting Administrative Entity, in coordination with the Ministry, shall prepare a draft request for proposals document stating the terms and specifications of the Partnership project, provided that it includes at least the following:
  - 1) Information related to the Partnership project to the extent necessary for the preparation and submission of proposals.
  - 2) The specifications of the Partnership project and the technical and financial requirements that shall be met in the submitted proposals.
  - 3) Performance indicators and safety, security and environmental protection requirements.

- 4) The key terms of the Partnership contract and other applicable terms, specifying those that are non-negotiable.
  - 5) Evaluation criteria for proposals, the relative weight of each criterion, and the minimum value of the threshold required to accept or disqualify proposals. Provided that the principle of "Value for Money" is taken into consideration to the extent possible when evaluating proposals.
  - 6) Deadline for submitting proposals.
  - 7) Any other information that the Contracting Administrative Entity, the Ministry or the Board deems necessary.
- b) The Contracting Administrative Entity may delay the preparation of the request for proposals document until the completion of the stage of initial acceptance for the expression of interest.
  - c) The Contracting Administrative Entity shall submit the draft document to the Board for approval, and to verify its compliance with the provisions of this Guide and the best practices undertaken prior to concluding the Partnership contract in a manner that ensures integrity, fair competition, impartiality, transparency and equal opportunities.

### **2.2.2 Procedure for Submitting Proposals**

- a) Without prejudice to the provisions of paragraph (b) of Article 2.2.2, the Board shall, in coordination with the Contracting Administrative Entity, notify qualified investors of the requests for proposals document, including the duration of submitting their proposals.
- b) The Contracting Administrative Entity may, subject to the Board's approval, submit the request for proposals document to the Board in two stages if it is impractical to state the conditions and specifications of the Partnership project, performance indicators, technical or financial requirements, or the provisions of the Partnership contract in the request for proposals document, provided that the following is taken into consideration:

- 1) Inviting qualified investors to submit their initial proposals, inclusive of project specifications, performance indicators, financing arrangements, key contracting terms and other matters, within a certain duration.
- 2) The Contracting Administrative Entity may hold meetings or discussions with some or all applicants who submitted initial proposals to clarify issues related to initial proposals or the documents attached thereto. The Contracting Administrative Entity shall prepare minutes of meeting for such meetings and discussions, which shall include the matters raised and the clarifications provided by the Contracting Administrative Entity or the Board, while taking into consideration the procedures outlined in Article 2.2.4 of this Guide.
- 3) When examining initial proposals, the Contracting Administrative Entity may review the request for proposals document, and amend the same, when necessary, including the project specifications, performance indicators, financing arrangements, key provisions of the Partnership contract, other terms of the Partnership or other matters stipulated in paragraph (a) of Article 2.2.1 of this Guide. The Contracting Administrative Entity shall state the justification for any amendment to the request for proposals document in the register specified under Article 2.5.3 of this Guide.
- 4) The Contracting Administrative Entity shall announce any amendment to the request for proposals document in the invitation for submission of final proposals.
- 5) The Contracting Administrative Entity shall, after obtaining the Board's approval, invite bidders whose proposals were not rejected to submit their final proposals on the basis of one set of specifications, performance indicators and contractual conditions.

### **2.2.3 The Initial Bond**

- a) An initial bond shall be submitted with each proposal. The initial bond shall not be returned in the following circumstances:
- 1) If the bidder withdraws its proposal or amends it after the deadline for submission of proposals.
  - 2) If the successful bidder fails to sign the Partnership contract.

- 3) If the successful bidder fails to submit a performance bond.
- b) Initial bonds, their types, amount and the rules, provisions and procedures of submitting such bonds, shall be subject to the provisions of the law.

#### **2.2.4 Preliminary Meetings with Qualified Investors**

- a) The Contracting Administrative Entity shall answer investors' inquiries and may also hold preliminary meetings and consultations with investors to discuss issues related to the project, its specifications, conditions, Partnership requirements, matters related to the submission of proposals and documents attached thereto, and any other issues related to the project.
- b) The Contracting Administrative Entity shall prepare minutes of the meetings and consultations that were held, including the matters raised, and the clarifications provided by the Contracting Administrative Entity or the Board.
- c) The Contracting Administrative Entity may review the request for proposal document and amend such document where necessary, including the project specifications, performance indicators, financing arrangements, key provisions of the Partnership contract, other terms of the Partnership, or other matters stipulated in paragraph (a) of Article 2.2.1 of this Guide, provided that such amendments do not fundamentally impact the pre-qualification criteria based on which the qualified investors were chosen. The Contracting Administrative Entity shall state the justification for any amendment to the request for proposals document in the register specified under Article 2.5.3 of this Guide. Investors shall be notified of any amendment to the request for proposal document within a reasonable time before the deadline for submitting proposals.
- d) An investor may amend or withdraw the proposal prior to the submission deadline after an amendment is made by the Contracting Administrative Entity to the request for proposals document.
- e) The Board may set a mechanism for responding to investor inquiries and holding preliminary meetings and consultations in a manner that ensures integrity, fair competition, impartiality, transparency and equal opportunities.

#### **2.3 Negotiation Without Competitive Procedures**

### **2.3.1 Cases of Awarding a Partnership Contract Without Competitive Procedures**

The Contracting Administrative Entity may, after obtaining the approval of the Ministerial Committee and the Board, negotiate a Partnership contract without competitive procedures, in the following cases:

- 1) The urgent necessity to ensure the continuity of the provision of the relevant service, provided that the circumstances that led to such urgency were not foreseeable by the Contracting Administrative Entity or due to any laxity by the Contracting Administrative Entity.
- 2) If there is only one source capable of providing the necessary service, in the case the provision of the service requires use of an intellectual property right, trade secrets or other exclusive rights owned or possessed by a particular person.
- 3) If there was no response to the invitation to express interest, or if the submitted proposals did not meet the evaluation criteria set out in the request for proposals document, and the Ministerial Committee, based on a request from the Contracting Administrative Entity, found it unfeasible to issue a new invitation to express interest or request for proposals.

### **2.3.2 Partnership Contract Negotiation Procedures**

The Contracting Administrative Entity shall consider the following when negotiating a Partnership contract without competitive procedures:

- 1) Sending an invitation to express interest to the largest number of investors that are considered by the Contracting Administrative Entity as qualified to implement the Partnership project.
- 2) Setting evaluation criteria based on which proposals are evaluated, arranged, and presented to the Board for approval.

## **2.4 Procedures for Awarding and Selecting a Contractor**

### **2.4.1 Receipt of Proposal Envelopes**

- a) The Board shall receive the proposal envelopes submitted by bidders, open the proposal envelopes and ascertain that they contain all required documents and papers, and refer the proposal envelopes to the Contracting Administrative Entity.

- b) The procedures for receiving proposal envelopes and the invitation to bidders or their representatives to attend the opening session shall be subject to the rules and provisions stipulated in the law.

#### **2.4.2 Evaluation of Proposals**

- a) The Contracting Administrative Entity shall in coordination with the Ministry evaluate each proposal according to the evaluation criteria and the relative weight of each criterion that is specified in the request for proposals document, and then prepare a report on the evaluation result indicating the order of proposals.
- b) The Contracting Administrative Entity may set the minimum value of the threshold with regard to technical, financial and commercial aspects. Proposals that do not exceed the minimum threshold shall be disqualified.
- c) The Contracting Administrative Entity may request bidders to provide clarifications about their proposals without resulting in any change in a fundamental issue in the proposal or in the price.
- d) The evaluation report may be concluded by the rejection of all submitted proposals if they do not achieve economic feasibility or the objectives of implementing the project through Partnership with the private sector.
- e) The evaluation of proposals and the decision of award shall be subject to the rules and procedures stipulated in the law.

#### **2.4.3 Final Negotiations**

- a) The Contracting Administrative Entity shall, after obtaining Board's approval, invite the investor that obtained the best evaluation score for the final negotiation of the Partnership contract with the purpose of improving the provisions of the contract or improving the proposal from a technical or financial aspect, within a timeframe specified by the contracting administrative entity. Contractual terms indicated in the request for proposals document as non-negotiable may not be included in the negotiations.
- b) If it appears to the Contracting Administrative Entity that negotiations with the investor will not lead to the signing of a Partnership contract, it may notify the investor in writing of the termination of the negotiations and inform the investor to submit the final proposal within a reasonable period specified in the notification.



The Contracting Administrative Entity may terminate the negotiations if the investor does not submit an acceptable proposal.

- c) Upon termination of negotiations with the bidder who obtained the best evaluation score in accordance with the provisions of paragraph (b) of Article 2.3.4, the Contracting Administrative Entity shall invite the other bidders who submitted proposals, according to the order of their evaluation, respectively, for the final negotiation of the Partnership contract. Final negotiations with bidders may be conducted simultaneously in the event that more than one investor obtains equal scores in the evaluation, or similar scores at a percentage not exceeding 5% of the evaluation score.
- d) The Contracting Administrative Entity may not renegotiate with a bidder with whom negotiations have been terminated in accordance with the provisions outlined in Article 2.4.3 of this Guide.

#### **2.4.4 Conclusion of the Partnership Contract**

- a) The Board shall issue the award decision, and the Contracting Administrative Entity shall notify the winning investor of the decision and shall conclude the Partnership contract within the timeframe stipulated in the law.
- b) The Contracting Administrative Entity shall submit a report to the Ministerial Committee regarding the awarded investor, the negotiations conducted, and the final terms agreed upon within thirty days from the date of signature of the Partnership contract.
- c) The Board shall publish an announcement of the award of the Partnership contract, including a summary of the key conditions of the Partnership contract, through one of the advertising methods specified in the law.

#### **2.4.5 Performance Bond**

The awarded investor shall submit a Performance Bond after the award decision. The Performance Bond, its value, the date of its submission, the procedures for its return, and other matters are subject to the law and its implementing regulations and resolutions.

### **2.5 General Provisions**

#### **2.5.1 Incorporation of the Project Company**

- a) The Contracting Administrative Entity may require the awarded investor to establish a company in accordance with the laws of the Kingdom, the sole purpose of which is to implement the Partnership project, provided that the condition to incorporate the company is included in the request for proposals document or in the invitation documents. The Project Company shall take one of the forms specified by the Ministerial Committee.
- b) The Partnership contract shall state in a manner consistent with the terms of the request for proposal document, the minimum capital for the Project Company and the procedures for obtaining the approval of the Contracting Administrative Entity on the memorandum of association and its articles of association or any fundamental changes thereto.
- c) The Contracting Administrative Entity may, after obtaining the approval of the Ministerial Committee, participate in the establishment of the Project Company with the investor.

#### **2.5.2 Confidentiality**

The confidentiality of the documents and information contained in the proposals submitted by investors who responded to the invitation to express interest or the request for proposals shall be maintained. Neither party may disclose any documents or technical, professional or pricing information or any other documents or information obtained in the course of discussions, meetings or negotiations without the consent of the other party, unless the disclosure of documents or information is in accordance with the provisions of the Guide or in implementation of an order issued by a court or competent judicial authority.

#### **2.5.3 Register of Selection and Award Procedures**

The Contracting Administrative Entity shall maintain a register in which all documents, data and correspondences related to contracting procedures and awarding of the Partnership project are recorded.

#### **2.5.4 Cancellation of Procedures for Submitting Proposals for a Partnership Project**

- a) The procedures for submitting proposals for a Partnership project may be canceled in any of the following cases:
  - 1) If only one proposal is submitted.

- 2) If all proposals are rejected or disqualified, except for one proposal.
  - 3) If the proposals contain reservations that do not comply with the conditions and specifications specified in the request for proposals document.
  - 4) If the value of the lowest priced proposal unjustifiably exceeds the estimates set by the Contracting Administrative Entity, or if the value of the highest priced proposal is less than the initial estimates for the Partnership contracts that generate revenue.
  - 5) If the public interest requires the cancellation of the procedures for submitting proposals for a Partnership project.
- b) A reasoned decision shall be issued by the Board on the cancellation of the procedures for submitting proposals for a Partnership project. The Contracting Administrative Entity shall notify the Ministerial Committee of such decision.
  - c) The Contracting Administrative Entity shall notify all investors who responded to the invitation to submit proposals of the decision to cancel the procedures for submitting proposals for a Partnership project within twenty days from the date of its issuance.
  - d) No civil liability shall be incurred by the Board or the Contracting Administrative Entity in the event of cancelling procedures for submitting proposals for a Partnership Project.
  - e) As an exception to the provisions of sub-paragraphs (1), (2) and (4) of Paragraph (a) of this Article, it is permissible, after obtaining the approval of the Ministerial Committee, to accept the only proposal or whose value is less or greater than the assessed value whenever the public interest requires that.

### **2.5.5 Reconsideration and Complaints Procedures**

Any concerned person, prior to the effectiveness of the contract, claiming a loss or damage due to a breach by the Contracting Administrative Entity or the Board of a duty imposed under the law, may request in writing a reconsideration or file a complaint in accordance with the provisions stipulated in the law. The request for reconsideration or the complaint shall include all documents on which the applicant relies.

### 3 Provisions of the Partnership Contract

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#### 3.1 Content of the Partnership Contract

The Partnership contract shall include the key terms that regulate the Partnership project, and the mutual obligations of the parties, particularly, the following:

- 1) The nature and scope of the works to be carried out and the services to be provided by the project Company.
- 2) The necessary conditions for the provision of the services and the extent to which the Project Company enjoys exclusive rights, if any, under the Partnership contract.
- 3) The utilities that the Contracting Administrative Entity shall provide, including the support that the Contracting Administrative Entity may provide to the Project Company for obtaining the necessary licenses and approvals for the implementation of the Partnership project.
- 4) Any requirements related to the establishment of the Project Company and its minimum capital.
- 5) Ownership of the Partnership project assets and, where necessary, the obligations of the parties in relation to the site of the Partnership project and any necessary Jus in rem in accordance with the provisions of Articles 3.3 and 3.4 of this Guide.
- 6) The financial consideration which the Project Company shall receive for using the utilities or providing the services, the mechanisms for setting or modifying such financial considerations, and the payments, if any, that may be made by the Contracting Administrative Entity or any other public authority.
- 7) Procedures for reviewing and approving the engineering designs, construction plans and specifications by the contracting administrative entity, and procedures for selecting the Partnership project utility, final inspection, approval and acceptance of the same.
- 8) The extent of the project company's obligations, when necessary, to ensure that the service is modified in line with meeting the actual demand for it, its continuity, and providing it with the same terms for all users.

- 9) The right of the Contracting Administrative Entity or any other public authority to supervise the works that the Project Company intends to implement and the services to be provided, and the conditions under which the Contracting Administrative Entity may request amendments in relation to the works and terms of service, or take any reasonable measures it may deem appropriate to ensure proper operation of the Partnership project utility and provision of works and services in accordance with applicable legal and contractual requirements.
- 10) The extent to which the Project Company shall submit reports and information on its operations to the Contracting Administrative Entity or any other public entity.
- 11) The rights of the Contracting Administrative Entity to review and approve the contracts that the Project Company intends to conclude, specifically contracts with the shareholders of this Partnership or other concerned persons.
- 12) Performance bonds, and its recovery provisions and procedures.
- 13) Methods for settling any dispute that arises between the parties of the Partnership contract.
- 14) The extent to which either party may be exempted from liability for failure to or delay in fulfilling any obligation under the Partnership contract due to circumstances beyond their reasonable control.
- 15) The duration of the Partnership contract and the rights and obligations of both parties upon its expiry or termination.
- 16) Methods for calculating compensation under the provisions of Articles 3.11 and 3.12 of this Guide.
- 17) The law regulating the mechanisms for settling any disputes that may arise between the Contracting Administrative Entity and the investor to whom the Partnership contract is awarded.
- 18) The rights and obligations of both parties with respect to confidential information.
- 19) Measures ought to be taken to protect the environment.

### **3.2 Ownership of Partnership Assets**

The Partnership contract shall specify, where necessary, the assets that are owned by the Contracting Administrative Entity or any other administrative entity, and the assets that are owned by the project company. The Partnership contract also specifies the assets belonging to the following categories:

- 1) Assets that the Project Company shall return or transfer ownership of to the Contracting Administrative Entity or to any other entity specified by the Contracting Administrative Entity.
- 2) Assets that the Contracting Administrative Entity may opt to purchase from the project company.
- 3) The assets that the Project Company may keep or take action with at its discretion upon expiry or termination of the Partnership contract.

### **3.3 Acquisition of Rights Related to the Project Site**

- 1) Unless the contract provides otherwise, the Contracting Administrative Entity or any other administrative entity shall transfer to the Project Company the rights related to the project site, including the right of ownership or utilization and development (Musataha) rights if necessary for the implementation of the project, or provide the company with assistance, as necessary, in transferring those rights without prejudice to the provisions of Legislative Decree No. (19) of 2002 with respect to the Disposal of Land owned by the State as Private Property.
- 2) Acquisition or temporary appropriation of real estate procedures for the implementation of the Partnership project are subject to the provisions stipulated in Law No. (39) of 2009 on the Acquisition of Real Estate for the Public Interest.

### **3.4 Financial Arrangements**

- a) The Project Company may impose, charge, or collect financial consideration for the use of the Partnership project utility or its services, in accordance with the Partnership contract. The Partnership contract shall set out the mechanisms for setting and specifying the financial consideration or modifying it.

- b) The Contracting Administrative Entity shall have the authority to agree to make direct payments to the project company, in addition to the company's right to impose or charge financial consideration for the use of the utility or its services, or that the payments made by the Contracting Administrative Entity shall include the company's financial consideration for the use of the utility or its services.

### **3.5 Creation of Security Rights**

- a) Unless the Partnership contract states otherwise, the Project Company may create a security right over any of its assets and rights for the purpose of obtaining financing for the implementation of the Partnership project, including the assets and rights related to the Partnership project.
- b) The security right may be created over any of the following assets:
  - 1) Movable assets or real property owned by the Project Company or its rights in those assets.
  - 2) The project company's revenues and dues.
  - 3) Shares of the project company.
- c) It is not permissible to create a security right on the project assets owned by the Contracting Administrative Entity or any other administrative entity, or assets and rights allocated for the public benefit.

### **3.6 Assignment of Partnership Contract**

It is not permissible to assign the rights and obligations of the Project Company in the Partnership contract to a third party without the approval of the Contracting Administrative Entity, the Ministry and the Board.

The Partnership contract shall set out the conditions to be taken into account when approving the assignment of the rights and obligations of the project company, including the assignee's acceptance of all the obligations contained in the Partnership contract, the provision of necessary guarantees and assurances and proving its professional and financial capabilities to implement the Partnership project.

The approval of the Ministerial Committee and the Board shall be obtained if such assignment results in any financial obligations on the Contracting Administrative Entity.

### **3.7 Transfer of the Majority of the Stakes or Shares of the Project Company**

Unless the Partnership contract stipulates otherwise, the majority of the project company's shares may not be transferred to third parties without the approval of the Contracting Administrative Entity. The Partnership contract shall specify the conditions to be taken into account when approving the request to transfer the majority of the shares.

For the purposes of the provisions of this Guide, the majority of shares means the transfer of more than half of the project company's capital or its ownership of rights or a certain number of shares that enables the buyer of shares to have control over its decisions, or formation of its Board of directors or appointment of its managers.

### **3.8 Obligation to Provide the Service**

- a) The Partnership contract shall specify, where necessary, the extent of the project company's obligations to ensure the following:
  - 1) Modifying the service in line with meeting the actual demand for it.
  - 2) Continuity of the service.
  - 3) Providing the service on the same conditions to all beneficiaries.
  - 4) Providing access for other service providers, without discrimination and, as appropriate, to any of the infrastructure networks operated by the project company.
- b) The Project Company may, after obtaining the approval of the Contracting Administrative Entity or the competent administrative entity, issue rules regulating the use of the utility and the provision of the service.

### **3.9 Equality among Beneficiaries**

The Project Company shall abide by the principle of equality of the beneficiaries of the services provided by the Partnership project. As an exception, it may set out preferential terms for a certain category of beneficiaries, in accordance with the rules agreed upon with the contracting administrative entity.

### **3.10 Giving Preference to Local Services and Goods and Bahraini labor**



- a) Subject to the provisions of Resolution No. (40) of 2015 approving the amended format of the unified rules for prioritising national goods of GCC countries in government procurements, the Project Company shall give preference to suppliers of services and goods necessary for the implementation of the Partnership project among Bahraini companies or companies controlled by Bahraini citizens, subject to the following conditions:
- 1) The ability of these companies to provide services or goods in accordance with the necessary standard and within the specified timeframe.
  - 2) The increase in the costs for the provision of the services or goods by these companies shall not exceed 5% of the costs offered by other companies.
  - 3) The terms and conditions applicable to the provision of services or goods are highly competitive with the terms and conditions of other companies.
- b) The Project Company shall grant priority in appointment to Bahraini employees to implement the Partnership project, provided that they have the required qualifications.

### **3.11 Compensation for Amendments of Laws or Regulations**

The Partnership contract shall set out the provisions related to the right of the Project Company to compensation and the basis for its estimation as a result of any amendment in the laws or regulations in the Kingdom that apply to the utility infrastructure or the service provided in the event that such amendment led to a significant increase in the cost of implementing the contract or a significant decrease in the value of what the company received from this implementation compared to the implementation costs and its expected value.

### **3.12 Compensation for the Increase of the Cost of Executing the Contract or the Decrease of the Financial Consideration**

- a) Without prejudice to the provisions of Article 3.13 of this Guide, the Partnership contract shall set out the provisions related to the project company's right to get compensation and the basis for its estimation in the event that the cost of executing the contract increased significantly or the value of what the company received from this implementation decreased significantly compared to the implementation costs and its expected value, as a result of the following:
- 1) Changes in economic or financial conditions.

- 2) Amendments to laws and regulations that do not apply to the utility infrastructure or the service provided by the project company.
- b) The cases stipulated in paragraph (a) of Article 3.12 of this Guide, shall be subject to the following:
  - 1) they have occurred after the conclusion of the contract.
  - 2) falling outside the control of the project company.
  - 3) It shall be of a nature that the Project Company could not expect upon the conclusion of the Partnership contract.
- c) The Partnership contract shall set the procedural rules related to amending its provisions after the occurrence of any of the cases stipulated in paragraph (a) of this Article.

### **3.13 Contract Duration**

- a) The Partnership contract shall include a duration that does not exceed fifteen years commencing on the date of its conclusion or the date specified by the Contracting Administrative Entity in coordination with the Ministry.
- b) The Contracting Administrative Entity may, after obtaining the approval of the Ministerial Committee, approve the extension of the duration of the contract due to any of the following reasons:
  - 1) Delay in the completion process or disruption of operation due to circumstances beyond the reasonable control of either party to the contract.
  - 2) Suspension of the project for reasons related to the Contracting Administrative Entity or any other public entity, and it is beyond the control of the project company.
  - 3) An increase in costs resulting from the Contracting Administrative Entity's needs that were not originally envisaged in the Partnership contract and the Project Company would not have been able to recover those costs without that extension.

- c) the Contracting Administrative Entity may, after obtaining the approval of the Ministerial Committee, conclude a Partnership contract for a duration that exceeds the duration stated in Paragraph (a) of this Article.

### **3.14 Applicable Law**

Partnership contracts shall be governed by the laws of the Kingdom.

The parties may, subject to obtaining the Minister's approval in exceptional circumstances that are deemed to be justifiable to the Minister, agree to have the Partnership contract governed by a foreign law, provided that the Contracting Administrative Entity shall submit to the Minister sufficient justification regarding the choice of foreign law.

In any event, the applicable foreign law shall not contravene the public order in the Kingdom.

### **3.15 Partnership Contract Amendment**

The Contracting Administrative Entity shall obtain the approval of the Ministerial Committee and Board prior to implementing any amendments to the Partnership contract or signing any addendums thereto.

## **4 Supervising the Implementation of the Project and Dispute Settlement**

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### **4.1 Supervision of Project Implementation**

- a) The Contracting Administrative Entity is responsible for undertaking tasks related to the supervision the stages of project implementation, ensuring the achievement of the highest levels of performance required, evaluating the performance of the project company, and the continuous availability of the requirements, standards, arrangements, preparations and performance indicators stipulated in the Partnership contract.
- b) The Contracting Administrative Entity shall, in coordination with the Ministry, submit a periodic report to the Ministerial Committee on the results of supervision and evaluation of the Partnership project, together with its observations and recommendations, and the actions taken in this regard.

- c) The Contracting Administrative Entity may, after coordination with the Ministry, assign supervision and evaluation tasks to experts or entities that have the necessary technical capabilities to carry out these tasks.

#### **4.2 Breach of Obligations**

- a) The Contracting Administrative Entity shall, after coordination with the Ministry, notify the Project Company of any breach, error, or failure to fulfil the required quality and performance standards and required performance indicators, and to request remedial actions for such breaches within the period specified in the notice.
- b) The Contracting Administrative Entity may, after coordinating with the Ministry, operate the utility on temporary basis by itself or with the support of another investor in the event that the Project Company is in material breach of its obligations under the contract, is in grave error, or is unable to achieve the required quality standards and performance indicators in accordance with the contract's terms and conditions.
- c) The provisions of this Article is without prejudice to any compensation or penalties prescribed for the Contracting Administrative Entity under the Partnership contract.

#### **4.3 Termination of the Partnership Contract**

- a) The Contracting Administrative Entity may, after consulting with the Ministerial Committee, terminate the Partnership contract in any of the following cases:
  - 1) If the Project Company is unable to carry out its obligations or it appears that it is not ready to implement them due to insolvency, breach or other reasons.
  - 2) considerations related to public interest, provided that the Project Company is compensated in accordance with the provisions of the Partnership contract.
- b) The Partnership contract shall specify the method for calculating the compensation due to any of the two parties to the Partnership contract, if necessary, in the event of termination of the contract. Provided that the compensation is calculated such that to include the equitable value of the works completed under the contract and the costs or losses incurred by either party, including the expected profits.

#### **4.4 Measures to Transfer Partnership Project Assets**

The Partnership contract shall stipulate the following:

- 1) Mechanisms and procedures for transferring the Partnership project assets to the Contracting Administrative Entity or to the company that shall succeed the project company, and the extent of the project company's entitlement to any compensation due to such transfer, and its conditions.
- 2) Mechanisms and procedures for the transfer of the technology needed to operate the utility to the Contracting Administrative Entity.
- 3) Training the employees of the Contracting Administrative Entity or the company that shall succeed the Project Company on the operation and maintenance of the project.
- 4) The Project Company shall continuously provide support services and resources, including the supply of spare parts, for a reasonable period of time after the project has been transferred to the Contracting Administrative Entity or to the company that shall succeed the project company.

#### **4.5 Settlement of Disputes between the Contracting Administrative Entity and the Project Company**

- a) The Bahrain Chamber for Resolution of Economic, Financial and Investment Disputes shall be the competent authority to settle disputes arising from Partnership contracts between the public and private sectors through arbitration, in accordance with the provisions of Chapter Two of Section Two of the Legislative Decree No. (30) of 2009 with respect to the Bahrain Chamber for Resolution of Economic, Financial and Investment Disputes.
- b) It is permissible, after obtaining the approval of the Cabinet or an entity delegated by the cabinet, to stipulate in the Partnership contract that disputes be settled through arbitration outside the chamber, provided that the place of arbitration is in the Kingdom.

#### **4.6 Settlement of the Project Company's Disputes with Third Parties**

- a) If the Project Company is committed to providing services to the public or operating infrastructure utilities available to the public, the Contracting Administrative Entity may, impose an obligation on the company in the Partnership contract to establish

simple and effective mechanisms for settling claims submitted by the beneficiaries of the infrastructure utility or the services it provides.

- b) The Project Company and its shareholders have the liberty of selecting the appropriate mechanisms for settling disputes that arise between them.
- c) The Project Company shall have the liberty of agreeing to the appropriate mechanisms for settling disputes between itself and the financiers or contractors or suppliers and others it deals with.

## **5 Miscellaneous**

### **5.1 Issuing Guide Guidelines and Circulars**

- a) The Ministry shall have the right to request any information, data, or documents from the Contracting Administrative Entity to carry out the task of monitoring the implementation of the provisions of this Guide, the instructions and circulars.