# Federal Law No. (12) of 2023

## Concerning the Regulation of Partnership between the Federal Public and Private Sectors

**We, Mohamed bin Zayed Al Nahyan**

**President of the United Arab Emirates,**

Having reviewed the Constitution,

And Federal Law No. (1) of 1972 concerning the Competencies of Ministries and the Powers of Ministers, and its amendments,

And Federal Law No. (5) of 1985 promulgating the Civil Transactions Law, and its amendments,

And Federal Decree-Law No. (15) of 2018 concerning the Collection of Public Revenues and Funds,

And Federal Decree-Law No. (16) of 2018 concerning the Real Estate Properties of the Federal Government,

And Federal Decree-Law No. (26) of 2019 concerning Public Finance, and its amendments,

And Federal Decree-Law No. (32) of 2021 concerning Commercial Companies,

And based on the proposal of the Minister of Finance, and the approval of the Council of Ministers and the Federal National Council, and the ratification of the Federal Supreme Council,

**We have issued the following Law:**

### Article (1)

### Definitions

For the purposes of implementing the provisions of this Law, the following words and phrases shall have the meanings assigned to each, unless the context otherwise requires:

**The State:** The United Arab Emirates.

**The Government:** The Federal Government of the State.

**The Ministry:** The Ministry of Finance.

**The Minister:** The Minister of Finance.

**The Federal Public Sector:** Any ministry established in accordance with Federal Law No. (1) of 1972 concerning the Competencies of Ministries and the Powers of Ministers, and its amendments, as well as any federal authority, institution, regulatory body, or any other entities affiliated with the Government.

**The Concerned Federal Entity:** The federal entity responsible for procuring the Project.

**The General Budget Committee:** The committee formed by the Council of Ministers.

**The Private Sector:** Commercial companies and establishments (this does not include commercial companies and establishments wholly owned by the Government).

**Potential Partnership Project:** Any project that, after a feasibility assessment, is proven to meet the Partnership Project criteria specified in the Partnership Projects Manual.

**Partnership Project:** A contractual relationship between one or more federal entities and one or more partners from the Private Sector, established in accordance with the provisions of this Law, for the purpose of providing a public service or operating a public facility.

**The Partner:** Any legal person or consortium of legal persons from the Private Sector who is a party to the Partnership Agreement.

**The Project Company:** Any company or establishment founded by the Partner to implement the Project.

**The Project Agreement:** A contract concluded between the Concerned Federal Entity and the Partner to regulate the relationship between the parties regarding the Partnership Project.

**The Project Team:** The team responsible for developing the project idea and procuring it.

**The Grievances Committee:** A grievances committee formed by the Minister in accordance with the provisions of Clause (2) of Article (20) of this Law.

**The Partnership Projects Manual:** A manual issued in accordance with the provisions of this Law, which includes the rules, provisions, and procedures related to Partnership Projects.

## Article (2)

## Objectives of the Law

The Law aims to achieve the following:

1. Regulating Partnership Projects between the Federal Public Sector and the Private Sector in the State.
2. Encouraging the Private Sector to participate in developmental and strategic projects, and increasing investment in projects of economic, social, and service value.
3. Enabling the Government to implement its strategic projects efficiently and effectively.
4. Benefiting from the financial, administrative, organizational, technical, and technological capabilities and expertise available in the Private Sector, enabling the community to obtain the best services in a way that achieves the best value for money.
5. Increasing productivity and improving the quality of public services, while ensuring effective management for the development of those services.
6. Transferring knowledge and expertise from the Private Sector to federal entities, and training and qualifying employees of federal entities in the State to manage and operate projects.
7. Implementing projects that provide added value for public funds.
8. Reducing the financial and operational risk burdens on the Government that may result from project implementation.
9. Shifting the management of some infrastructure and public service projects from direct implementation, operation, and administration to other forms of implementation according to approved policies and with controls to ensure quality.
10. Stimulating the competitiveness of projects in local, regional, and global markets.

## Article (3)

## Scope of Application

The provisions of this Law shall apply to any Partnership Project wholly or partially funded by the Private Sector and procured by a federal entity.

## Article (4)

## Exemptions

The provisions of this Law shall not apply to:

1. Partnership contracts concluded before the entry into force of this Law, without prejudice to the provisions of Article (32) of this Law.
2. Outsourcing of services specified in the Partnership Projects Manual.
3. Projects whose value is below the financial threshold stipulated in the Partnership Projects Manual.
4. Privatization projects of public assets and services.
5. Supply and procurement contracts related to national security specified in the Partnership Projects Manual.
6. Federal entities, sectors, and projects that are exempted by a decision of the Council of Ministers.

## Article (5)

## Competencies of the Ministry

For the purposes of applying this Law, the Ministry shall undertake the following competencies:

1. Proposing the Partnership Projects Manual and submitting it to the Council of Ministers for approval.
2. Preparing and issuing the Partnership Project Management and Implementation Manual, including provisions regulating the management and supervision of Partnership Projects during the implementation phase.
3. Subject to Clause (1) of this Article, preparing, issuing, and amending manuals and all models and documents related to Partnership Projects.

4. Proposing updates to legislation regulating Partnership Projects between federal entities and the Private Sector in accordance with best international practices.
5. Working to provide a suitable environment to attract the Private Sector to participate in Partnership Projects and overcoming difficulties that may hinder the success of Partnership Projects.
6. Providing assistance and support to federal entities in the process of procuring Partnership Projects in accordance with this Law if required, and encouraging federal entities to use the Partnership Project method.
7. Studying and evaluating proposals and feasibility studies submitted by federal entities and the Private Sector and determining the feasibility of procuring them as a Partnership Project, after coordinating with the relevant authorities if necessary.
8. Guiding federal entities regarding the mechanism for preparing feasibility studies and other studies related to the evaluation of Partnership Projects.
9. Providing advice to federal entities regarding the procurement and implementation of Partnership Projects if necessary, at the Ministry's discretion.
10. Establishing a data registry for Partnership Projects.
11. Periodically measuring the success of Partnership Projects and submitting periodic reports thereon to the General Budget Committee.

## Article (6)

## Competencies of the Concerned Federal Entity

For the purposes of applying this Law, the Concerned Federal Entity shall have the following competencies:

1. Proposing Partnership Projects and preparing all necessary studies to evaluate the Partnership Project, and determining the project's financial, economic, technical, and social feasibility, risks, and resulting impacts in accordance with the requirements of the Partnership Projects Manual.
2. Preparing the initial budget for the Partnership Project in cooperation with the Project Team in accordance with the manuals and models

related to budget preparation issued by the Ministry and the Partnership Projects Manual.
3. Determining all technical specifications and requirements related to the Partnership Project.
4. Coordinating with the Ministry to formulate the structure of the Partnership Project, including determining the partnership methods appropriate to the nature of the project, the nature of the contribution of the two partnership parties to the project, and the distribution of shares and resulting financial returns.
5. Proposing service fees related to the Partnership Project.
6. Supporting the Project Team in preparing the procurement documents, terms of reference, and specifications for the Partnership Project.
7. Implementing its obligations stipulated in the Project Agreement and exercising the rights contained therein.
8. Coordinating with other concerned government and federal entities to ensure the alignment of the Partnership Project outputs with their plans.
9. Supervising the proper implementation of Partnership Projects by the Private Sector in accordance with the provisions of Article (25) of this Law, without prejudice to the competencies of other oversight bodies.
10. Working to overcome difficulties that prevent Partnership Projects from achieving their desired objectives in coordination with the competent authorities in the State.
11. Preparing quarterly periodic reports for each of the Partnership Projects procured by it and submitting them to the Ministry.

## Article (7)

## Formation of the Project Team

1. A Project Team shall be formed for each Potential Partnership Project, and the Partnership Projects Manual shall specify the mechanism for forming the team.
2. The Project Team shall undertake the following:
    1. Coordinating and managing the procurement procedures for the Partnership Project and selecting the Partner.

2. Preparing the initial budget for the project in coordination with the Concerned Federal Entity.
3. Preparing the procurement documents, terms of reference, and specifications for the Partnership Project and the Project Agreement.
4. Evaluating and opening bids in accordance with the evaluation procedures and criteria specified in the procurement documents and the Partnership Projects Manual.
5. Ensuring the application of the principles of transparency, fair competition, and equal opportunities in accordance with the provisions of this Law and the Partnership Projects Manual.
6. Any other competencies stipulated in this Law or in the Partnership Projects Manual.

## Article (8)

## Project Selection

1. The Concerned Federal Entity, the Ministry, or the Private Sector may propose a Partnership Project.
2. The Ministry, with the Concerned Federal Entity, shall decide whether the proposed project to be procured as a Partnership Project deserves to be selected as a Potential Partnership Project, in accordance with the criteria specified by the Partnership Projects Manual.
3. When selecting a project as a Potential Partnership Project, it must be evaluated in accordance with the procedures stipulated in the Partnership Projects Manual.
4. The Partnership Projects Manual shall specify the criteria and studies required in the project selection and approval stages.

## Article (9)

## Project Proposal by the Federal Entity

A federal entity wishing to enter into a Partnership Project shall commit to the following:

1. Ensuring that the project meets the Partnership Project criteria specified by this Law and the Partnership Projects Manual, and

studying the suitability of procuring any of its projects as a Partnership Project.
2. Procuring the project using an alternative method if there are strategic or public interest reasons.
3. Providing evidence that it has explored the option of Partnership Projects for its projects whenever requested by the Ministry.
4. Preparing a presentation for the project when it wishes to enter into a Partnership Project, including the justifications for selecting the project, and submitting it to the Ministry in accordance with the procedures specified in the Partnership Projects Manual.

## Article (10)

## Project Proposal by the Private Sector

1. The Private Sector may submit an initiative to any federal entity or the Ministry to procure a project as a Partnership Project. Whenever the initiative is submitted directly to it, the federal entity must refer it to the Ministry in accordance with the procedures contained in this Law and the Partnership Projects Manual.
2. The Partnership Projects Manual shall specify the provisions governing Partnership Project initiatives submitted by the Private Sector, including the following provisions:
    1. The mechanism for submitting initiatives and the method of their evaluation, acceptance, and procurement.
    2. Guarantees for the protection of confidential information, intellectual property rights, trade secrets, and any special exclusive rights related to the initiative.
    3. Incentives and benefits offered to the initiator.

## Article (11)

## Project Approval

1. The federal entity or the Private Sector shall submit the project to the Ministry for approval as a Potential Partnership Project, including the details specified in the Partnership Projects Manual.
2. The Ministry shall study and evaluate the project in accordance with the requirements of this Law and the Partnership Projects Manual.

3. If the project meets the requirements of Partnership Projects and there is no financial appropriation for the project, the Ministry shall submit the proposal for initial approval of the project by the General Budget Committee, and after its approval, it shall be submitted to the Council of Ministers for final approval.
4. The Ministry may submit the project directly to the Council of Ministers if there is a financial appropriation for the project.
5. If the Council of Ministers approves the project, the Ministry shall notify the Concerned Federal Entity of the project's approval.
6. The Partnership Projects Manual shall specify the approvals required at each stage of the development and procurement of the Partnership Project.

## Article (12)

## Budget Approval

1. The Project Team, in cooperation with the Concerned Federal Entity, shall develop the initial budget for the Partnership Project in accordance with the budget preparation provisions issued by the Ministry.
2. No Partnership Project that entails expenditures on any federal entity may be procured unless the cost of the project for its entire implementation period is approved by the Government.

## Article (13)

## Government Financial Guarantees

1. Subject to the legislation in force in the State, the Concerned Federal Entity may - based on the project's needs - propose to the Ministry the issuance of a government guarantee to secure the financial obligations of the federal entity as stipulated in the terms of the Project Agreement.
2. The Partnership Projects Manual shall specify the conditions and procedures for requesting a government financial guarantee, and the mechanisms for deciding on it.

## Article (14)

## Types of Partnership Projects

The Partnership Projects implemented in accordance with this Law shall be of one of the following types:

1. Build, Operate, and Transfer (BOT).
2. Build, Own, Operate, and Transfer (BOOT).
3. Build, Own, and Operate (BOO).
4. Financial Usufruct of Assets.
5. Build, Own, Lease, and Transfer (BOLT).
6. Management Contracts.
7. Any other types specified by the Partnership Projects Manual.

## Article (15)

## Procurement Methods and Procedures

1. The procurement of Partnership Projects shall be in accordance with one of the following methods:
    1. Two-Stage Method: The procurement shall be as follows:
        1. First Stage: A pre-qualification is conducted for a group of Private Sector entities that have expressed interest in the project.
        2. Second Stage: The full procurement documents are issued exclusively to the pre-qualified potential partners.
    2. Expedited Procedure Method: The procurement may be through an expedited procedure method consisting of one stage - without a pre-qualification procedure - in any of the following cases:
        1. There is a need to procure the project urgently.
        2. If the Project Team deems pre-qualification unnecessary in the case of a limited number of suitable potential partners in the market or the absence of a complex technical aspect to the project, making competition limited to financial aspects only, or for any other reason that does not require partner qualification.

    3. Direct Appointment Method: The procurement may be through a direct appointment method, where the Concerned Federal Entity negotiates directly with one or more potential partners. This method is used only in the following cases:
        1. The need to provide assets or a service urgently, which is incompatible with the use of the procedures specified in paragraphs (a) and (b) of Clause (1) of this Article.
        2. There is only one potential partner in the market with the capability to implement the project.
        3. Some or all of the project components are related to or connected with national security or the protection of state secrets.
        4. Any other necessary and urgent matters related to the public interest, provided that the Minister approves the use of this procedure for their procurement.
2. The Concerned Federal Entity may, in the case of a single potential partner for the project, terminate the bid or continue with the procurement and award the project to the potential partner, subject to the following two conditions:
    1. Meeting the requirements of the procurement documents.
    2. There is evidence of sufficient value for money in the proposal, achieving a value for money assessment.
3. The Partnership Projects Manual shall specify the procedures for each of the procurement methods mentioned in this Article.

## Article (16)

## Submission of Bids

1. A bid for a Partnership Project may be submitted either by a single partner from the Private Sector or by a consortium of several partners from the Private Sector.
2. If the bid is from a consortium of partners, the bid must be submitted in the name of the consortium. It is prohibited for any member of the consortium to submit individual bids, either directly or through another consortium, or for the bid to be submitted by a company in which a consortium member owns a majority of the capital or has

control over its management, unless the bidding conditions state otherwise or with the approval of the Concerned Federal Entity.
3. Any federal entity may participate in the procurement of a Partnership Project, after the Ministry's approval of this participation.

## Article (17)

## Evaluation of Bids

1. The Project Team shall study and evaluate the submitted bids from the technical, financial, and legal aspects, and determine the accepted and rejected bids, provided that each bid is given an evaluation score according to the evaluation criteria specified in the procurement documents.
2. The Project Team shall submit its recommendations on the results of the bid evaluation, including a list of bids that passed the minimum evaluation threshold, to the Ministry and the Concerned Federal Entity for their approval.
3. The Project Team may, whenever it deems it in the interest of the project and in coordination with the Ministry and the Concerned Federal Entity, decide to request additional clarifications after the submission of bids - including, but not limited to - requesting bidders to submit their "Best and Final Offer".
4. If the Project Team is unable to agree on the terms of the project and the Project Agreement with the best bidder according to the evaluation results, the Project Team has the right to stop discussions with the best bidder and move to negotiate the terms of the project and the Project Agreement with the subsequent bidders according to their descending order on the list of bids that received the best evaluation.

## Article (18)

## Cancellation or Modification of Procurement Procedures or the Project

1. The Concerned Federal Entity, in coordination with the Ministry, may cancel or modify the procurement procedures or the project at any time before the project is awarded.

2. No party that has submitted a bid for a Partnership Project has the right to claim compensation for the cancellation or modification of the procurement or the project.

## Article (19)

## Announcement of Bid Award

The Concerned Federal Entity shall notify the winning bidder of the bid award and inform the other bidders of the result of the bid award.

## Article (20)

## Grievance against Bid Procurement Procedures

1. A bidder from the Private Sector for any project may, within a maximum of (10) ten days from the date of the bid award, submit a grievance request to the Ministry in the following cases:
   1. Violation of the procurement documents or its procedures of the provisions of the Law, the Partnership Projects Manual, or other relevant laws.
   2. Violation of the partner selection procedures of the provisions of the Law, the Partnership Projects Manual, or other relevant laws in a manner that affects transparency and fair competition among bidders.
   3. Proof of bribery, illicit commissions, bid-rigging, fraud, or abuse of power with the aim of unduly influencing the procurement procedures to the extent that these acts have an actual impact on the results of the bid award, without prejudice to the provision of any other relevant law.
2. A Grievances Committee shall be established by a decision of the Minister to consider the grievances submitted related to the procurement procedures. The Partnership Projects Manual shall specify the mechanism, procedures, and deadlines for grievances.
3. The grievance request must be based on one of the reasons referred to in Clause (1) of this Article and must include an explanation of the direct impact of those reasons in weakening the chance of winning the bid or being the direct cause of losing the bid if the bid award is completed, with all supporting documents attached to the request.

4. The Grievances Committee may suspend the procurement procedures until the request is decided upon, whenever it finds the request worthy of consideration and that continuing with the procedures would significantly weaken the applicant's chances of winning the bid.
5. If the Grievances Committee finds that the reasons for the grievance are valid, it shall issue its recommendations either to correct the wrong procedure, exclude one of the bidders, take any other measures, or reject the grievance for the invalidity of the reasons, and shall submit its recommendations to the Minister for approval before taking any action.

## Article (21)

## The Project Agreement

1. The Project Team shall prepare the Project Agreement in coordination with the Ministry and the Concerned Federal Entity in accordance with the provisions of this Law and the Partnership Projects Manual.
2. The Partnership Projects Manual shall specify the provisions to be included in the Project Agreement, including but not limited to, provisions related to changes in laws, changes in economic conditions due to unforeseen circumstances at the time of contracting, amendment of the Project Agreement, and termination provisions and the compensation resulting from termination.
3. The Project Agreement may include a statement of the financial revenues available to the Private Sector according to one of the following methods:
    1. Payments made in exchange for providing the project or service.
    2. Granting the Partner the right to collect and retain revenues from the use of an asset or service or to share in the revenue generated from this use.
    3. A combination of the two methods referred to in paragraphs (a) and (b) of Clause (3) of this Article.
    4. Any other method agreed upon.
4. The Project Agreement may oblige the Partner to employ national labor or local contractors and to use local materials, equipment, and

goods. Any of these requirements must be explicitly disclosed in the procurement documents.
5. After the period for submitting a grievance or its resolution according to Article (20) of this Law has passed, the Project Agreement shall be signed in Arabic - or English if required - by the Concerned Federal Entity and the Partner to whom the bid was awarded.
6. The laws in force in the State shall apply to the Project Agreement.

## Article (22)

## Faltering Projects

1. The Concerned Federal Entity shall step in for the Partner and take over the Partnership Project to ensure its continued implementation whenever the Partner falters in implementing the project and this results in harm to the public interest, interruption of public utility services, or suspension of the public service whose continuity is required by the public interest, without prejudice to the right of the Federal Entity to claim any compensation for damages resulting from the faltering implementation of the project.
2. The Partnership Projects Manual shall specify the provisions for faltering projects.

## Article (23)

## Mortgage

1. The Partner may - after obtaining the approval of the Concerned Federal Entity - mortgage any of its following assets and rights related to the project as security for financing obtained to implement the project:
    1. Mortgaging the fixed and movable rights owned by the Partner or its rights in the assets of the Partnership Project or the Project Company.
    2. Mortgaging the right of the Partner or the Project Company, if owned in its name and for its account, in the revenues and payments resulting from the use of the facility or service subject of the Partnership Project.

2. The Concerned Federal Entity must be a party to any agreement that gives the financing parties the right to step in for the Partner in the Project Agreement, and the Concerned Federal Entity may object to any of the financing parties.
3. The provisions regulating mortgages under the laws in force in the State shall apply to the mortgages referred to in this Article, unless the Project Agreement provides otherwise.

## Article (24)

## Incentives and Exemptions

Incentives may be granted to partners from the Private Sector in Partnership Projects, for the purpose of increasing the attractiveness of the Partnership Project. The types of these incentives shall be determined by a decision of the Council of Ministers based on the recommendation of the Minister.

## Article (25)

## Supervision of Project Implementation

The Concerned Federal Entity is responsible for supervising the implementation of the project and managing the implementation phase in accordance with the provisions of the Project Agreement and the manuals and models issued by the Ministry. The role of the Ministry in the implementation phase is limited to oversight and providing support to the Concerned Federal Entity whenever required.

## Article (26)

## Content of the Partnership Projects Manual

The Partnership Projects Manual shall specify the detailed provisions regulating Partnership Projects, in particular the following:

1. Governance and procedures for procuring Partnership Projects, including proposing projects, assessing value for money, market sounding, project structuring and management, procurement procedures, the mechanism for requesting clarifications, conferences, and project procurement criteria.

2. Special requirements related to the content of procurement documents and the Project Agreement.
3. Special requirements related to any deadlines and timeframes to be followed for procurement procedures.
4. Special requirements related to the criteria for partner selection and bid evaluation, as well as the qualifications required for the Project Team.
5. Rules governing the request for the "Best and Final Offer" and negotiations with the potential partner.
6. Requirements for disclosure and publication of basic information related to the procurement of Partnership Projects on websites and in the media.
7. Provisions regulating contract management and supervision of Partnership Projects during the implementation phase and procedures for managing and implementing the Project Agreement, including provisions for payment and the matrix of powers determined by the Federal Entity.
8. Rules governing the change of control, composition of partners, or the partner's structure.
9. Rules governing force majeure and exceptional circumstances that may arise during the project implementation.
10. Rules governing the termination of the Project Agreement and the compensation mechanism upon termination.
11. Rules governing the arrangement of mortgages on assets related to the project and any agreement that may grant financing entities the right to step in for the partner in implementing, controlling, or acquiring the project.
12. Any other provisions that the Law refers to be regulated in the Partnership Projects Manual or that the Council of Ministers decides to add.

## Article (27)

## Transparency and Disclosure in Procurement Procedures

1. Procurement procedures are subject to the principles of transparency, free competition, and equal opportunities, and must be

implemented in accordance with the rules and procedures stipulated in this Law and the Partnership Projects Manual.

2. To achieve the principle of transparency and equal opportunities, the Concerned Federal Entity shall publish the following information to the public:
    1. A summary of all key decisions related to the approval of the Partnership Project and procurement procedures.
    2. The project award decision.

## Article (28)

## The Project Company

1. The Partner may establish the Project Company in accordance with the laws in force in the State to implement the project. The established company shall assume responsibility for complying with all terms of the Partnership Agreement, and it may not be replaced, sold, or its ownership transferred (directly or indirectly), nor may it contract with a third party without obtaining prior approval from the Concerned Federal Entity and through the same mechanism by which the original Partnership Agreement was approved.
2. A foreign investor from outside the State may own the entire Project Company in accordance with the Commercial Companies Law in force in the State, unless the procurement documents state otherwise.

## Article (29)

## Partnership Projects Information Center

The Ministry shall establish a data registry for Partnership Projects and an evaluation system for existing and implemented Partnership Projects. The Ministry may, whenever it deems appropriate, publish useful information to the public on its website.

## Article (30)

## Appointment of Advisors

1. The Ministry may appoint external advisors to provide assistance in the process of selecting, structuring, procuring, evaluating, and supervising Partnership Projects whenever necessary.
2. The Ministry may direct the Concerned Federal Entity or the Project Team to appoint external advisors whenever it sees this as an optimal use of external resources.

## Article (31)

## Dispute Resolution

The courts of the State shall have jurisdiction to hear disputes arising from the implementation of the Project Agreement. It may be agreed that disputes will be settled through alternative dispute resolution methods applicable in the State, including mediation, arbitration, and recourse to an expert.

## Article (32)

## Amendment, Renewal, or Extension of Partnership Project Agreements

1. Partnership Projects concluded before the implementation of the provisions of this Law shall be subject to the provisions of their respective agreements and the laws applicable to them before the issuance of this Law.
2. These agreements and their related licenses may not be amended, renewed, or extended except in accordance with the provisions of this Law, the Partnership Projects Manual, and the manuals and models issued by the Ministry.

## Article (33)

## Repeals

1. Any provision that violates or conflicts with the provisions of this Law is hereby repealed.

2. Council of Ministers Resolution No. (1/1) of 2017 regarding the issuance of the manual of provisions and procedures for partnership contracts between federal entities and the private sector, and Council of Ministers Resolution No. (8/4) of 2019 regarding the guiding manual for provisions and procedures of partnership between the public and private sectors in the State, shall remain in force until the issuance of the Partnership Projects Manual, to the extent that they do not conflict with the provisions of this Law.
3. The provisions of federal legislation regulating procurement and warehouse management in the Federal Government shall not apply to Partnership Projects concluded in accordance with the provisions of this Law.

## Article (34)

## Publication and Entry into Force of the Law

This Law shall be published in the Official Gazette and shall come into force on the day following the date of its publication.

**Mohamed bin Zayed Al Nahyan**

**President of the United Arab Emirates**

Issued by us at the Presidential Palace - Abu Dhabi:-

Date: 13 / Jumada Al-Awwal / 1445 H

Corresponding to: 27 / November / 2023 AD

# Partnership Projects Manual

# and Partnership

# Project Management

# and Implementation

# Manual

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## Partnership Projects Manual

# Chapter 1: Introduction

## Introduction

This chapter includes a set of terms mentioned in this Manual. We note the following regarding these terms:

1. If the terms are not presented exactly as they are in the glossary, they should be understood in their usual meaning.

2. For the purpose of searching for a specific definition, please remove the definite article "the" from the term being searched for.

3. The terms in the definitions chapter are to be interpreted as follows:

a) The singular includes the plural, and the plural includes the singular.

b) The masculine includes the feminine, and the feminine includes the masculine.

## I. Definitions

| | |
|---|---|
| United Arab Emirates. | **The State** |
| The Federal Government of the State. | **The Government** |
| Ministry of Finance. | **The Ministry** |
| Minister of Finance or Minister of State for Financial Affairs (as per jurisdiction). | **The Minister** |
| The ministerial committee responsible for proposing general procedures for federal fiscal policy, studying financial policies and legislation and their impact on the economy to ensure the financial stability of the State, and submitting recommendations thereon to the Council of Ministers. | **General Budget Committee** |
| The committee in the Ministry of Finance responsible for deciding on grievances related to the bidding procedures for partnership projects with the private sector. | **Grievances Committee** |
| The Public-Private Partnership Department at the Ministry of Finance. | **Public-Private Partnership Department** |
| Ministries established under Federal Law No. 1 of 1972 concerning the Competencies of Ministries | **Concerned Federal Entity** |

| | |
|---|---|
| and the Powers of Ministers, and Federal Government Agencies and Authorities. | |
| The process of examination and auditing that includes the study and verification of all relevant information and data. | **Due Diligence** |
| The response from a private sector company to an invitation to bid, expressing its desire to submit proposals. | **Expression of Interest** |
| A financial indicator that assesses company performance by excluding interest, financial expenses, rent, taxes, depreciation, and amortization from its net income. | **Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA)** |
| A comprehensive study to estimate the feasibility of a partnership between the federal public and private sectors, taking into account, but not limited to, the financial, technical, legal, economic, and environmental aspects of the project, and its sustainability. | **Feasibility Study** |
| Part of the feasibility study that includes preparing financial statements and analyses showing the expected cash flows throughout the project period. | **Financial Study** |
| The monetary value of all goods and services produced within the country's borders during a specific period. | **Gross Domestic Product (GDP)** |
| The discount rate at which the net present value of all cash flows (positive and negative) from a project or investment equals zero. It is used to assess the attractiveness of a project or investment. Generally, a project is considered valuable if its internal rate of return exceeds the cost of capital, the project's hurdle rate, or the cost of financing the project. | **Project Internal Rate of Return (IRR)** |

| | |
|---|---|
| The announcement issued by the Concerned Federal Entity before the bidding stage for a partnership project between the federal public and private sectors to attract private sector participation and gauge market interest in the project. | **Invitation to Bid** |
| Federal Law No. (12) of 2023 concerning the Regulation of Partnership between the Federal Public and Private Sectors, and any amendments that may be made to it. | **The Law** |
| The manual for partnership projects between the federal public and private sectors. | **The Manual** |
| The difference between the present value of future cash flows generated by proposed projects and the present value of cash outflows. The present value of future cash flows is calculated using the cost of capital or the minimum required rate of return as the discount rate. | **Net Present Value (NPV)** |
| The team formed from members of a concerned federal entity to prepare feasibility studies for partnership projects between the federal public and private sectors and the bidding documents. | **Project Team** |
| The proposal submitted by the investor to the Concerned Federal Entity in response to a request for proposals for a partnership project between the federal public and private sectors. | **The Bid** |
| The contractual relationship between a federal entity (or several federal entities) and one or more partners from the private sector established in accordance with the provisions of the Law and the Manual, for the purpose of providing a public service or operating a public facility. | **Partnership between the Federal Public and Private Sectors (PPP)** |
| The plan prepared to define the objectives of partnership projects between the federal public | **PPP Plan** |

| | |
|---|---|
| and private sectors in a specific sector, the projects, and their implementation plan in that sector. | |
| The bid document issued by the Concerned Federal Entity to bidders requesting them to submit their proposals. | **Request for Proposals (RFP)** |
| The bid document issued to potential bidders to assess their capabilities and/or qualifications regarding submitting their proposals for a partnership project between the federal public and private sectors. | **Request for Qualification (RFQ)** |
| The team composed of employees from key federal entities in a specific sector. | **PPP Sector Team** |
| The statement submitted to the Concerned Federal Entity in response to a request for proposals for a partnership project between the federal public and private sectors. | **Statement of Qualifications** |
| The procedures initiated by a government entity that include requests for and approvals of proposals for a specific project. | **The Bid** |
| The additional value generated or the money the government will save if a partnership project between the federal public and private sectors is implemented compared to traditional methods. | **Value for Money** |

1. The project's hurdle rate is the minimum rate of return that a project must achieve to be commercially viable from an investor's perspective.

## II. Preamble

Partnership projects between the federal public and private sectors aim to diversify the mechanisms for establishing and financing strategic infrastructure projects and improving the quality of services. They also grant the government the authority to supervise and evaluate quality and efficiency during the implementation of these projects.

The government is keen to achieve the maximum possible benefit for society, the state, the private sector, and the local/national economy through strategic development projects in which the federal public and private sectors participate.

The issuance of this Manual is an initial step towards developing major strategic projects and supporting the national economy, and it serves as an open invitation to the private sector for effective participation in the national development process.

For this purpose, the Ministry has prepared this Manual in accordance with the legal framework defined by Federal Law No. (12) of 2023 concerning the Regulation of Partnership between the Federal Public and Private Sectors to clarify the general guidelines and procedures related to partnership contracts between the federal public and private sectors, taking into account the special nature of these projects and the considerations that ensure their success.

Although the Manual provides a comprehensive explanation of the procedures for partnership projects between the federal public and private sectors in as much detail as possible, in exceptional cases, federal entities must refer to the Ministry of Finance to obtain any additional required information not contained in this Manual.

## III. Objectives of the Manual

This Manual clarifies the governance framework and procedures related to the design, planning, and implementation of partnership projects between the federal public and private sectors. It also provides a summary of the guidelines and procedures that federal entities and potential private sector partners must follow in partnership projects between the federal public and private sectors, ensuring transparency and clarity for all concerned parties.

### a) Regarding the Ministry:

**The Manual provides:**

- Detailed guidance on the role of the Ministry and its involvement in the various stages of the partnership process between the federal public and private sectors and its dealings with all parties related to these projects.

### b) Regarding the Concerned Federal Entity:

**The Manual aims to:**

- Provide a specific framework for organizing and implementing partnership contracts between the federal public and private sectors.
- Unify the mechanisms, standards, and conditions for implementing partnership projects between the federal public and private sectors and document them.
- Detail the provisions for follow-up, management, and implementation of partnership contracts between the federal public and private sectors.

### c) Regarding the Private Sector:

**The Manual clarifies:**

- The rights and obligations entrusted to private sector partners within the framework of partnership contracts between the federal public and private sectors.
- Guidelines related to the bidding and proposal submission process for potential private sector partners.

## IV. Related Responsibilities

### a. Scope of Application

This Manual is intended for partnership projects between federal entities and the private sector.

### b. Implementation:

- The provisions of this Manual shall come into effect from the date specified in the Council of Ministers' decision.
- The provisions of this Manual apply to all operations related to the partnership contracts described therein.

- The competent departments of the federal entities are committed to following the procedures described in this Manual when planning and implementing partnership projects between the federal public and private sectors.
- In case of a conflict between this Manual or partnership contracts between the federal public and private sectors and any other applicable law, the provisions of the Federal Law shall prevail, and no contract shall be concluded until the conflict is resolved or an official exemption is obtained.
- It is advisable to contact the Ministry for official clarifications in case of any questions about the interpretation of the provisions of this Manual.
- The responsibility for ensuring that federal entities apply the principles and guidelines of this Manual lies with the internal audit organizational units in the federal entities and the State Audit Institution or its equivalent, with a focus on monitoring violations and recommending internal controls and follow-up procedures regarding the implementation of partnership projects between the federal public and private sectors.
- Projects that started before the issuance of this Manual are subject to the previous manual, while the provisions of this Manual apply to new or planned projects, or those whose contracts are updated, extended, evaluated, or amended, or procured after the date of issuance of the Manual, as stated in Article (32) of the Law.

## Chapter One: Introduction

## C. Updates

The Ministry is responsible for periodically reviewing, updating, and amending the guidelines in this manual, with federal entities having the ability to submit proposals for amendments. After approving the amendments, the Ministry is committed to the following:

- Considering additional amendments.
- Updating related procedures.
- Providing clear information about updates to all concerned parties.
- Responding to inquiries and questions related to amending or updating the manual.

## D. Training

To ensure the optimal application of this manual, it is recommended that federal entities provide training programs for employees, annually or with each update (whichever comes first).

Training programs can be organized through workshops to enhance understanding of the procedures and requirements for Federal Public-Private Partnership projects.

### Overview of Federal Public-Private Partnership

## A. Overview of Federal Public-Private Partnership Projects

A Federal Public-Private Partnership (PPP) is defined as a collaborative framework that brings together the federal public and private sectors to develop infrastructure projects and enhance the quality of services provided to the public. The federal public sector partners with a private sector partner to share in the planning, financing, construction, and/or operation or maintenance of a specific asset or service. This model requires the private sector to contribute its expertise, resources, and capital, while the federal public sector provides supervisory and regulatory support for the project. Federal PPPs are widely used in the development and provision of essential public infrastructure and services. Although the organizational structure of Federal PPPs varies, their core characteristics are shared as follows:

## a. Financing

A Federal PPP often involves a commitment from the private partner to provide financing for the project, in addition to design, construction, and operation responsibilities.

## b. Risk Sharing

The partnership is based on the principle of risk sharing between the federal public and private partners, where risks are borne in proportion to each party's ability and willingness to bear them.

### c. Long-term Commitment

Federal PPP contracts are typically long-term, potentially extending for several decades, depending on the risk and return profile of the specific project.

### d. Innovation

These partnerships encourage the private sector to introduce new ideas, modern technology, and best practices to achieve project objectives.

### e. Performance-based Approach

Federal PPP contracts are performance-based, where payments are linked to the achievement of pre-defined performance targets.

### f. Beneficiary Focus

The interests of the beneficiary are given top priority in Federal PPPs, aiming to deliver high-quality services or infrastructure to the public.

## II. Types and Models of Federal Public-Private Partnership

### a. Types of Federal Public-Private Partnership

Federal PPP agreements are divided into multiple types and models based on the nature of the project. The appropriate partnership model can be determined by answering the following three questions:

### 1. What is the nature of the project?

**Greenfield Projects:** These include infrastructure development projects on previously undeveloped land, or the construction of new infrastructure such as highways, airports, hospitals, and schools. Greenfield projects require significant capital investment as all necessary infrastructure must be built from scratch.

**Brownfield Projects:** These include projects to redevelop existing infrastructure or add new infrastructure. They involve developing or renovating existing highways, airports, hospitals, and schools, or adding new buildings or facilities to an existing site. Such projects require capital investment as existing infrastructure can be utilized. The project might also be a service currently provided by the government that requires improvements in quality and efficiency.

## 2. What are the tasks and responsibilities of the private sector partner?

There are nine key characteristics central to determining the most suitable PPP model. These characteristics are usually identified during the feasibility study and incorporated into the contract model. The following are the tasks and responsibilities of the private partner:

**Design (D):** Involves creating a detailed project plan, defining the project scope, and identifying key project milestones.

**Build (B):** When the project involves new infrastructure assets, the private partner is usually required to construct the assets and install all equipment.

**Rehabilitate (R):** When the Federal PPP is for an existing asset, the private partner may be responsible for rehabilitating or expanding the asset.

**Finance (F):** When the Federal PPP involves building or rehabilitating an asset, the private partner is usually required to partially or fully finance the capital and operational investments.

**Maintain (M):** Involves maintaining the infrastructure assets to a specified standard throughout the contract term.

**Own (O):** The private partner owns the asset for the duration of the contract.

**Transfer (T):** Refers to the transfer of the asset or the operation and maintenance of a project to the government sector after the contract term ends.

**Lease (L):** In some cases, the private partner leases the assets belonging to the federal entity for the duration of the contract.

**Operate (Op):** The operational responsibilities assigned to the private partner within a Federal PPP framework can vary significantly, depending on the nature of the underlying assets and the associated service. For example, the private partner may be responsible for:

- Operating the assets and providing integrated services to government entities, such as water desalination plants.

- Operating the assets and providing services directly to users, such as a water distribution system.
- Providing support services, while the government entity retains responsibility for providing the public service to users, such as cleaning services in school buildings.

## 3. What is the payment mechanism for the private partner?

**Payment by Users:** The private partner provides the service to users and generates revenue by charging service fees to users (according to the partnership contract).

**Payment by Government:** The government is the sole source of revenue for the private partner, with payments dependent on meeting the performance criteria for the asset or service specified in the contract.

**Hybrid Payments:** In some cases, particularly when revenues collected from users are insufficient to cover the costs and expected profits of the private partner, a combination of the two previous payment methods is used.

## b) Federal Public-Private Partnership Models

Federal PPP projects take various forms in terms of construction, operation, and financial and legal structure, meaning these projects can be designed to provide the most suitable framework to meet the desired outcomes of each project. Below is a presentation of the most prominent Federal PPP models.

**Table 1: Federal Public-Private Partnership Models, based on the above characteristics**

| **Model** | **Role of the Private Partner** | | | | | | | | | **Descri** |
|---|---|---|---|---|---|---|---|---|---|---|
| | **Design** | **Build** | **Rehabilitate** | **Operate** | **Maintain** | **Own** | **Lease** | **Transfer** | **Finance** | |
| Management Contract | | | | X | X | | | | | The pri partner assume specific respons within t service |
| | | | | X | X | | X | X | | |

| Model | Role of the Private Partner | | | | | | | | | Descrip |
|---|---|---|---|---|---|---|---|---|---|---|
| | Design | Build | Rehabilitate | Operate | Maintain | Own | Lease | Transfer | Finance | |
| Lease Contract | | | | | | | | | | The governn leases infrastru manage maintai the priv partner transfer optiona |
| Build-Own-Transfer (BOT) | | X | | | | X | | X | | In these models private builds a operate asset fo duration contrac roles of private are defi the defi |
| Build-Own-Operate-Transfer (BOOT) | | X | | X | | X | | X | | |
| Build-Own-Lease-Transfer (BOLT) | | X | | X | | X | X | X | | |
| Build-Own-Operate (BOO) | | X | | X | | X | | | | |
| Design-Build-Maintain (DBM) | X | X | | | X | | | | | In these models private designs develop project, without financin roles of private |

| Model | Role of the Private Partner | | | | | | | | | Descri |
|---|---|---|---|---|---|---|---|---|---|---|
| | Design | Build | Rehabilitate | Operate | Maintain | Own | Lease | Transfer | Finance | |
| Design-Build-Own-Maintain (DBOM) | X | X | | | X | X | | | | are defi the defi |
| Design-Build-Own (DBO) | X | X | | | | X | | | | In these models private designs develop project, includin private financin roles of private are defi the defi |
| Design-Build-Finance-Own-Maintain-Transfer (DBFOMT) | X | X | | | X | X | | X | X | |
| Design-Build-Finance-Maintain-Transfer (DBFMT) | X | X | | | X | | | X | X | |
| Rehabilitate-Own-Transfer (ROT) | | | X | | | X | | X | | These involve rehabili of an ex asset. T roles of private are defi the defi |
| Rehabilitate-Own-Operate (ROO) | | | X | X | | X | | | | |

Note: "X" indicates the role of the private partner within the specified model.

## c) Excluded Contracts

The guidelines outlined in this manual do not apply to the following contracts and scenarios:

**Outsourcing Contracts:** These include legal agreements between government entities and external service providers (the contractor), where the contractor agrees to perform specific tasks or provide certain services for the government. These tasks or services were originally the government's responsibility but are delegated to external sources to save money, improve efficiency, or focus on core competencies.

Outsourcing contracts can cover a wide range of services, including manufacturing, information technology, customer service, and research and development. They can be long-term or short-term agreements and often include specific terms and conditions for performance, payment, and dispute resolution. There is no risk-sharing for these types of contracts.

**Partnership contracts concluded before Law No. (12) of 2023 came into effect:** This exemption includes feasibility studies for Federal PPP projects and ongoing contracts concluded before the law and this manual came into effect. However, the exemption does not include the renewal, amendment, or extension of a partnership contract under Article (32) of the Law.

**Projects with a value below the specified threshold:** Projects with a value of less than AED 150 million are excluded, as detailed in Chapter Four, Section One of this manual.

**Procurement contracts related to national security:** This category includes contracts related to defense equipment and technology, cybersecurity solutions, intelligence and surveillance systems, critical infrastructure, emergency services and supplies, and research and development.

**Federal entities, sectors, and projects excluded by a decision of the Council of Ministers:** This exemption includes any projects or categories of projects that have been explicitly excluded by a decision of the Council of Ministers.

**Privatization:** Refers to the full private sector ownership of assets and services. The table below highlights the fundamental differences between Federal PPP projects and privatization, as privatization involves the complete transfer of risk to the private sector.

**Table 2: Asset Ownership Terms under Privatization compared to Federal Public-Private Partnership**

| Under Privatization | Under Federal Public-Private Partnership |
|---|---|
| The private partner has ownership of the asset. | The government is usually the owner of the asset. Ownership may be transferred to the private partner only during the contract period. |
| There is no strict contract between the government and the private partner; it is regulated through licenses and sector-specific conditions. | The contract defines the rights and obligations of each party. |
| There are no time constraints on the duration of asset operation. | The duration is specified in the contract. |
| There is no strict alignment of objectives, as the government is not usually directly involved in setting outputs for the private entity. | The government precisely defines the quantity and quality of the required services. |

## The Difference between Outsourcing, Privatization, and Federal Public-Private Partnership

Federal PPP projects fall between the models of privatization and outsourcing. The following diagram highlights the level of participation of each party in the different types of projects.

| Outsourcing | Partnership | Privatization |
|---|---|---|
| **Federal Public Sector** (Greater Control) | **Federal Public Sector** (Sharing) | **Federal Public Sector** (Less Control) |
| Contracts for specific works (Outsourcing) | Federal Public-Private Partnership | Privatization |
| Control by Federal Public Sector | Mutual benefit and sharing of risks and returns | Control by Private Sector |
| **Private Sector** (Less Involvement) | **Private Sector** (Sharing) | **Private Sector** (Greater Control) |

## Governance of Federal Public-Private Partnership Projects

## A. Overview

Establishing a good governance system with clear roles, responsibilities, and interactions for the concerned parties is essential to enhance transparency and ensure the fullest benefit from private sector participation.

The Organisation for Economic Co-operation and Development (OECD) recommends adopting three main principles for effective governance of Federal PPPs, which are as follows:

- Work to establish a specific, logical, and legal institutional framework, supported by competent authorities and adequate resources.
- Establish partnership selection criteria based on value for money.
- Implement a transparent budgeting process to mitigate financial risks and ensure the integrity of the procurement process.

## II. Governance Structure

The governance structure outlined in this manual covers federal and local-federal projects only, in line with Federal Law No. (12) of 2023, which regulates the partnership between the federal public sector and the private sector.

The state follows a centralized governance model in managing its federal and local-federal projects. The main stakeholders in each project are the Council of Ministers, the General Budget Committee, the Ministry, the Ministry's Public-Private Partnership Department, the concerned federal entity, and the project team.

## Proposed Governance Structure

- Council of Ministers
    - General Budget Committee
        - Ministry of Finance
            - Public-Private Partnership Department
- Concerned Federal Entity
    - Sector Team for Federal Public-Private Partnership Projects
- Project Team

## III. Institutional Roles and Responsibilities

Many roles and responsibilities are distributed among different entities during the period of each Federal PPP project.

**Table 1: Roles and Responsibilities**

| | Policymaking and Strategy Development | 1 Project Definition | 2 Project Screening | 3 Project Appraisal | 4 Tendering and Partner Selection | 5 Contract Management |
|---|---|---|---|---|---|---|
| **Council of Ministers** | Informed | Informed | Consulted | Consulted | Consulted | Informed |
| **General Budget Committee** | Consulted | Consulted | Consulted | Consulted | Consulted | Informed |
| **Ministry (Federal PPP Department)** | Responsible and Accountable | Consulted | Consulted | Consulted | Consulted | Consulted |
| **Concerned Federal Entity** | Informed | Responsible and Accountable | Responsible and Accountable | Responsible and Accountable | Responsible and Accountable | Responsible and Accountable |
| **Project Team** | | Responsible | Responsible | | | |
| **Private Sector** | Informed | | | Informed | | |

## a. Council of Ministers

The Council of Ministers is responsible for the following tasks:

- Final approval or rejection of the Federal Public-Private Partnership plan.
- Final approval or rejection of the feasibility study for Federal PPP projects.
- Final approval or rejection of the selected bidder.
- Granting additional incentives or exemptions to concerned federal entities and private sector participants.

### b. General Budget Committee

The General Budget Committee undertakes the following tasks:

- Initial approval or rejection of the Federal Public-Private Partnership plan, including determining budget allocations if required.
- Approval or rejection of the feasibility study for Federal PPP projects only if additional budget allocations are needed.
- Approval of tendering for Federal PPP projects only if additional budget allocations are needed.

### c. The Ministry

The Ministry undertakes the following tasks:

- Preparing, issuing, and amending guidelines and all templates and documents related to Federal PPP projects.
- Proposing updates to legislation regulating Federal PPP projects in accordance with global best practices.
- Providing a suitable environment to attract the private sector to participate in Federal PPP projects and overcoming obstacles that may hinder the success of the projects.
- Acting as an intermediary between the concerned federal entity, the General Budget Committee, and the Council of Ministers.
- Providing support to federal entities that tender Federal PPP projects in accordance with the law, if necessary, and encouraging all federal entities to assess the feasibility of tendering their eligible projects using the Federal PPP approach.
- Appointing a general coordinator to guide the PPP project teams and provide them with relevant tools and templates.
- Proposing Federal PPP projects to the concerned federal entities and enabling them to tender the proposed projects for Federal PPP.
- Reviewing project priorities.
- Reviewing preliminary feasibility studies and plans for Federal PPP projects.
- Studying and evaluating proposals and feasibility studies submitted by federal entities and the private sector and determining the feasibility of tendering them as partnership projects.

- Advising concerned federal entities regarding the tendering and implementation of Federal PPP projects.
- Developing a data registry for Federal PPP projects.
- Periodically measuring the success of Federal PPP projects and submitting reports to the General Budget Committee.
- Acting as a knowledge center for disseminating and collecting information on Federal PPP projects, ensuring knowledge exchange among federal entities and making it available to the public.
- Prioritizing the concerned federal entity to begin developing Federal PPP plans.
- Identifying the concerned federal entities that will be required to apply the manual, starting from the creation of a PPP plan.

## d. Concerned Federal Entities

The concerned federal entities undertake the following tasks:

- Identifying and evaluating potential Federal PPP projects according to the criteria of this manual.
- Prioritizing Federal PPP projects and preparing preliminary feasibility studies.
- Forming a project team that includes members from the concerned federal entity responsible for preparing feasibility studies and tender documents for the projects.
- Proposing Federal PPP projects and preparing all necessary studies to assess feasibility, risks, and financial, economic, technical, and social impacts according to the requirements of this manual.
- Preparing the initial budget for Federal PPP projects in cooperation with the project team, and in accordance with the guidelines and templates related to budget preparation issued by the Ministry.
- Defining the technical specifications and requirements for Federal PPP projects.
- Coordinating with the Ministry to formulate the structure of Federal PPP projects, including determining partnership models, contributions of partnership parties to the projects, and the distribution of resulting shares and financial returns.
- Proposing service fees related to Federal PPP projects.

- Supporting project teams in preparing tender documents and requests for proposals for the projects.
- Recommending qualified bidders to the Ministry.
- Fulfilling their obligations under the project agreements and utilizing the rights contained therein.
- Coordinating with other concerned federal and government entities to ensure outputs are consistent with their plans.
- Supervising the private sector in implementing Federal PPP projects that fall within the jurisdiction of the federal entity, without prejudice to the competencies of other supervisory bodies.
- Working to overcome obstacles that prevent Federal PPP projects from achieving their desired objectives, in coordination with the competent authorities.
- Preparing quarterly reports for each proposed Federal PPP project and submitting them to the Ministry.

## e. Project Team

The project team undertakes the following tasks:

- Preparing feasibility studies, including technical, legal, and financial studies.
- Coordinating and managing the bidding process for Federal PPP projects and partner selection.
- Preparing initial budgets for the projects in coordination with the concerned federal entity.
- Preparing tender documents, requests for proposals, and project agreements, and sharing them with the concerned parties.
- Evaluating and opening bids according to the evaluation procedures and criteria specified in the tender documents and this manual.
- Ensuring the principles of transparency, fair competition, and equal opportunities in accordance with the provisions of the law and this manual.

## f. Private Sector

Private sector partners are responsible for the following:

- Submitting expressions of interest, qualifications, documents, and bids.

- Implementing projects according to the terms of the Federal PPP contract.
- Proposing potential Federal PPP projects as unsolicited proposals.
- Raising financing for projects according to the terms of the Federal PPP contract.

## Partnership Project Management and Implementation Guide

## Partnership Project Management and Implementation

Each concerned federal entity must follow the steps below to successfully implement Federal Public-Private Partnership projects.

The General Budget Committee and the Council of Ministers can make the necessary decisions to approve the Federal PPP plan, feasibility study, and partner selection during pre-scheduled meetings of the General Budget Committee. Some exceptions apply depending on the urgency of the project and at the request of the concerned federal entity.

## A. Project Identification

The federal entity should formulate a strategic plan to leverage Federal PPP opportunities in line with the procedures indicated below. If the entity has previously developed such a plan but wishes to explore a new, unplanned opportunity, it can proceed directly to step (5) of this process. In this case, the entity's focus will be on developing a preliminary feasibility study according to the guidelines specified in Section (2-B) of this chapter, and then obtaining the necessary approvals according to the established procedures.

If there is no approved plan and the entity finds a promising opportunity, it must request an exception from the Ministry.

### a. Identifying Federal Public-Private Partnership Projects

| Owner | Completion Time | Supporting Tools | Reviewer | Review Time | Supporting Tool | Approver |
|---|---|---|---|---|---|---|
| Concerned Federal Entity | 1 Month | P01- Project Identification and Prioritization Template | The Ministry | After next step | R01a- Prioritization Checklist | N/A |

## Steps to Follow

1. The concerned federal entity must prepare a list of all public facilities and assets it manages, public services it provides, activities it conducts, and its current and future capital projects to determine the possibility of assigning them to the private sector through a partnership project.
2. The Ministry and potential private sector partners may identify and propose Federal PPP projects to the concerned federal entity. Any project proposed by the Ministry must be added to the list, and private sector partners are allowed to submit an unsolicited proposal for a Federal PPP project.
3. The concerned federal entity evaluates all potential projects to determine their suitability and the possibility of assigning the project to the private sector through a Federal PPP, based on project evaluation criteria.
4. After the concerned federal entity selects the projects that meet all five project evaluation criteria, the project can then be moved to the screening stage.

## Project Evaluation Criteria

1. The project does not involve issuing policies or regulations or relate to internal support services.
2. The extent to which the project benefits the public in terms of enhancing community safety, health, financial level, knowledge base, or overall lifestyle.
3. The extent to which the private sector has better human resources and deeper knowledge to implement the project compared to the government's capabilities.
4. The possibility of partially or fully transferring risks from the concerned federal entity to private sector partners (e.g., construction, financial, legal, and environmental risks).
5. The project value (specifically capital and operational expenditures), and its compliance with the minimum required value (please see the explanation of the fifth criterion below).

### Explanation of the Fifth Criterion

To avoid wasting time by analyzing and structuring Federal PPP projects, which take longer than traditional methods and may not be economically viable, the government must assess whether the total project value meets the following criterion:

**Total Capital Expenditure + Total Operational Expenditure**

**>= AED 150 Million**

Note: Projects with a value below this threshold may be considered as Federal PPPs, provided they can demonstrate the potential to add value and achieve tangible financial savings. Additionally, the Ministry of Finance may direct government entities to evaluate projects below the mentioned threshold to verify, at its discretion, whether they meet the Federal PPP criteria.

## B. Unsolicited Proposals

### What is an Unsolicited Proposal?

An unsolicited proposal is a feasibility study related to a potential Federal Public-Private Partnership project, initiated by a potential private sector partner and submitted directly to a federal entity for consideration to be tendered as a partnership project.

### Who can propose or receive an unsolicited proposal?

The following conditions must be met before any potential private sector partner is allowed to submit an unsolicited proposal to a federal entity:

- The decision to submit the proposal should not be based on a request, involvement, supervision, or direction from a government entity.
- The proposer must not be a government entity, a government employee, or a consultant appointed to provide advisory services regarding infrastructure projects or public service.

## Steps for submitting an unsolicited proposal:

- The private sector must prepare a project proposal including a preliminary feasibility analysis and submit it to the concerned federal entity or the Ministry. The proposal must contain a level of detail equal to a preliminary feasibility study as outlined in this manual (Chapter Four, Section B), in addition to information about the proposer, their experience, and qualifications.
- The concerned federal entity must inform the Ministry immediately upon receiving any unsolicited proposal.
- The concerned federal entity evaluates the proposal to verify if the project is part of existing plans and whether it has been submitted before. Based on this evaluation, the federal entity decides whether to approve the proposal for further study, redirect it to the competent authority, or reject it.
- If the proposal is approved, it undergoes a second review by the concerned federal entity to ensure its alignment with strategic objectives and that it provides added value. After this review, the proposal is either approved or rejected.

The value was determined based on the following: benchmarking study. Implicit costs of a PPP project (such as feasibility studies, structuring, and tender process management), which typically cost around AED 10.5 million, and should not constitute more than 7% of the total capital expenditure of the project.

- If the project is approved in the second review, the private sector is requested to prepare a comprehensive feasibility study, adhering to the guidelines as stated in the manual (as detailed in Chapter Three).
- The concerned federal entity evaluates the entire feasibility study based on the evaluation criteria specified in the manual, and the project team may be asked to make some amendments based on the evaluation.
- The Ministry reviews the amended feasibility study and provides its opinion if necessary, comparing it with the templates attached to this manual.
- The Ministry then submits its recommendations to the Council of Ministers for a final decision.

- If the study meets the required criteria and is approved by the Council of Ministers, the project moves to the tendering stage, or the project is rejected if the study is not approved.

If the project is rejected at any stage, the concerned federal entity must formally inform the potential private sector partner of the rejection decision within ten working days.

**Partial compensation for study fees if the project is rejected:** The proposer is partially compensated for the costs of preparing feasibility studies and other preparatory work, in recognition of the effort and resources invested in preparing the proposal. This compensation is not full but covers a portion of the expenses in appreciation of the proposer's investment in identifying and clarifying the Federal PPP opportunity.

## Tendering and Project Award Stage for the Proposer

If the project related to the unsolicited proposal is approved, it will be tendered according to the same standard tendering process outlined in Chapter Four, with an amendment to Step 11 regarding the evaluation of bids and partner selection. The proposer will be granted one or a combination of the following advantages at the discretion of the concerned federal entity in coordination with the Ministry:

- **Best Offer Matching:** The original proposer is given the opportunity to submit a bid that matches any better offer submitted during the tendering stage by another party. This ensures that the original proposer, who conducted the initial studies, has a fair chance to implement the project, provided they submit a bid that matches or exceeds the terms of the other offer.
- **Advantage in Bid Evaluation:** Proposers of unsolicited proposals may receive a preferential advantage when bids are evaluated as a reward for their efforts in proposing the project. However, this bonus does not guarantee that the bid will be awarded to them, but it provides a competitive advantage in recognition of their original contribution to proposing the project idea.

To ensure fairness and transparency, the concerned federal entity is required to inform bidders through the Request for Proposal that the project being tendered originated from an unsolicited proposal.

The project proposer automatically qualifies for the Request for Proposal stage.

To protect sensitive data, intellectual property rights, trade secrets, and the rights contained in the unsolicited proposal for a Federal PPP project, the federal entity should follow these two necessary procedures:

1. **The private party may request the signing of disclosure and non-disclosure agreements:**

   The federal entity must require all internal and external stakeholders involved in the review and negotiation process to sign disclosure and non-disclosure agreements before sharing any proposed details. These agreements should be legally reviewed to ensure enforceability and should clearly define the disclosed information, what constitutes confidential information, the duration of the confidentiality obligation, and the consequences of its breach.

2. **If the proposal contains ideas that could be classified as a patent or proprietary technology, the private partner has the right to request the signing of intellectual property rights agreements:**

   The federal entity must cooperate with legal experts to draft agreements that accurately define the ownership of ideas or technology and the terms of their use and licensing. These agreements must include clauses that clarify how intellectual property rights will be handled during and after the proposal evaluation process, whether the project is awarded or rejected.

## II. Project Screening

## a. Prioritizing Federal Public-Private Partnership Projects

| Owner | Completion Time | Supporting Tools | Reviewer | Review Time | Supporting Tool | Approver |
|---|---|---|---|---|---|---|
| Concerned Federal Entity | 1 Month | P02 - Feasibility Study Template | The Ministry | Two Weeks | R01a - Prioritization Checklist | N/A |

## Steps to Follow

1. The concerned federal entity must use general evaluation factors to analyze each potential project. These factors are divided into two main

categories: project impact and ease of implementation, and these factors can be quantitative or qualitative.
2. The concerned federal entity may include up to five additional evaluation factors or sub-factors that address specific aspects of different projects.
3. After identifying the evaluation factors for a potential project, the concerned federal entity gives each a relative weight that reflects its importance to the project.
4. After determining the values and their weights for the evaluation factors, the concerned federal entity selects the projects that will qualify for the preliminary feasibility study stage according to the prioritization outcomes.
5. The Ministry will then review the prioritization process using the checklist shared with this manual and ensure it has been implemented correctly.

## General Evaluation Factors

## Project Impact

1. Project Value
2. Financial Impact
3. Social Impact
4. Alignment with Sector Objectives
5. Enhancing Efficiency and Quality

## Ease of Implementation

1. Capabilities and qualifications of human resources in the concerned federal entity
2. International Success
3. Readiness of the regulatory environment
4. Market Capacity
5. Data Availability

**Table 4: Examples of factors included in the project prioritization process**

| Factor | Criterion | Unit | Evaluation Method | Weight | Justification for Weight |
|---|---|---|---|---|---|
| Project Value | Capital and operational | Measurable (AED) | Preliminary assessment | 10% | Entity provides |

| Factor | Criterion | Unit | Evaluation Method | Weight | Justification for Weight |
|---|---|---|---|---|---|
| | expenditure for the first five years | | of capital and operational expenditure | | justification for the weight |
| Financial Impact | Financial impact on the government's budget | Low, Medium, High | Preliminary assessment | 10% | Entity provides justification for the weight |
| Social Impact | Reach to beneficiaries | Measurable (#) | Preliminary assessment | 10% | Entity provides justification for the weight |
| Enhancing Efficiency and Quality | None | Low, Medium, High | Preliminary assessment | 10% | Entity provides justification for the weight |
| Alignment with Sector Objectives | None | Low, Medium, High | Comparison with objectives | 10% | Entity provides justification for the weight |
| Capabilities and qualifications of human resources in the concerned federal entity | None | Low, Medium, High | Preliminary assessment | 10% | Entity provides justification for the weight |
| Benchmarking of similar international experiences | None | Low, Medium, High | Preliminary assessment | 10% | Entity provides justification for the weight |
| Readiness of the regulatory environment | None | Low, Medium, High | Preliminary assessment | 10% | Entity provides justification for the weight |
| | | | | 10% | |

| Factor | Criterion | Unit | Evaluation Method | Weight | Justification for Weight |
|---|---|---|---|---|---|
| Market Capacity | Number of potential private sector partners operating in the region | Low, Medium, High | Preliminary assessment | | Entity provides justification for the weight |
| Data Availability | None | Low, Medium, High | Preliminary assessment | 10% | Entity provides justification for the weight |

**Table 5: Final Evaluation of the Prioritization Stage**

| Project | Project Value (in AED) | Social Impact Score | Budget Impact Score | Final Score | Rank |
|---|---|---|---|---|---|
| Project One | 5 Billion | High | High | 100 | #1 |
| Project Two | 0.5 Billion | Medium | Medium | 67 | #3 |
| Project Three | 2 Billion | High | Medium | 80 | #2 |

## B. Options Analysis (Preliminary Study)

| Owner | Completion Period | Supporting Tools | References | Review Period | Supporting Tool | Approving Authority |
|---|---|---|---|---|---|---|
| Concerned Federal Entity | One to two months | None | The Ministry | One month | Checklist - RO1b Reference for Preliminary Study | General Budget Committee Council of Ministers |

## Steps to be Followed

1. The concerned federal entity must prepare a preliminary feasibility study for each project that passes the prioritization stage, in accordance with the sections described below.
2. The concerned federal entity submits the Federal Public-Private Partnership (PPP) project plan to the Ministry, which includes project identification, prioritization, and the preliminary feasibility study.
3. In addition to the partnership plan, the concerned federal entity must submit a preliminary implementation plan for the selected projects and the initial budget allocated for preparing the feasibility studies.
4. The Ministry evaluates each preliminary feasibility study according to the checklist provided in the manual.
5. The Ministry presents the plan with checklists and templates to the General Budget Committee and then to the Council of Ministers for final approval.

## Sections of the Preliminary Feasibility Study:

### Market Assessment

A preliminary market assessment covering the following aspects:

- Market Size: Estimate the demand for the assets or services related to the project.
- Similar Projects: Identify similar local projects, if any,

### Technical Feasibility

It is essential to assess the technical feasibility of the project in the initial stages. The technical feasibility studies of the concerned federal entity aim to verify the project's viability from a technical, environmental, social, and market perspective, and must be conducted for

### Financial Feasibility

A preliminary financial analysis should be conducted to determine the project's financial viability and to form an initial idea about the best ways to implement it (the most suitable PPP model). This analysis includes:

- Potential PPP models through

or international projects.
• Identification of Potential Private Sector Partners: Identify potential private sector partners capable of implementing the project.

## Current Situation Analysis

A detailed analysis of the current state of assets or services provided by the government entity. This step is often linked to brownfield projects.

The report should include general information about the services and assets currently provided by the federal public sector, including:

• Currently provided assets and services and their beneficiaries.

infrastructure projects.

The concerned federal entity is not required to decide on the project implementation mechanism at this stage.

Technical feasibility should include:

• A preliminary assessment of the optimal technical solution for project implementation.
• The costs associated with each potential option and the expected service levels (maintenance) for each option.
• The environmental and social impact of each option.

which the project can be implemented (e.g., Build-Own-Transfer, Rehabilitate-Own-Transfer, etc.).
• Financial data reflecting the federal public sector's financial situation to measure the cost to the government if the project were to be completed by the federal public sector.
• Financial data (income statement and cash flow schedules) for all identified PPP models and any other implementation models outside the PPP framework (such as outsourcing).
• Value for money for each model.

• Service delivery mechanism.
• Service performance standards.
• Details of capital expenditures, project implementation costs, operating costs, and revenues from assets and services.

### Social and Environmental Analysis

A preliminary assessment of the social and environmental impacts of the project, which contributes to the decision of whether or not to proceed with the project based on clear and comprehensive data.

This analysis should address potential risks associated with these impacts, including risks related to environmental degradation such as pollution or destruction of natural habitats, and social impacts such as the risk of conflict with local communities, limited access to usual routes, or any other negative effects on society.

### Legal Analysis

A preliminary legal analysis must be conducted to ensure the project's applicability within the general legal framework. This analysis works to clarify the following aspects:

• The project's compliance with legislation related to government procurement and federal public-private partnerships.
• The project's compliance with real estate legislation.
• Identification of the need for any legislative amendments in case of conflict between current laws and international standards.

The assessment should also review potential opportunities such as job creation or achieving social and environmental gains, such as improving access to clean water or rehabilitating the environment and natural habitats for wildlife.

The analysis must be comprehensive and provide general recommendations to mitigate any negative impacts and increase potential benefits.

### Implementation and Project Management

A comprehensive description of the project implementation plan, including specific timelines, a proposed budget, and the necessary resource requirements.

• The possibility of transferring or canceling any existing contracts related to the project.

### Economic Analysis

A preliminary assessment to analyze the potential impacts of the project on the economy, taking into account both direct and indirect economic impacts, as well as the project's contribution to enhancing the Gross Domestic Product (GDP).

Direct economic impacts refer to changes in government revenues and expenditures, while indirect economic impacts refer to changes in employment and consumer spending resulting from the project's implementation.

## C. Project Preparation

| Owner | Completion Period | Supporting Tools | References | Review Period | Supporting Tool | Approving Authority |
|---|---|---|---|---|---|---|
| Concerned Federal Entity | One month | None | None | None | None | None |

### Overview

It is useful to carry out the following steps between the project identification stage and conducting the feasibility studies.

## Stakeholder Consultation

Collaboration between stakeholders and actors in a federal PPP project plays a crucial role in its success. Therefore, the concerned federal entity is required to identify key stakeholders at an early stage to ensure effective communication, as this is necessary to help them understand the project, provide the required community, commercial, and political support, attract potential investors, and reduce project-related risks. It also contributes to recording their needs, concerns, and interests.

Stakeholders are divided into two categories:

**Internal Stakeholders:** This category includes officials and employees within the federal public sector who deal with the project directly or indirectly.

**External Stakeholders:** This category includes banks, investment funds, government financiers, multilateral funding donors, public service users, the media, other government bodies (at the municipal, local, and federal government levels), regulatory bodies, legislators, and non-governmental organizations.

Poor communication or lack thereof can lead to the growth of rumors and misconceptions that can hinder the successful completion of the project.

Hence, the importance of developing an effective communication plan based on:

- Identifying all target audiences for communication.
- Clarifying the basic concepts to be communicated based on the project's essential elements, such as its outcomes, the needs it will meet, and the target groups.
- Nominating suitable media outlets for communicating with the concerned parties.
- Identifying the key characteristics of communication materials, preferably customized for each target audience.

## Appointing Advisors

During project preparation, it is necessary to identify the required capabilities. If the concerned federal entity does not have sufficient internal resources and competencies to conduct a comprehensive assessment, it can appoint external advisors.

Advisors can provide assistance in conducting feasibility studies, structuring the project, and managing tender documents, the bidding process, and project award contracts.

The need for advisors generally arises in the following four areas:

- Technical aspect: to conduct technical feasibility studies.
- Financial aspect: to conduct financial feasibility studies.
- Legal aspect: to conduct legal studies and analysis and to draft and review necessary contracts, agreements, and documents.
- Environment and society: to assess the project's impact on the environment and the quality of life of the community.

## Forming the Project Team

Each concerned federal entity forms a project team for each approved preliminary feasibility study. This team is tasked with assisting in facilitating the implementation of all matters related to the project, from preparing feasibility studies for the specified projects to the bidding stage and selection of private sector partners.

Each project team consists of:

- A team leader nominated by the concerned federal entity.
- Representatives from the concerned federal entity.
- Representatives from other relevant public entities, as necessary.

The Ministry follows up on the project team's work and provides necessary support, while ensuring the concerned federal entity's compliance with the federal PPP manual.

The project team members are appointed by the entities they represent, and the project team should include individuals specializing in the following areas:

- Technical affairs related to the sector or the federal PPP project.
- Commercial and financial affairs.
- Project management.
- Legal and regulatory affairs.

• Engineering or information technology and construction affairs (for infrastructure projects only).

The Ministry appoints a general coordinator to support the team. The coordinator's mission is to guide the team, provide relevant tools and templates, and ensure compliance with the standards and guidelines specified in this manual.

## III. Project Appraisal

Federal PPP projects are appraised to study the technical, legal, and financial aspects to ensure the project's implementation feasibility and success. This study also assesses the expected benefits against the potential risks for the government and the private partner to ensure the partnership benefits both parties. The following section explains all the studies necessary to conduct this appraisal.

It is important to note that most studies are usually conducted in parallel, with the total period for developing the feasibility study being about six months.

### A. Preliminary Analysis

| Owner | Completion Period | Supporting Tools | References | Review Period | Supporting Tool | Approving Authority |
|---|---|---|---|---|---|---|
| Project Team | Two weeks | None | - Concerned Federal Entity<br>- The Ministry | At the end, along with all studies | Checklist - RO2 Feasibility Study Verification | At the end, along with all studies |

#### Market Sounding

The primary objective of this step is to identify all potential partners who have the competence and interest to complete the project, and to engage them in dialogues

#### Summary and Objectives

It is necessary to conduct the following four analyses to obtain a deep and comprehensive understanding of the market and the circumstances surrounding the project: current situation and discussions to explore their opinions and views on the project.

- The first stage involves carefully compiling a list of potential partners who are interested and capable of achieving the project's objectives.
- The next step involves preparing a detailed document that clarifies the project's scope, including preliminary technical and financial aspects, as well as a potential risk-sharing matrix and a questionnaire for potential partners. The document should cover the following aspects:
    - Potential Partner Profile: To learn about the potential partner's experience, scope of work, and the services they provide.
    - Potential Partner's Interest: To gauge the potential partner's initial interest in pursuing the project and identify key preferences.
    - Readiness Assessment: To examine the readiness and ability of the potential partner to

analysis, market assessment, gap analysis, and procurement alternatives analysis.

## Current Situation Assessment

This assessment aims to understand the current situation and conditions related to the project, and should include the following evaluations:

- Infrastructure (if any): to assess the condition of the current infrastructure, such as roads, utilities, and transportation network, which may be affected by the project or required for its implementation.
- Services provided and their beneficiaries (if any): to determine the quality of services currently provided by the federal public sector and their beneficiaries.
- Current service delivery model (if any): to determine how services are provided by the federal public sector.
- Operational performance (if any): to assess the efficiency of the services provided by the federal public sector and identify major performance gaps.

participate in the required scope of work for the project.

◦ Technical Review: To understand the technical capabilities and skills of the potential partner.

◦ Financial Review: To determine the potential partner's preferred payment method, major costs, and obtain a preliminary cost estimate.

◦ Key Challenges and Considerations: To identify any potential obstacles and critical factors for the project's success.

• Financial performance: to analyze the costs and revenues of operating the current services.

For brownfield projects under the federal PPP framework, the project team must provide a comprehensive transition plan for current employees, assets, and operations.

This is followed by arranging meetings between the project team and a select group of potential private sector partners. Through the questionnaire, the project team gathers key ideas to confirm market interest and improve feasibility studies, thus ensuring a strong and competitive bidding process. Market sounding is essential in any federal PPP transaction, as it goes beyond measuring the level of interest, capability, and financial criteria of participants, to expanding the project scope and identifying the optimal implementation model based on the opinions and recommendations of the concerned parties. This approach also helps build initial interest from potential investors and partners, and serves as an early marketing opportunity for the project.

The step concludes with the project team compiling all the data and key opinions into a single document.

## Gap Analysis

The results of the new assessments of the current situation and market analyses are used to develop a more accurate gap analysis, which may fill potential gaps by introducing specific figures to replace the assumptions made in the preliminary feasibility studies.

To assess the gap, the strategic objectives of the concerned federal entity regarding the project must first be identified, and then the current performance is evaluated in light of these objectives. This will highlight the differences and discrepancies between the current situation and the desired objectives. Based on these results, a plan is designed to bridge these gaps, including specific steps to improve performance and achieve the set objectives.

## Procurement Alternatives

This analysis should include the following:

- Researching available alternatives for procurement models (such as outsourcing, direct procurement, and alternative federal PPP models) with a focus on evaluating the economic and social impacts of each option. The project team should carefully study and analyze the benefits and risks associated with each option.
- Reviewing federal PPP models to select the optimal model for the project and justify this choice. In addition, a risk-sharing matrix must be developed that details how risks are distributed between the concerned federal entity and the private sector, which helps the project team in determining the most suitable and best federal PPP model for the project.

## B. Technical Feasibility

| Owner | Completion Period | Supporting Tools | References | Review Period | Supporting Tool | Approving Authority |
|---|---|---|---|---|---|---|
| Project Team | 2-4 months | None | - Concerned Federal Entity | At the end, along with all studies | Checklist - RO2 Feasibility Study Verification | At the end, along with all studies |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | - The Ministry | | | |

| Multiple Alternatives | Summary and Objectives |
|---|---|
| Various alternatives and options available to complete the project should be explored, including estimating the costs for each option. Each option resulting from the technical feasibility study should be based on the goal of providing a high-quality service with cost and energy efficiency, while maintaining environmental sustainability and commercial and economic viability. | The technical requirements of the project must be detailed enough to accurately define the basic structure of the project. This data should provide all the necessary technical details to accurately determine the design, including the following points: |

## Technical and Engineering Design

A general technical design for the project must be created, including the necessary engineering and architectural plans, in addition to an assessment of the availability and suitability of the materials, equipment, and technologies used.

## Operational Analysis

This part includes an assessment of the operational requirements of the project, including staffing, training, maintenance needs, and potential risks and challenges.

## Cost Estimation

The total expected costs for building and/or renovating and/or rehabilitating assets or providing the service must be estimated, including operating and maintenance costs.

### Inputs for Tender Documents

Opinions and clarifications related to the tender documents (specifically Requests for Proposals and Requests for Qualifications) must be provided, such as qualification and eligibility criteria and performance guarantees.

### Approvals and Permits

Some projects may require specific approvals and permits, which are divided into two categories:

1. Administrative approvals that need to be issued by the public entity.
2. Regulatory approvals and permits from competent authorities: The public entity or the private partner may be responsible for obtaining these approvals, depending on the current stage of the project development process.

## C. Legal Analysis

| Owner | Completion Period | Supporting Tools | References | Review Period | Supporting Tool | Approving Authority |
|---|---|---|---|---|---|---|
| Project Team | 2-4 months | None | - Concerned Federal Entity<br>- The Ministry | At the end, along with all studies | Checklist - RO2 Feasibility Study Verification | At the end, along with all studies |

### Summary and Objectives

The project team must conduct a thorough legal analysis to consider all legal aspects related to the project, to ensure the project's compliance with all necessary legislative requirements. The legal analysis includes the following:

• A full assessment of the applicable legal framework and regulations for the federal PPP.
• Assistance in risk management, by identifying and addressing risks and challenges in the technical and financial assessments.

- Mitigating potential legal issues during the study, tendering, award, and contracting phases, as well as the project implementation and development phases, by considering the requirements of each stage of the federal PPP process.

## Preparing the Legal Analysis

It must be ensured that the project aligns with local and international legal requirements, with an analysis of the project's legal dimensions. The analysis should consider at least the following three main steps:

1. The first step involves studying the applicable legal framework: This includes identifying and analyzing relevant legislation that affects the project's progress.
    - Enablers in federal PPP legislation, with a focus on project-specific requirements, such as the minimum investment value and the maximum duration of contracts.
    - Studying the government procurement law and its implementing regulations, looking for general guidelines for contracts and procurement.
    - Considering legislation related to foreign investment, land ownership, and labor laws.
    - Verifying legislation related to planning, land use, and environmental protection.
    - Reviewing legislation specific to the sectors relevant to the project. (For example: legislation on correctional and penal facilities may prohibit private sector participation in such projects.)
    - Reviewing legislation concerning dispute resolution and intellectual property laws.
    - Reviewing and analyzing legislation and regulations governing the transfer of ownership or management of public assets or the provision of public services to third parties.
    - Assessing the legal treatment of revenues generated from the project according to the regulations governing them.
2. The second step involves assessing the legal readiness of the concerned federal entity, which includes verifying that the concerned

federal entity and other relevant institutions have the legal authority to initiate the project or grant approvals.

3. The third step involves subjecting the project's core issues to a comprehensive legal analysis. Large-scale infrastructure projects often have significant legal implications, requiring a thorough assessment of the following elements:
    - The financial aspects of the project.
    - Commercial viability, including the project's bankability.
    - The mechanism for using available land and assets.
    - Potential ownership claims on real estate by any other parties.
    - Any rights of other parties, such as state-owned oil companies and their underground pipelines or roads passing under power transmission lines.
    - Employment and employee transfers.
    - Tax and accounting issues in the project's financial model.

### Table (6): Examples of Legal Issues that May Need to be Addressed

| Category | Example |
| --- | --- |
| **Financial Aspects** | • A thorough analysis of the chosen type of support or specified public guarantees, when necessary.<br>• Procedures for obtaining approval for public support and identifying the concerned authorities.<br>• Identifying and reviewing legal restrictions that may affect final beneficiaries in the private sector, if any.<br>• Verifying the legal capacity to develop additional commercial activities such as advertising, retail, and entertainment. |
| **Land and Property Assets** | • Analysis of the type of rights that can be granted to the private sector.<br>• Consideration of the country's specific circumstances regarding land availability (this may take the form of right-of-way or a permit for transportation projects or site ownership for facilities).<br>• Laws applicable to asset ownership.<br>• Responsibility for relocating people residing in the designated areas. |

| Category | Example |
| --- | --- |
| **Employment** | • Potential impacts on federal public sector employees in the event of asset transfer to the private sector. |
| **Taxation and Accounting** | • The regime applicable to the project.<br>• The regime applicable to imports (when large equipment is included in capital expenditures).<br>• Provisions for tax exemptions and potential tax benefits for foreign direct investment. |
| **Environment** | • Environmental approvals that may be required by law for a specific site or type of project.<br>• Environmental exemptions applicable to the site and/or project. |

## D. Financial Feasibility

| Owner | Completion Period | Supporting Tools | References | Review Period | Supporting Tool | Approving Authority |
| --- | --- | --- | --- | --- | --- | --- |
| Project Team | 2-4 months | None | - Concerned Federal Entity<br>- The Ministry | At the end, along with all studies | Checklist - RO2 Feasibility Study Verification | At the end, along with all studies |

### Preparing the Financial Study

To accurately assess the project's viability, a financial analysis should be conducted for four cases:

1. Base Case (brownfield projects): Includes a comprehensive financial analysis of the current and expected situation of the project under sole

### Summary and Objectives

The primary goal of the financial feasibility study for a federal PPP project is to verify the financial viability of the project for both the government and the private sector. This is done by conducting a thorough financial analysis that includes projections of the project's revenues and expenses, and an assessment of the expected risks and returns.

| | |
|---|---|
| government management, using current and historical financial data without expecting improvements in quality or increases in supply.<br>2. Federal Public Sector Case: An analysis of the project's costs and revenues if it were managed by the federal public sector, and the extent to which it achieves coverage and/or general impact when implemented as a federal PPP project. | This analysis includes considering the availability of financing under the current economic and market conditions, with the aim of establishing a financially sustainable partnership that achieves mutual benefits for the federal public and private sectors, while achieving the project's objectives. |

**Public-Private Partnership (PPP) Case**

1. Government: An analysis of the financial implications for the government in the federal PPP model, taking into account government costs and revenues associated with the project. This case is used to assess value for money.
2. Private Sector Partner: This item aims to conduct an in-depth financial analysis of the private sector partner within the framework of the proposed federal PPP project. The analysis aims to provide a comprehensive overview of the project's financial impact on the private partner, including a breakdown of expected costs and revenues. This aspect of the analysis enhances the government entity's ability to understand the overall financial viability of the project and assesses the private partner's ability to meet its financial obligations. It also ensures alignment between the partnership and the financial goals and aspirations of the private partner, which often include achieving a high profit margin and an appropriate internal rate of return.

After the project team completes the four financial analyses (please see the following pages for details), it will be able to estimate the value for money of the project.

To do this, the project team will:

• Determine the cash flows for the federal public sector case over the contract period.
• Determine the government's cash flows in the case of implementing the partnership project throughout the contract period.
• Apply a discount to the cash flows based on the Weighted Average Cost of Capital (WACC) as the discount rate. As shown in the diagram below, it is noted that the WACC differs between the private sector and the government.

The team should also prepare a sensitivity analysis based on the private partner's profit margin, internal rate of return, and/or value for money for the government as specified variables.

The impact of risks, as explained in section (G) below, should also be taken into account when calculating cash flows and value for money.

Value for Money = Net Present Value (PPP - Government) - Net Present Value (Public Sector Comparator)

**Private Sector**

Weighted Average Cost of Capital (WACC - Private Sector) = (Cost of Equity * % Equity) + (Cost of Debt * % Debt)

**Government**

Weighted Average Cost of Capital (WACC - Government) = Cost of Debt

Due to the inability to determine the government's capital structure, the WACC for the government should be considered equal to the cost of borrowing.

## Method for Preparing the Four Financial Analyses Described Above

To prepare the four financial analyses, the project team must follow the steps below and include appropriate inputs and assumptions:

**i. Including Inputs and Assumptions**

**1) For the Base Case**
The project team collects all data related to the service (if any), including:

- Current and past costs.
- Current and past demand.
- Current and past revenues.

**2) For the Federal Public Sector Case**
The project team's duties are as follows:
**For brownfield projects:**

- Set demand and quality targets (equal to the objectives of federal PPP projects).
- Use the same input ratios used in the base analysis.

**For greenfield projects:**

- Utilize data and results from previous similar projects by the concerned entity or in another country or countries.

**iii. Revenue Analysis**

**1) For the Base Case**
Inputs should be used to analyze past and current revenues, including total revenue generated by the current service, with a focus on as much detail as possible.

**2) For the Federal Public Sector Case**
Estimate total revenue from inputs, including estimating project revenue under government management.

**3) For the PPP Case for the Government**
Estimate expected revenues from inputs and assumptions, including total revenue in the case of a partnership with the private sector.

**4) For the PPP Case for the Private Sector**
Typically, the private partner has two main sources of revenue, depending on the federal PPP model:

- Payments from the government to the partner

for developing the asset or providing the service.
- Beneficiary payments, which the partner may receive directly from beneficiaries depending on the type of project.

**iv. Setting Growth Assumptions**

**1, 2, 3, 4 for all four cases**
To forecast inputs and assumptions throughout the contract period, growth assumptions must be set, especially regarding the following:

- The country's inflation rate: usually used to measure most expected costs.
- Historical demand growth rate: usually used to measure inputs related to the target outputs.

The project team can identify other types of growth, if necessary.

**3) For the PPP Case for the Private Sector and Government**
Inputs are primarily based on assumptions based on two main factors:

- The target demand/ outcome for the project service.
- Comparable projects and expert inputs.

**ii. Cost Analysis**

**1, 2, 3, 4 for all four cases**
The costs derived from the inputs should cover all costs that will be incurred, including the following:

- Capital expenditures (land, property, equipment, and other capitalized costs)
- Operating expenses (costs related to employees, utilities, rent, consumables, maintenance, overhead, and any other relevant operating costs)
- Other costs (including taxes, depreciation, and financing).

Most importantly, the government may have to pay amounts to the private sector in addition to the costs in the case of a federal PPP.

### v. Preparing Financial Statements

#### 1, 2, 3, 4 for all four cases

Construct these financial statements for the analysis:

- Income Statement: Used to determine revenues and costs (after deducting net income) over the target time period.
- Cash Flow Statement: Includes any type of cash adjustments used to determine the free cash flow required for the final analysis (Net Present Value calculations).

## Source of Funding

The private sector conducts an in-depth assessment of the available financing options for federal PPP projects, given the need for significant capital. In the case of greenfield projects that do not generate cash flows during the development phase, it is unusual for capital expenditures to be fully financed through equity provided by the private sector partners.

The financing methods for federal PPP projects vary between traditional and non-traditional options as shown in the diagram below. This manual only addresses traditional financing methods.

| Traditional | Non-Traditional |
|---|---|
| Equity | Mezzanine Debt |
| Debt | Capital Market Loans |
| Grant | Derivative Products |

## 1. Equity

The private partner is responsible for structuring and providing equity contributions to the federal PPP project, with contributions typically sourced from the members of the project's participating consortium. Other parties such as contractors, development organizations, or even public entities may also contribute to the equity.

In the event of project losses, equity investors are the first to bear the losses, and lenders are only affected if the equity is lost and insufficient to cover the project's liabilities. Due to the high risks associated with investing in a federal PPP project, equity investors are granted higher returns on their investments compared to creditors.

The following diagram shows the usual sources of equity financing.

**Typical Sources of Equity Capital**

| | |
|---|---|
| Owners'/Stakeholders' Contribution | Public Offerings / Equity Funds |
| Retained Earnings | In-kind Contribution |

Equity investors are interested in the project's Internal Rate of Return (IRR), the Equity IRR, and the payback period.

## 2. Debt

Within the framework of federal PPP projects, the burden of arranging debt financing falls on the private partner. This requires raising funds from a variety of sources, including financial institutions such as banks, development organizations, government entities, and through the issuance of bonds. The majority of this debt is provided in the form of "senior debt," from primary lenders who demand guarantees that the project will generate sufficient cash flows to repay the debt. These lenders require preference in repayment and access to project assets compared to other creditors.

**Typical Sources of Debt**

| | |
|---|---|
| Development Banks (e.g., Economic Development Board or World Bank) | Commercial Banks |
| Bond Issuance | Bilateral Funds |

### 3. Grants

The government may provide financial (or sometimes non-financial) support through grants to development projects of social or economic benefit that might lack financial viability without this support. These grants aim to support the project's financial viability by financing initial capital expenditures, which reduces the overall financial risk of the project, thereby increasing its attractiveness to investors and enhancing the likelihood of its successful completion. Additionally, these grants work to stimulate economic growth and development by supporting projects that have the potential to create jobs, improve infrastructure, and promote innovation.

## E. Contracting Model

| Owner | Completion Period | Supporting Tools | References | Review Period | Supporting Tool | Approving Authority |
|---|---|---|---|---|---|---|
| Project Team | 2-4 months | None | - Concerned Federal Entity<br>- The Ministry | At the end, along with all studies | Checklist - RO2 Feasibility Study Verification | At the end, along with all studies |

### Summary and Objectives

The contracting model defines the scope of the project and the obligations of the public and private parties. The contracting model is extremely important as it forms the basis for the final agreement. The project team must prepare the contracting model, which may be prepared with the participation of specialized advisors between the concerned federal entity and the private partner. Therefore, it must cover at least the following sections, with the possibility of including additional sections if needed:

1. **Scope of the Project and Contract, including the contract duration and implementation plan and mechanism**

   The duration and scope of the contract in a federal PPP project depend on the type of partnership used. It should be chosen at the latest by the end of the preliminary feasibility stage. The contracting model should also clearly define the specific objectives and outcomes that the private partner has been contracted to complete.

Implementing a federal PPP project can often take several years and go through multiple bidding stages. Therefore, the contracting model must include a detailed implementation plan that specifies the steps and specific timelines for each stage. This may include launching the project in different phases, such as design, construction, and operation of the infrastructure or service.

It is important to note that the project team must define the content of each implementation phase, such as the start date of implementation, which ensures that all stakeholders are aware of the project's progress and implementation method. This level of detail in the contracting model helps to ensure that the project is implemented effectively and efficiently, and that the private partner fulfills its obligations under the contract.

2. **Governance - Financial, administrative, and technical supervision and monitoring of the contract**

Governance in a federal PPP project refers to the mechanisms and processes put in place to ensure that the contract between the federal public and private partners is implemented effectively and efficiently. This includes monitoring and supervising the financial, administrative, and technical aspects of the project.

Financial governance involves monitoring and supervising the financial performance of the private partner, including revenues and expenditures. This may include regular financial reports and audits, and ensures that the private partner meets its financial obligations under the contract.

Administrative governance involves monitoring and supervising administrative aspects such as procurement, human resources, and risk management. This may include ensuring that the private partner complies with its obligations regarding laws and regulations, and that it has adequate systems and processes to manage the project effectively.

Technical governance involves monitoring and supervising the technical aspects, such as design, construction, and operation. This may include ensuring that the private partner meets its technical obligations under the contract and delivers the infrastructure or service according to the required standards. Technical governance may also include regular inspections and audits to ensure the private partner's compliance with the contract.

3. **Key Performance Indicators (KPIs) to evaluate the private partner's performance**

**In-depth Explanation of Key Performance Indicators (KPIs) (Example)**

## Setting Key Performance Indicators (KPIs)

Defining KPIs involves the following:

1. Identifying the strategic objectives the project aims to achieve.
2. Assigning one or more KPIs for each strategic objective.
3. Specifying the details of each indicator (such as reporting frequency, unit of measurement, evaluation methodology and mechanism, data source, and importance of the indicator).

## Partner Evaluation

A score is determined for each KPI based on the company's performance compared to the expected performance (an example of a service expected to take two hours is shown below).

| | **Poor** | **Good** | **Excellent** |
|---|---|---|---|
| **Points** | 1 | 3 | 5 |
| **Performance** | More than 3 hours | 2 - 3 hours | Less than 2 hours |

## Applying Bonuses / Penalties

1. After determining the points for each KPI, all individual indicators are summed up to reach the overall score.
2. Penalties may be imposed or bonuses granted to the private sector partner based on the overall evaluation result and its success in achieving the target score specified in the contracting model.
3. Penalties may also be imposed or bonuses granted based on individual KPIs of high importance.

1. **Ownership of the project and its assets, and procedures for handover and change of ownership**

Ownership of the project and its assets under a federal PPP is typically a shared responsibility between the federal public and private sectors, where the private partner is responsible for design, construction, financing, and operation, while the federal public sector retains ownership of the assets and sets the general objectives and standards for the project.

Handover and change of ownership procedures in federal PPP projects vary based on the project type and country, but generally follow these steps:

- ◦ Construction: The private partner designs and builds the project according to the contract terms.
- ◦ Operation: After construction is complete, the project is operated by the private partner, who also handles maintenance tasks.
- ◦ Operation Phase: During this phase, the private partner continues to operate and maintain for the period agreed upon in the partnership contract.
- ◦ Handover: At the end of the operation phase, the project is handed over from the private partner to the federal public sector.

- ◦ Transfer of Ownership: After handover, ownership of the assets is transferred to the federal public sector, which then takes over operation and maintenance.

It is crucial to specify the precise details of the handover process and organize them in the contract, detailing the procedures and completion stages to ensure a smooth transition, as well as conducting the ownership transfer in a way that preserves the assets in good condition and meets the future needs of the federal public sector.

2. **Financial rules and obligations between the parties, including the revenue and payment mechanism (if any)**

The federal PPP agreement typically specifies the financial rules and obligations between the partners, including:

- ◦ Revenue and Payment Mechanism: This may include the payment structure related to the private partner, such as fixed fees, performance-based payments, or a combination of both. It may also include details of revenue sharing between the parties.
- ◦ Financing: The partnership agreement defines the financing arrangements for the project, and these arrangements include the sources of funding and the responsibilities of each party towards financing.

3. **Rules and procedures related to contract suspension, amendment, or termination**

An overview of the following rules should be included in the contracting model:

- ◦ Suspension: Specifying the circumstances under which the contract can be suspended, such as non-compliance with terms or in cases of force majeure where continuing the project is impossible.
- ◦ Amendment: Specifying how amendments can be made to the contract to meet changing circumstances or to improve project performance.
- ◦ Termination: Specifying the reasons for which the contract can be terminated, such as a material breach of obligations or the project's economic non-viability.

- Notification: Specifying the required notice period before suspending, amending, or terminating the contract, as well as the methods of providing notice.
- Justification: Specifying the reasons on which a request for suspension, amendment, or termination can be based, and the procedures required to review these requests.
- Compensation: Specifying the financial compensation that either party can claim in the event of suspension, amendment, or termination of the contract, and the process for claiming such compensation.

### F. Social, Economic, and Environmental Analysis

| Owner | Completion Period | Supporting Tools | References | Review Period | Supporting Tool | Approving Authority |
|---|---|---|---|---|---|---|
| Project Team | 2-4 months | None | - Concerned Federal Entity<br>- The Ministry | At the end, along with all studies | Checklist - RO2 Feasibility Study Verification | At the end, along with all studies |

### Social Impact Analysis

#### Steps to be Followed:

The process of social impact analysis is legislatively regulated in many countries as part of the evaluation procedures for infrastructure projects. The project team must follow the applicable legislative rules in the United Arab Emirates, and the rules typically include the following:

1. Identifying the people who live or work within the

#### Summary and Objectives

Social impact analysis focuses on measuring and understanding the impacts that a project may have on local communities within its area of influence. This analysis aims to mitigate any potential negative impacts by taking these aspects into account during the decision-making process. Social impact analysis is important for reducing project-related risks by project's area of influence. This includes mapping communities and analyzing their social, economic, and cultural relationships with the project's target area, in addition to identifying relevant social issues.

minimizing potential opposition and increasing social support, as well as providing a broader understanding of the expected costs and benefits of the project.

### Chapter Four: Management and Implementation of the Partnership Project

1. Preparing a social baseline that clarifies the current situation before starting the project implementation.
2. Assessing the potential impacts of the project on the specified communities within the area of influence, by comparing the situation with and without the project.
3. Defining strategies to mitigate the negative impacts identified in the previous steps, and preparing a social action plan that includes recommendations and a preliminary estimate of costs and implementation timeline.

Below are some examples of potential social impacts to consider:

1. Displacement and resettlement of populations and loss of livelihoods.
2. Changes in demographic status and social cohesion.
3. Loss of cultural heritage or sacred places.
4. Blocking access to resources and services.
5. Impact on community health and well-being.
6. Changes in the economic conditions of the community.
7. Impact on community safety and security.
8. Changes in community opinions about the project and its developing companies.

## Economic Impact Analysis

The economic analysis determines the extent of the project's impact on the economy and typically includes the following:

— Direct Impacts: The direct and immediate effects of the project on the economy, such as reducing time, increasing the speed of service delivery, creating jobs, increasing economic activity, and improving infrastructure.
— Indirect Impacts: The secondary or indirect effects of the project on the economy, such as on suppliers and other local businesses.
— Induced Impacts: The economic effects resulting from the increased income and spending of project employees and other direct beneficiaries.
— Fiscal Impacts: The impact on public finances, including government revenues and expenditures, such as the tax revenues it will generate and the costs associated with the project.
— Quantitative Analysis (GDP Impact Calculation): Please see the example below.

## GDP Impact Calculation – Example of a Federal Public-Private Partnership Contract for a Service

**Total GDP Impact**

**+**

**Indirect GDP Impact**

Direct GDP Impact X Indirect GDP Multiplier for Public Administration

**Direct GDP Impact**

**+**

**Corporate Profit Expenses**

Annual EBITDA X Corporate

**Wage Expenses**

Annual Employee Income X Wage

| | | |
|---|---|---|
| | Localization Factor | Localization Factor |

## Environmental Impact Analysis

### Summary and Objectives

Federal Public-Private Partnership projects may result in positive or negative environmental impacts, arising from the construction and operation phases. These impacts may extend beyond the immediate project area and affect communities and environments in the affected regions. All these challenges, in addition to the requirements related to official approvals from environmental authorities, may cause delays in project implementation. On the other hand, environmental precautionary measures imposed on the project by regulatory bodies may affect project costs and return on investment.

Therefore, a comprehensive assessment of environmental impacts must be conducted during the project evaluation phase to adequately identify and address these issues and ensure their inclusion in the project decision analysis, while predicting, avoiding, or minimizing negative impacts.

Furthermore, some financial institutions adopt their own environmental standards that they impose on their clients, which may contain additional requirements. Therefore, it is necessary to understand these environmental standards and integrate them into the assessment process to ensure the project meets the necessary requirements of the funding bodies.

### Steps to Follow

The environmental feasibility analysis is a critical step in the framework of Federal Public-Private Partnership projects, aiming to assess whether any part of the project could pose a challenge in obtaining environmental approvals. To reach a conclusive answer on this point, four main steps should be followed:

1. Identifying all legal and regulatory aspects related to environmental approvals. This process includes analyzing the environmental

regulatory framework for approvals, identifying the responsible body for issuing these approvals, and understanding the required procedures, including the levels of approval needed.

2. Conducting a thorough environmental analysis to assess, describe, and quantify the expected environmental impacts of the project. This is usually referred to as an Environmental Impact Assessment (EIA) and should be in the form of a formal report that accurately reviews the project's environmental impact, including a comprehensive analysis of its effects on the target area and a description of the affected physical and biological components.
3. Developing a strategy to mitigate some of the specific impacts of the project, focusing on the most significant environmental impacts and identifying how to reduce them, such as changes in infrastructure design or output specifications and measures to compensate for unavoidable environmental consequences.
4. Obtaining environmental permits where possible and the final approvals necessary for infrastructure construction, keeping in mind that it may not always be possible to obtain all environmental approvals during the assessment phase.

### G. Risk Analysis

| Owner | Completion Duration | Supporting Tools | Reviewers | Review Duration | Supporting Tool | Approver |
|---|---|---|---|---|---|---|
| Project Team | 2-4 Months | None | - Concerned Federal Entity<br>- The Ministry | At the end, along with all studies | Checklist - RO2 Feasibility Study Verification | At the end, along with all studies |

### Risk Management Methods

The responsibility for bearing and managing risks in Federal Public-Private Partnership projects lies with all parties, as each party manages the risks it has the best ability and expertise to handle. Therefore, the following steps should be followed to enhance the distribution of risk-related responsibilities:

1. **Risk Identification**
   The project team must identify all potential risks that may arise during the project period. This includes identifying all types of risks that stakeholders, including the concerned federal entity, the private sector, and the Ministry, may face.
   Table 7 shows some common risks that may arise during Federal Public-Private Partnership projects, but please note that the uniqueness of each project exposes it to different types of risks.
2. **Risk Assessment**
3. **Risk Mitigation and Allocation to the Responsible Party**

### Table (7): Common Risks in Federal Public-Private Partnership Projects

| Examples of Risks | | |
|---|---|---|
| Financing | Recruitment | Inflation |
| Cultural Change | Compliance | Demand Fluctuation |
| Construction | Bankruptcy | Operating Costs |
| Change in Law | Data Privacy | Political Risks |
| Environmental Risks | Social Risks | Force Majeure |

1. **Risk Assessment**
   The project team must assess the potential impacts of the risks, which usually depends on available data and expert opinions. The project team should estimate the magnitude or impact of the risks and their likelihood of occurrence when assessing each case.
2. **Mitigation and Allocation of Identified Risks**
   Some risks may require one of three mitigation strategies: avoiding the risk entirely, transferring the risk from one party to another, or monitoring the risk and acting when necessary. The attached

appendix provides an example of major risks associated with Federal Public-Private Partnership projects and their mitigation measures.

**Table (8): Examples of Risk Assessment Method**

| Likelihood | | Impact | | For other potential impacts resulting from the nature of the project, specifically its effect on the number of inspections required in the case of fire safety measures, the necessary studies and analyses must be conducted. |
|---|---|---|---|---|
| **Rating** | **Occurrence** | **Rating** | **Financial** | |
| Very Likely | Very likely to occur, with a probability exceeding 60%, and has occurred frequently in similar circumstances | Very High | Direct loss exceeding AED 100 million | |
| Likely | High probability of occurrence, between 30-60%, under normal project conditions | High | Direct loss of AED 10-100 million | |

| Likelihood | | Impact | | For other potential impacts resulting from the nature of the project, specifically its effect on the number of inspections required in the case of fire safety measures, the necessary studies and analyses must be conducted. |
|---|---|---|---|---|
| **Rating** | **Occurrence** | **Rating** | **Financial** | |
| Possible | Possible to occur, with a probability between 10-30%, and similar individual incidents have been recorded | Medium | Direct loss of AED 1-10 million | |
| Unlikely | Likely to occur only in exceptional circumstances, with a probability between 1-10%, but the possibility remains low | Low | Direct loss of AED 0.1-1 million | |
| Very Unlikely | Occurrence is unexpected (>1%), and no similar incidents | Very Low | Direct loss of less than AED 0.1 million | |

| Likelihood | | Impact | | For other potential impacts resulting from the nature of the project, specifically its effect on the number of inspections required in the case of fire safety measures, the necessary studies and analyses must be conducted. |
|---|---|---|---|---|
| Rating | Occurrence | Rating | Financial | |
| | have been recorded | | | |

## H. Tendering Plan

| Owner | Completion Duration | Supporting Tools | Reviewers | Review Duration | Supporting Tool | Approver |
|---|---|---|---|---|---|---|
| Project Team | 2 weeks | None | - Concerned Federal Entity<br>- The Ministry | At the end, along with all studies | Checklist - RO2 Feasibility Study Verification | At the end, along with all studies |

The tendering plan defines the tendering process and details each step of the process, and it should include the following sections:

## Preliminary Section

1. Summary of the Federal Public-Private Partnership project, including the need for the project, specific objectives and how to achieve them, technical elements, contracting model, and details of risk allocation.
2. Summary of the expected market for the Federal Public-Private Partnership project, specifying whether the target market is local or international, and outlining the advertising and marketing program and any other steps to be implemented according to the approved tendering plan to attract investors and engage relevant stakeholders.

## Bid Preparation:

1. Preparations necessary for tendering, including identifying the number of staff and their roles, the organizational structure, and any external consulting services.
2. Steps of the tendering process and its timeline, including the number of requests for clarification and a schedule of activities and responsibilities at each stage.
3. Detailed procedures and mechanisms for tendering, the tendering method, its reasons, and budget.
4. Provisions for communication with the private sector, qualified investors, or bidders to enable them to submit their bids.

## Other Sections

1. Details of the approved evaluation procedures and criteria.
2. Tendering risks and proposed measures to address them.
3. The approved method for submitting comments and amendments to the tender documents and the permissible suggestions for bidders regarding the possibility of submitting alternative technical proposals that would improve the Federal Public-Private Partnership project.
4. The expected budget for the tendering procedures.
5. Draft tender documents (including notices, special and general provisions for the tendering process, a draft of the partnership project contract, and any other documents attached to the tender documents).
6. A statement on whether the tendering plan and tender documents contain any changes to the data and information provided in the

business study documents or the project approval decision, with an explanation of the procedures and measures taken regarding those changes.

## I. Final Analysis and Submission

| Owner | Completion Duration | Supporting Tools | Reviewers | Review Duration | Supporting Tool | Approver |
|---|---|---|---|---|---|---|
| Project Team | 1 week | Template - PO2 Feasibility Study | - Concerned Federal Entity<br>- The Ministry | 1 month | Checklist - RO2 Feasibility Study Verification | General Budget Committee Council of Ministers |

## Steps to Follow

1. The project team compiles all the detailed analyses mentioned in this section into a single document and shares it with the concerned federal entity, attaching the proposed template documents.
2. The concerned federal entity reviews the study and may request any clarifications or amendments if necessary. It then submits it to the Ministry.
3. The Ministry reviews the study based on approved procedures, sharing comments and suggestions with the concerned federal entity, if any.
4. If there is a budget impact, the Ministry must first present the study to the General Budget Committee for preliminary approval, then to the Council of Ministers for the final decision.
5. If there is no budget impact, the Ministry may share the study directly with the Council of Ministers for the final decision.

The final document must include the following:

— Overview of the project and strategic objectives
— Current status of the asset or service
— Procurement alternatives, including value for money and the pros and cons of each

— Applicable Federal Public-Private Partnership models and the reasons for choosing one
— Technical analysis
— Legal analysis
— Financial analysis
— Social, economic, and environmental impact analysis
— Potential risks of the project
— Tendering plan

**As part of the final submission, the project team must fill out and submit the provided forms.**

## IV. Tendering and Partner Selection

The process outlined below explains the comprehensive tendering procedure to be followed for all Federal Public-Private Partnership tenders, in accordance with the requirements of the law. This process aligns with the "two-stage approach" recommended for all projects. However, two alternative approaches can be adopted:

1. **Expedited Procedure:** According to the law, an expedited procedure, which consists of only one stage without the need for qualification procedures, can be used. This approach is permitted in cases stipulated by the law in Article (15), Paragraph (1-b).
   When the concerned federal entity chooses the expedited procedure, it must obtain official approval from the Ministry, providing documents or justifying reasons for the urgent need or the absence of potential partners. The Ministry must issue an official letter within 20 days of receiving the request, after which the procurement process can begin from Step 8 as described below.
2. **Direct Appointment Method:** A direct appointment method can also be used, where the concerned federal entity negotiates directly with one or more potential partners. This method is used only in cases stipulated in Article (15), Paragraph (1-c) of the law. In this case, the concerned federal entity begins direct negotiations with the potential private partner, and the process starts from Step 10 as described.
   When the concerned federal entity chooses the expedited procedure

or direct appointment, a formal request should be submitted to the Ministry, accompanied by the necessary documents and clarifications that support the request, in line with the conditions outlined in Article (15), Clause (1-b) or (1-c) of the law. The Ministry is obligated to issue an official response within 20 days of receiving the request, after which the entity is allowed to begin the procurement process.

**-- The flowchart has been simplified and is presented as a series of steps --**

1. **Prepare Tendering Plan:** Prepare a detailed tendering plan (including, for example, project milestones).
2. **Expression of Interest (EOI):** Companies express their interest.
3. **Draft and Share Invitation to Tender Document:** The project team drafts the document for the concerned federal entity to review, market, and share.
4. **Prequalification (Request for Qualification - RFQ):** Submission of qualification documents.
5. **Draft and Send Request for Proposals (RFP):** The project team drafts the RFP for the concerned federal entity to share with interested parties to evaluate and select qualified candidates.
6. **Request for Proposals, Review and Selection:**
    - **Evaluation:** Evaluate proposals and recommend the top candidates.
    - **Selection:** The concerned federal entity and the Ministry review the documents of the qualified bidders and approve them or request additional data or evaluation.
    - **Send RFP to Shortlisted Parties:** The project team drafts the RFP for the concerned federal entity to share with interested parties to evaluate and select the best candidate.
    - **Submission of Financial and Technical Proposal.**
    - **Evaluation:** Evaluate proposals and recommend the top candidates.
    - **Selection:** The concerned federal entity and the Ministry review the documents of the best bidders and approve them or request additional data/evaluation.

7. **Awarding the Partnership Project:**
    - **Communication with the potential private partner, final negotiations, and contracting.**
    - **Signing the contract with the selected private partner. (End)**

## A. Invitation to Tender and Expression of Interest

| Owner | Completion Duration | Supporting Tools | Reviewers | Review Duration | Supporting Tool | Approver |
| --- | --- | --- | --- | --- | --- | --- |
| Project Team | 1 week | None | Concerned Federal Entity | 1 week | None | None |

### Overview

The invitation to tender for a Federal Public-Private Partnership project is a marketing document issued by the concerned federal entity to invite potential private sector partners to express their interest in a specific partnership project with the government. This invitation opens the door for competition and encourages potential partners to participate, and provides an opportunity to discuss the project with potential bidders, get their initial feedback, and understand their concerns about participating in the procurement process before they submit their proposals.

> **The Expression of Interest stage does not result in the qualification or disqualification of any potential bidder.**

### Steps to Follow

1. The project team prepares the Invitation to Tender document, which includes the following:
    i. Project summary and expected timeline.
    ii. Summary of objectives, scope of work, and desired outcomes.
    iii. Instructions on the nature of the work, submission requirements, participation fees (if any), submission mechanism, and submission deadline.

    iv. Information on acceptable formats for submitting the Expression of Interest.
2. The concerned federal entity supervises the marketing campaign, which includes sharing the Invitation to Tender document with the public and responding to inquiries from potential private sector partners.
3. Potential private sector partners express their interest before the published deadline.
   The Invitation to Tender document should be widely marketed to reach as many potential private sector partners as possible, to ensure transparency and fair competition. This includes publishing on all relevant websites and social media platforms.

## B. Prequalification

| Owner | Completion Duration | Supporting Tools | Reviewers | Review Duration | Supporting Tool | Approver |
|---|---|---|---|---|---|---|
| Project Team | 2 weeks | Template - RQ1 Request for Qualification | Concerned Federal Entity | 2 weeks | Template - RQ1 Request for Qualification Guidelines | Concerned Federal Entity |

Interested parties are given two weeks to submit a Statement of Qualifications from the date of delivery of the Request for Qualification.

Using this guide, a Request for Proposals template has been issued that details how to prepare the Request for Qualification, which includes and specifies the bidding rules such as selection criteria and expectations from bidders.

## Overview

The prequalification phase begins with the concerned federal entity issuing a Request for Qualification (RFQ) to interested private sector partners, who in turn submit a Statement of Qualifications (SOQ). This stage is essential in the Federal Public-Private Partnership process for the following reasons:

— To ensure that private sector partners have the necessary technical and financial qualifications to implement the project efficiently and meet their contractual obligations.
— To save time and avoid prolonging the final bidding stage by excluding unqualified parties early in the tendering process.
— To qualify a limited number of participants with high technical expertise (after excluding unqualified parties), which will also help reduce the costs and effort required in the evaluation stage.

### Steps to Follow

1. The project team prepares the Request for Qualification according to the template attached to this guide.
2. The concerned federal entity reviews the Request for Qualification and shares it with potential private sector partners who have expressed interest.
3. Potential private sector partners submit a Statement of Qualifications, responding in detail to the points mentioned in the Request for Qualification.
4. The project team studies and evaluates the Statements of Qualifications according to the specified criteria.
5. The project team submits its recommendation to the concerned federal entity and the Ministry, including the best candidates for approval.
6. The project team communicates with the bidders to inform them of the qualification outcome.

### Related Documents

1. **Request for Qualification (RFQ) (from the government to bidders)**
   A tender document issued to potential bidders, requesting detailed information about their qualifications, capabilities, and the reasons for their interest in a project.

2. **Statement of Qualifications (SOQ) (from bidders to the government)**
   A written statement sent to a federal entity in response to a Request for Qualification.

Discussions between potential private sector partners and the concerned federal entity can take place throughout the process, at the request of either party. The contact number of a member of the federal entity's team will be included in the RFQ to enable this line of communication.

## C. Request for Proposals (RFP)

| Owner | Completion Duration | Supporting Tools | Reviewers | Review Duration | Supporting Tool | Approver |
|---|---|---|---|---|---|---|
| Project Team | 1-6 Months | Template - RPO Project Data and Procedures | - Concerned Federal Entity<br>- The Ministry | 1 month | Template - RPO Project Data and Procedures Guidelines | General Budget Committee Council of Ministers |

Interested parties are given a period of one to six months to submit their proposals after the RFP is issued. The duration is determined by the concerned federal entity in the tendering plan, taking into account the complexity of the project.

Using this guide, a Request for Proposals template has been issued that details how to prepare the Request for Qualification, which includes and specifies the bidding rules such as selection criteria and expectations from bidders.

### Overview

The Request for Proposals (RFP) is sent to qualified bidders to gather information that enables the concerned federal entity to evaluate the proposals and identify the most suitable bidders to implement the project.

Discussions between potential private sector partners and the concerned federal entity can take place throughout the process at the request of either party. The contact information of a member of the project team from the federal entity is included in the RFP to facilitate this communication.

If the project team cannot agree with the best bidder based on the proposal evaluation outcome on the project terms and project agreement, the project team may halt negotiations with the best bidder and proceed to negotiate with the next bidders in rank according to the proposal evaluation outcome.

Partnership project proposals are submitted by a single private sector partner or by a consortium of several private sector partners. If the proposal is submitted by a consortium, it must be submitted in the name of the entire consortium, and its members are prohibited from submitting proposals individually or as part of another consortium, or submitting a proposal from a company where a consortium member holds a majority or controls its management, unless the tender conditions state otherwise or with the approval of the concerned federal entity.

The concerned federal entity, in coordination with the Ministry, reserves the right to cancel or amend the tendering procedures or the project at any stage before the contract award, provided a clear explanation of the reasons is provided to all applicants.

Bidders are not entitled to claim compensation in the event of cancellation or modification of the tender or project.

To ensure transparency and fair competition, the evaluation criteria must be clearly stated in the RFP, and these criteria must be objective, measurable, and directly related to the project requirements.

## Steps to Follow

1. The project team prepares a Request for Proposals template based on the criteria specified in the guide.
2. The concerned federal entity reviews the RFP and shares it with potential private sector partners.

3. Potential private sector partners prepare their technical and financial proposals based on the criteria outlined in the RFP and submit them to the concerned federal entity.
4. The project team reviews and evaluates the proposals according to the RFP criteria and submits its recommendation for the best bidder to the concerned federal entity.
5. The concerned federal entity prepares a summary of the best proposals with the selected bidder and submits it to the Ministry for review.
6. If there is a budget impact, the Ministry first sends the summary to the General Budget Committee for preliminary approval, then to the Council of Ministers for the final decision.
7. If there is no budget impact, the Ministry may share the summary directly with the Council of Ministers for the final decision.

The concerned federal entity has the right, at its discretion and after completing negotiations with the bidders, to request the submission of a Best and Final Offer (BAFO). This will be done according to the following procedures:

1. **Formal Request for Best and Final Offer:** The project team should send a formal invitation to the selected candidates to submit their best and final offer, clearly stating the deadline for this submission and explaining any changes or additional information required from previous bids.
2. **Define BAFO Criteria:** The project team must clearly define the evaluation criteria for the best and final offer, ensuring consistency with the requirements specified in the initial tender.
3. **Consistency with Core Terms:** The request for the best and final offer should not change the essential terms of the original tender, maintaining consistency of terms and fairness in the submission process.
4. **Final Opportunity to Amend Bids:** The project team must clarify that the request for the best and final offer represents the last opportunity for bidders to amend their bids and that there will be no negotiations after this stage.
5. **Maintain Strict Confidentiality:** The project team must ensure the complete confidentiality of the best and final offers to prevent the

disclosure of any offer's content to competitors, thereby ensuring fair competition.
6. After receiving and reviewing the best and final offer: The procedures start from step five.

### Related Documents

1. **Request for Proposals (RFP) (from the government to bidders)**
   A tender document issued by the concerned federal entity to invite bidders to submit their proposals for a Federal Public-Private Partnership project. It aims to enable the federal entity to collect detailed information from qualified applicants to help select the most technically and financially suitable proposal for the project.
2. **Proposal (from bidders to the government)**
   A document submitted by bidders to the concerned federal entity in response to an RFP for a Federal Public-Private Partnership project. (The RFP usually includes a template for the proposal format).

## Responsibilities of the Project Team and the Concerned Federal Entity in Review and Selection

## 1. Opening of Bids

— Receive all technical and financial proposals.
— Ensure all proposals and related documents are received, recording the names and number of documents received, and the date and time of receipt.
— Invite bidders to attend the bid opening session if the approved tendering plan and RFP specify this procedure.

## 2. Evaluation of Technical Proposals

— Prepare a checklist to verify the documents, data, and other information that must be included in the technical proposals based on the RFP.
— Receive and review the technical proposals to ensure their completeness and compliance with the RFP requirements.
— Prepare a report detailing the proposals that comply with the requirements and conditions and those that do not (clarifying the aspects of non-compliance and shortcomings after reviewing the approved list of requirements and conditions for the project).

## 3. Evaluation of Financial Proposals

— Comprehensive evaluation of the financial proposals.
— Detailed analysis of the strengths and weaknesses in the financial proposals according to the specified evaluation criteria, and identify the required clarifications.
— Evaluate the financial proposals and determine which proposals pass the evaluation, taking into account any additional non-financial evaluation criteria stipulated in the tendering plan and RFP.
— Prepare the evaluation and ranking report.
— Clarify the information included in the proposals based on the approved mechanism and timeframe.
— Update the evaluation report, and identify any changes that occur in the ranking of the proposals.

At the discretion of the project team, specialized committees may be formed to assist in the evaluation process when needed, such as a financial proposal evaluation committee, a technical proposal evaluation committee, or a bid opening committee.

## D. Awarding the Federal Public-Private Partnership Project

| Owner | Completion Duration | Supporting Tools | Reviewers | Review Duration | Supporting Tool | Approver |
|---|---|---|---|---|---|---|
| Project Team | 1 month | Template - PA1 Project Agreement | - Concerned Federal Entity<br>- The Ministry | 2 weeks | Template - PA1 Project Agreement | General Budget Committee Council of Ministers |

After the contract is awarded and before financial close, the private sector partner or partners establish the Project Company (a Special Purpose Vehicle - SPV).

### Steps to Follow

The project team drafts the Federal Public-Private Partnership project agreement and submits it to the concerned federal entity and the Ministry for review, before awarding it to the selected bidder. The project team informs all bidders of the award decision, and the preferred partner is announced 20 days after the completion of the proposal review and evaluation.

### Some Provisions of the Project Agreement (Please refer to the Project Agreement template issued with this guide for detailed provisions):

The agreement includes several clauses such as technical and implementation requirements, environmental and social requirements, performance guarantees, insurance requirements, implementation schedule, reporting obligations and oversight provisions, financial structure provisions and regulations of the contract, payment mechanisms, definition and provisions of force majeure, dispute resolution and termination provisions, compensation upon termination, exemptions from termination, extension, renewal, and amendment, and project default.

All these rules and provisions, such as those governing change of control, unforeseen circumstances, contract termination, asset mortgage arrangements, etc., vary from one project to another and must be detailed accurately in the project agreement and discussed and agreed upon clearly between the concerned parties.

The concerned federal entity must take the following steps when negotiation with the partner is needed:

1. Form a negotiation team that includes members of the project team and additional consultants when necessary. The members must have relevant expertise in the areas under negotiation and in the details of the Federal Public-Private Partnership project.
2. Request the best bidder, and standby bidders when necessary, to increase the guarantees to cover what is agreed upon during negotiations.
3. Determine the place and time for the final negotiations and prepare a precise schedule for them, taking into account the requirements related to bid guarantees.
4. Communicate with the best bidder to discuss the details and requirements related to the final negotiations.
5. Draft and document the negotiation strategy, defining the importance of each negotiation point as high, medium, or low, focusing on legal aspects and formulating the negotiation team's position on each point.
6. Record the details of the negotiations with the bidder and the final outcomes for each negotiation point.
7. Prepare minutes including the negotiations and what was agreed upon and send it to the bidder for signature.

## Grievances on Tendering Procedures

According to Article 20 of the Law, grievance requests can be submitted for the following reasons:

a. Violation of the tender documents or its procedures of the provisions of the Law, this Guide, or other relevant laws.
b. Violation of the partner selection procedures of the provisions of the Law, this Guide, or other relevant laws in a way that affects transparency and fair competition among bidders.

c. Proof of bribery, illicit commissions, bid rigging, fraud, or abuse of power aimed at unduly influencing the tendering procedures to an extent that these actions have an actual effect on the results of the tender award, without prejudice to the provisions of any other relevant law.

A committee is formed in the Ministry of Finance to decide on grievances received regarding the tendering procedures for Federal Public-Private Partnerships. One or more members from the federal entity related to the grievance request are invited. The members are named by the committee chairman based on the nomination received from the head of the concerned federal entity or their delegate.

## Grievance Process

1. Any of the bidders may submit a grievance request to the Ministry within a maximum of 10 working days from the date of the tender award. The request must include details and supporting documents, clarifying the direct impact of those reasons in weakening the chance of winning the tender or being the direct cause of losing it.
2. The Grievance Committee at the Ministry will review the submitted grievance in detail and decide on it within 30 working days from the date of its receipt, which may be extended by an additional 15 working days. The committee may suspend the tendering procedures until the grievance is decided if it believes that proceeding with the tendering procedures would significantly weaken the chances of the grievant in winning the tender.
3. If the Grievance Committee finds the reasons for the grievance to be valid, the committee issues its recommendations on the grievance, which include one of the following actions:
   — Correcting the wrongful procedure
   — Disqualifying one of the bidders
   — Taking any other actions
   — Rejecting the grievance due to invalid reasons
   And submits its recommendations to the Minister for approval before taking any action.

## E. Commercial and Financial Close

After the completion of the tendering process, obtaining the necessary approvals, and updating the relevant documents to clearly confirm the project's status, the concerned federal entity must conclude the contract, taking into account the fulfillment of the preceding conditions for the project to commence. In this context, it must do the following:

— Verify the completion of all necessary approvals for the contract award and signing.
— Prepare and complete the Federal Public-Private Partnership project documents.
— Determine the time and place for signing the Federal Public-Private Partnership project documents and coordinate with the winning bidder.
— Allow the concerned parties to sign the contract.
— Establish the regulations for commercial and financial close.
— Finalize all financial close procedures for the Federal Public-Private Partnership project, including any updates to the financial model and amendments to the contract to reflect the final financial terms.
— Commence the implementation of the Federal Public-Private Partnership project, taking into account the fulfillment of precedent conditions, including the submission of performance guarantees when necessary.

### Commercial Close

Commercial close is achieved when the concerned federal entity and the private sector partner reach an agreement on all terms of the Federal Public-Private Partnership contract. This agreement necessarily requires the private sector partner to obtain the necessary financing for the partnership project, if financing is required.

### Financial Close

Financial close is achieved when all project and financing agreements are signed, and all conditions agreed upon in these agreements are met. This step aims to provide the necessary financing to start the project (whether through debt, equity, and/or grants). Identifying and arranging the project's funding sources are activities leading to financial close.

### Importance of Financial Close for Various Stakeholders

| | |
|---|---|
| **Government Entity** | — Ensure that the private sector partner has fulfilled all financial preparations to provide the necessary funding for the project.<br>— Understand the existence of conditions that must be met before the actual disbursement of funds by the lenders. |
| **Lenders** | — Comprehensive understanding of the project's revenue model.<br>— Verification of the ability to repay the financing.<br>— Understanding the risk-sharing framework to determine if the terms are acceptable and bankable. |
| **Private Sector Partner** | — Confirming the acquisition of sufficient financial support and commitment from lenders to implement the project. |

## Guarantees (Written Undertakings) Provided by the Federal Entity:

After the tendering phase, the concerned government entity, based on the project's needs, may propose to the Ministry to issue a government guarantee to ensure the financial obligations of the federal entity as stipulated in the project agreement, providing various types of guarantees to the private sector. These guarantees aim to facilitate commercial financing for the project, enhance competition among bidders by mitigating project risks, increase investor appetite, and ensure the financial stability of the project. These guarantees are classified into three main categories:

1. **Performance Guarantees:**

   Performance guarantees are one of the most important and widely used guarantees within the Federal Public-Private Partnership framework. These guarantees aim to assure the private partner from the concerned government entity that the government will manage the risks falling on the government entity in the agreed manner. These guarantees must be carefully drafted based on a comprehensive risk analysis.

— **Regulatory Guarantees:** Provide protection to the private sector against burdens that may arise from legislative changes or external factors, such as legislative changes beyond the control of the government entity.
— **Political Guarantees:** Provide protection to the private sector against risks arising from political changes that may affect the stability of the partnership.
— **Early Termination Guarantees:** Ensure that the private partner is not held responsible if the contract is terminated early by the government entity.
— **Availability Guarantee:** Guarantees payment to the private sector once the project infrastructure is available, regardless of actual usage levels.
— **Revenue Guarantees:** Guarantees a minimum revenue for the private sector, regardless of actual usage or market conditions.
— **Force Majeure Guarantees:** Protects the private sector from liability for delays or issues resulting from uncontrollable or unforeseeable damage, such as natural disasters.

2. **Letter of Comfort:**

A letter of comfort is a form of support that the government can provide, but it is not legally binding. It is a declaration of the government's intention to support the project and helps build trust among investors and potential lenders. Although a letter of comfort does not have the same legal force as other guarantees, it positively influences the encouragement of financiers and enhances private sector participation.

3. **Financial Guarantees:**

Financial guarantees include several mechanisms that allow the government to support the financial obligations of the private sector partner, either directly or indirectly. These guarantees include:

— **Loan Guarantee:** The government provides a guarantee for loans granted by the private sector to finance the project, which may result in improved loan terms and conditions.
— **Credit Enhancement:** The government may provide support to enhance the creditworthiness of the private partner, which helps reduce financing costs.
— **Debt Repayment Guarantees:** Guarantees to lenders that the private partner will repay the debt amount on schedule, thereby mitigating loan risk.

## When is Each Type of Guarantee Chosen?

The choice of each type of guarantee is based on a thorough assessment of the project's requirements, its associated risks, and financing needs. The Ministry determines the appropriate type of guarantee for each project at its discretion if required, taking into account the following criteria:

1. **Performance Guarantees (Preferred Model):**
   **To mitigate project risks:**
   Performance guarantees are preferred when the project involves significant risks that require effective management. These guarantees help ensure that the private sector partner fulfills its contractual obligations, which is crucial for the project's success.
   **For complex infrastructure projects:**
   Performance guarantees are suitable for complex infrastructure projects that face various operational and legislative risks. They provide assurance that the private partner will handle these risks effectively.
   **For projects where revenue streams are not guaranteed:**
   These guarantees provide financial security if the project's revenues are not guaranteed or are subject to factors beyond the private partner's control (such as demand fluctuations).
2. **Letter of Comfort:**
   **When legal obligations are limited:**
   A letter of comfort is recommended if the government wishes to

provide a level of assurance to investors and lenders without offering legally binding guarantees. This letter may be appropriate when the government's legal obligations are limited.

**For projects with lower risks:**

In projects with relatively lower risks, where comprehensive guarantees are not necessary, a letter of comfort can be sufficient to provide more flexible and less legally binding support.

**To attract capital investments:**

A letter of comfort may encourage investors who may not be concerned with guarantees but seek government support.

3. **Financial Guarantees (Least Preferred):**

    Financial guarantees are preferably used when the project aims to attract private financing, such as loans from banks or investments from institutional investors. These guarantees can enhance the project's creditworthiness.

    **For projects with high capital requirements:**

    Financial guarantees help secure favorable financing terms and lower interest rates for projects that require significant investments.

    **To share financing risks:**

    They are used to distribute financing risks between the federal public and private sectors, increasing the project's attractiveness to investors.

## V. Contract Management

Contract management is the final step in a Federal Public-Private Partnership project and follows the financial and commercial close stage of the project. The concerned federal entity is responsible for managing the partnership contract with the private sector partner for the duration agreed upon in the contract. Each federal entity determines the contract management mechanism based on the governance structure derived from the feasibility study, which is modified to suit the characteristics, duration, and required expertise of each project.

The project agreement attached to this guide includes all the essential clauses that form the framework for managing these contracts. Section (B) of this chapter sets out the general framework for the main responsibilities related to contract management, while the project agreement template includes all provisions related to the contract, such as termination, change of partner, and exceptional circumstances.

## A. Importance of Contract Management

Contract management plays a pivotal role in the effective management of obligations within the framework of a Federal Public-Private Partnership. It helps save time and resources for both parties, which benefits their respective business strategies and procedures. The absence of complete contract monitoring and supervision and the failure to meet obligations can lead to lost savings opportunities, potential financial penalties, the high costs of litigation, and a deterioration in business relationships. Therefore, efficient contract management ensures the building of strong relationships, compliance with requirements, and risk reduction, especially in long-term partnership projects that include extensive services and works and contain complex contractual clauses. Careful project management allows the government to estimate and share the savings achieved between the parties. It is essential for both the government and the private sector partner to be aware of contract management procedures to ensure the efficiency and success of the Federal Public-Private Partnership. The exchange of information and knowledge about existing partnerships is a vital element for improving future contracts and fostering continuous positive cooperation.

## B. Contract Management Framework

The term contract management in Federal Public-Private Partnership projects refers to the specific processes and procedures aimed at ensuring both parties adhere to the terms of the contract. These processes include:

1. **Establishing a Governance and Contract Management Team:** Establishing a governance and contract management team by the government in the early stages of the project brings significant benefits, such as reducing potential risks.
2. **Contract Preparation:** This includes project planning, procurement, and contract negotiation to ensure the project is properly structured legally and financially.

3. **Contract Execution:** This includes mobilizing resources, starting construction, and delivering goods and services to ensure the agreed-upon terms are implemented as required.
4. **Contract Supervision:** This includes the ongoing management of the contract, ensuring timely payments, monitoring compliance with the contract, and coordinating communication between the parties.
5. **Performance Monitoring:** This includes evaluating the performance of the private sector partner and determining their compliance with the terms of the contract. It also includes assessing the quality of goods and services provided, measuring compliance with performance targets, and evaluating customer satisfaction.
6. **Dispute Resolution:** This includes settling disagreements or disputes that may arise between the private and public partners. It may involve mediation, arbitration, or litigation, with the goal of reaching a fair and acceptable solution for both parties.

Contract management aims to ensure the project is completed within the specified timeline and budget, while meeting the expectations of all participating parties.

Contract management is essential from the perspective of the concerned federal entity to ensure:

— The private partner complies with its responsibilities according to the agreement.
— The project is completed and operated according to the minimum level of service standards outlined in the contract.
— The government entity does not incur any financial losses.

While private sector partners consider the contract management process important for the following reasons:

— To ensure the public entity adheres to its obligations described in the agreement.
— To provide a means to raise issues and problems related to project implementation.

## A. Forming the Contract Management Team

The importance of a Federal Public-Private Partnership in generating optimal value for money depends on the efficiency of the private partner and on the government's contract management systems and teams. This importance is particularly pronounced in contracts that include government risks, such as minimum revenue guarantees or other contractual agreements. It is essential to recognize that forming a contract management team alone is not sufficient to ensure increased value for money in Federal Public-Private Partnership contracts; it must be done within a framework of delegation, contractual status, and necessary resources that vary across different sectors and projects. Factors influencing the team's function include:

— The scope of the project or program of projects: the value of assets resulting from Federal Public-Private Partnership projects is a useful measure.
— The level of administrative complexity of the projects, especially if they are cross-border or involve multiple agencies within their jurisdiction.
— The extent of risks borne by the government within the Federal Public-Private Partnership agreement (which can be determined by considering the financial consequences for the government if the risks materialize).

Governance structures in Federal Public-Private Partnership contracts require multiple levels of interaction between the parties.

After the tendering process and the selection of partners, the concerned federal entity must form a specialized team for contract management before dissolving the project team. This team, often organized at the sectoral level, may be tasked with managing several Federal Public-Private Partnership projects. Defining the typical composition, role, and responsibilities of each team member is vital to ensure effective and efficient contract implementation. The team should include, but is not limited to:

— **Project Manager:** Responsible for overall project supervision, ensuring compliance with contractual obligations, and managing communication among stakeholders.
— **Financial Manager/Analyst:** Monitors financial aspects, including budget management, financial reporting, and ensuring the project's economic viability.

— **Legal Advisor:** Provides advice on legal matters, ensures the contract complies with laws and regulations, and handles legal support for resolving any potential legal disputes.
— **Technical Expert:** Provides insights on the technical aspects of the project, ensuring technical requirements are met.
— **Risk Manager:** Identifies, assesses, and mitigates risks associated with the project.
— **Quality Assurance Manager:** Ensures the project outputs meet the quality standards and requirements specified in the contract.

The team should be formed by the concerned federal entity before the project is awarded and implemented.

## B. Contract Preparation

The contract preparation process begins from the date of project award and continues until the start of construction operations. It includes all activities necessary to prepare for construction, such as land acquisition and obtaining necessary permits. During this phase, the concerned federal entity or the project manager has responsibilities including:

i. Ensuring the private partner obtains the necessary financing, as appropriate, and is financially solvent to implement the project.
ii. Ensuring all necessary assets for the project, such as land and buildings, are purchased or transferred in accordance with the contract terms.
iii. Ensuring the private partner has completed all necessary technical and regulatory requirements to proceed with the project.
iv. Ensuring compliance with the provisions of the agreement.
v. Additional responsibilities may arise during this phase depending on the project requirements.

## C. Contract Execution

Contract execution in Federal Public-Private Partnership projects refers to the application of the terms of the agreement concluded between the parties, including all necessary procedures to start and complete the project and provide services and goods as described in the contract. The contract execution phase includes the following:

i. The private partner prepares all necessary resources, including equipment, labor, and materials, to begin work on the project.
ii. The private partner prepares a detailed plan for the contract execution process, clarifying resources, milestones, outputs, and timelines. The plan should be approved by the concerned federal entity.
iii. The private partner begins construction operations and the provision of services and goods according to the execution plan and the contract.
iv. The private partner ensures all necessary permits and approvals are obtained before starting the project.
v. Both the private partner and the concerned federal entity complete the preceding conditions stipulated in the partnership contract before the actual implementation of the project.
vi. The private partner cooperates with the federal entity to resolve any issues or challenges that arise during the implementation phase.
vii. The private partner adheres to safety, quality, and environmental standards as stipulated in the contract.
viii. The private partner submits periodic reports to the concerned federal entity, reflecting the project's progress, any issues or challenges, and the next steps.
ix. The concerned federal entity reviews the submitted reports and takes the necessary actions to ensure proper progress towards achieving the project objectives.

## Chapter Four: Management and Implementation of the Partnership Project

### IV. Contract Management

Contract management in federal public-private partnership projects refers to the ongoing administration of the contract throughout the project's duration.

### v. Performance Monitoring

The performance monitoring phase in contract management for federal public-private partnership projects refers to the process of evaluating the private

It includes ensuring the contract is executed as agreed upon by both parties and ensuring the project runs smoothly.

The contract management process includes the following steps:

i. The private partner submits invoices (as applicable) and receives payments according to the contract terms.
ii. The private partner provides all necessary documents and information as specified in the contract.
iii. The private partner adheres to all environmental, social, and other requirements specified in the contract.
iv. The private partner submits quarterly reports on the project's financial performance, including budget, cost control, and revenue generation.
v. The concerned federal entity reviews invoices and makes timely payments (as applicable) according to the contract terms.
vi. The concerned federal entity monitors compliance with the contract terms, including safety, environmental, and quality standards, and takes corrective measures when necessary.

partner's performance against the contract terms. It aims to ensure that the private partner achieves the project objectives and delivers goods and services as described in the contract. This process includes:

i. The concerned federal entity defines the Key Performance Indicators (KPIs) for the project, which should be clear, measurable, and aligned with the project's objectives.
ii. The private partner submits periodic reports detailing performance levels against the KPIs and highlighting any challenges or issues facing the project.
iii. The concerned federal entity reviews the performance reports and takes the necessary steps to ensure the project achieves its objectives.
iv. The concerned federal entity conducts regular site visits to the project to assess the quality of goods and services provided and ensure compliance with safety, environmental, and quality standards.
v. The concerned federal entity measures customer satisfaction and evaluates their feedback as part of the performance monitoring process.

vii. The concerned federal entity coordinates communication between the parties and ensures all necessary information is shared effectively and in a timely manner.
viii. The concerned federal entity maintains accurate and detailed records of all contract management activities, including invoices, payments, and compliance reports.

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## VI. Dispute Resolution

Disputes are common in federal public-private partnership projects due to their long-term nature. Therefore, it is important to manage the relationship between the project parties effectively to facilitate the proper resolution of future disputes. Improperly resolving disputes can damage relationships and negatively affect the project's progress. It is essential to establish a mechanism for resolving disputes arising from federal PPP contracts, and legal counsel may be consulted for this purpose.

## Dispute Settlement Mechanisms

1. Negotiation: The most common means of resolving disputes, where the parties meet to discuss a mutually acceptable settlement.
2. Mediation: Mediation is conducted with the help of an independent third party, thus ensuring balanced negotiations in the presence of a neutral third party.
3. Arbitration: The contract includes arbitration procedures that the parties agree to be bound by, involving a dispute resolution process decided by a third party called an arbitrator.

The agreed-upon dispute settlement mechanism is a crucial element in determining the risks of federal PPP contracts for the private partner. Therefore, it is necessary to build the confidence of potential private sector partners in a fair dispute settlement system to encourage their participation in these projects. It is preferable to settle disputes by resorting to any of the available dispute settlement mechanisms that are consistent with international best practices without resorting to lengthy and costly legal proceedings.

The arbitrator's decision is binding on the contracting parties.

4. Expert Determination: Useful for resolving disputes related to a technical issue, and the parties often agree to be bound by the expert's decision.
5. Litigation: The process of resorting to the court to resolve a dispute.

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## Appendix

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## Appendix 1

### Different Definitions of Federal Public-Private Partnership

| | |
|---|---|
| **Organisation for Economic Co-operation and Development (OECD)** | An agreement between the government and one or more private partners (which can include operators and financiers) whereby the private partners deliver the service in such a manner that the service delivery objectives of the government are aligned with the profit objectives of the private partners. Furthermore, the effectiveness of the |

| | |
|---|---|
| | alignment of these objectives depends on a sufficient transfer of risk to the private partners. |
| **International Monetary Fund (IMF)** | Arrangements where the private sector supplies infrastructure assets and services that have traditionally been provided by the government. These arrangements involve private execution and financing of public investment. PPPs are characterized by a focus on service provision and investment by the private sector, resulting in a significant transfer of risk from the government to the private sector. |
| **European Commission (EC)** | The term PPP is not defined uniformly at the domestic level, but it generally includes forms of cooperation between public authorities and the private sector aimed at ensuring the financing, construction, renovation, management, and maintenance of infrastructure for service provision. |
| **Standard & Poor's (S&P)** | Any medium- to long-term relationship where the public and private sectors share risks and rewards, leveraging multi-sector specializations, expertise, and funding to achieve desired objectives. |
| **European Investment Bank (EIB)** | A PPP is a term referring to diverse relationships between the private sector and public bodies, often used to employ resources and expertise from the private sector to support the delivery of federal public sector services and assets. The term PPP covers a wide range of working arrangements, from informal, loose, and strategic partnerships to comprehensive service contracts |

| | |
|---|---|
| | for design, build, finance, and operate (DBFO) projects and formal partnership projects. |

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## Appendix 2

### Sectors with Federal Public-Private Partnership Projects

**Sectors where assets or services can be procured under the Federal Public-Private Partnership system.**

| Type | Sector | Examples |
|---|---|---|
| Economic | Transport<br>Roads | • New express or regular roads<br>• Specific tunnel or bridge projects<br>• Access points (e.g., to ports)<br>• Development and expansion of roads and networks |
| Economic | Transport<br>Railways | • High-speed rail lines<br>• Conventional rail lines<br>• Express links (e.g., to airports)<br>• Operating leases for rolling stock<br>• Metro and other mass transit projects<br>• Ticketing and fare collection systems<br>• Metro stations |
| Economic | | • Bus Rapid Transit (BRT) infrastructure |

| Type | Sector | Examples |
|---|---|---|
| | Transport<br>Other urban mobility infrastructure | • Parking facilities |
| Economic | Transport<br>Ports and Airports | • New or upgraded airports<br>• New or upgraded ports |
| Economic | Water and Waste | • Desalination plants<br>• Wastewater treatment plants<br>• Full water cycle concessions<br>• Solid waste management systems<br>• Waste-to-energy plants<br>• Incinerators |
| Economic | Energy | • Independent Power Producer (IPP) plants through Power Purchase Agreements (PPAs)<br>• Electricity transmission lines<br>• Gas pipelines<br>• Energy efficiency (e.g., in public buildings or city lighting) |
| Economic | ICT / Telecommunications | • Fiber optic lines or networks<br>• Telecommunication/ Broadband networks |
| Economic | Tourism | • National parks<br>• Cultural heritage buildings |
| Economic | Agribusiness | • Grain storage PPP projects<br>• Irrigation projects |
| Social | | • Hospitals<br>• Student accommodation |

| Type | Sector | Examples |
|---|---|---|
| | Health, Education, Security/Prisons, Courts/ Justice, Social Housing | • University facilities<br>• School facilities<br>• Courthouses<br>• Prison facilities<br>• Social housing |
| Social | Sports, Emergency Response, Local Security, Government Accommodation | • Sports centers<br>• Fire stations<br>• Police stations<br>• Government offices |

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## Appendix 3

## Case Study in Financial Feasibility

| Case Intro | | | | |
|---|---|---|---|---|
| The UAE Ministry of Interior wants to improve the fire safety inspections efficiency in order to attain 100% coverage | | | | |
| | **1**<br>**Baseline** | **2**<br>**PSC** | **3**<br>**PPP-GOV** | **4**<br>**PPP-PSP** |
| Target Number of inspections | 300,000 | 600,000 | 600,000 | 600,000 |
| Inspections carried per year | | 600,000 | 0 | 600,000 |
| Number of Inspectors | 1,000 | 2,000 | 0 | 1,000 |
| Efficiency (inspections/ inspector/year) | 300 | 300 | NA | 600 |

| | | | | |
|---|---|---|---|---|
| Main Costs | Salaries, Rent, Vehicles | Salaries, Rent, Vehicles | Payments to PSP | Salaries, Rent, Vehicles |
| Costs Value | 50Mn | 100Mn | 70Mn | 55Mn |
| Revenues | Fines | Fines | Fines | Payments form GOV |
| Revenues Value | 5Mn | 10Mn | 10Mn | 70Mn |
| Cash Flow | 5 - 50 = (45Mn) | 10 - 100 = (90Mn) | 10 - 70 = (60Mn) | 70 - 55 = 15Mn |
| VFM | | (90Mn) - (60Mn) = (30Mn) | | |
| Since the private sector's cash flow is positive and VFM is positive => this is a financially acceptable project | | | | |

## Appendix 4 - Federal Public-Private Partnership Law on Tendering Methods and Procedures

**Article (15)**
**Tendering Methods and Procedures**

1. The tendering of partnership projects shall be in accordance with one of the following methods:

a) Two-Stage Method: The tender shall be conducted as follows:

(1) First Stage: During this stage, a pre-qualification of a group of private sector parties that have expressed interest in the project is conducted.
(2) Second Stage: During this stage, the full tender documents are issued exclusively to the pre-qualified potential partners.

b) Fast-Track Procedure Method: Tendering may be conducted through a fast-track procedure, which consists of a single stage - without a qualification procedure - in any of the following cases:

(1) There is a need to tender the project urgently.
(2) If the project team deems that a qualification procedure is unnecessary due to a limited number of suitable potential partners in the market or the absence of a complex technical aspect of the project, making competition limited to financial aspects only, or for any other reason that does not require partner qualification.

c) Direct Appointment Method: Tendering may be conducted through direct appointment, where the concerned federal entity negotiates directly with one or more potential partners. This method is used only in the following cases:

1. The need to provide assets or services urgently, which is incompatible with the use of the procedures specified in paragraphs (a) and (b) of Clause (1) of this Article.
2. The existence of only one potential partner in the market capable of implementing the project.
3. Some or all components of the project are related to national security or the protection of state secrets.
4. Any other necessary and urgent matters related to the public interest, provided that the Minister approves the use of this procedure for their tendering.

2. If there is only one potential partner for the project, the concerned federal entity may terminate the tender or proceed with the tendering and award the project to the potential partner, taking into account the following two conditions:

a) The requirements of the tender documents are met.
b) There is evidence of sufficient value for money in the bid that achieves the value for money assessment.

3. The Partnership Projects Guide shall specify the procedures for each of the tendering methods mentioned in this Article.

## Appendix 5
## Types of Risks (Example)

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| Failure to provide services as agreed in the contract | Services provided by the private sector may not meet the required conditions or match the specifications issued by the government entity responsible for service delivery | Develop clear and accurate output specifications<br>Performance monitoring<br>Impose penalty deductions from payments released for each unit separately | Private sector partner |
| Project completion risks | The project may be delayed due to construction delays, design problems, unexpected events, or financing complexities | Provide special insurance coverage (against project completion delays)<br>Appoint an independent and specialized entity to approve project completion<br>Liquidated damages, construction guarantees, and other appropriate | Private sector partner - unless the delay is due to force majeure or the sponsoring federal entity |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | | guarantees provided by the private partner as incentives for project completion, unless the sponsoring federal entity is responsible for the delay | |
| Cost overrun | The actual costs of the project during the design and construction phases may exceed the expected project costs according to its feasibility studies | Formulate fixed-price construction contracts<br>Specify conditions related to contingency plans<br>Provide alternative credit commitments/ facilities related to additional equity rights paid in advance and expected in the base case financial model | Private sector partner |
| Design-related risks | The design developed by the private | Prepare clear project output specifications | Private sector partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | partner may not be compatible with the project output specifications | Define responsibilities for patent and latent defects<br>Consult with and inform the responsible federal entity about work progress<br>Refer and appoint independent experts for quick and effective dispute resolution | |
| Environmental risks | Consequences of losses resulting from environmental damage for the following reasons:<br>– Construction works<br>– Works carried out by the federal entity or a third party before transferring project responsibility to | Bidders should exercise due diligence by conducting extensive studies on the project and the prevailing conditions at the work site<br>Take necessary corrective steps to address identified environmental pollution problems | Federal public and private sector partners |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | the private partner | | |
| Force majeure or circumstances beyond reasonable control risks | Unexpected circumstances beyond the reasonable control of both parties may occur in a way that affects the project's construction or operation activities | Properly define force majeure which can be addressed with mechanisms including taking necessary relief measures (relief events)<br>Project termination due to force majeure events or circumstances beyond the reasonable control of the parties | Shared between federal public and private sector partners |
| Inflation risks | Actual inflation rates may be higher than expected | Link inflation indices to payment calculations, considering worst-case scenarios according to World Bank or IMF forecasts<br>Add a clause in the federal PPP contract stating | Should be agreed between the federal public and private partners on agreed price inflation, with any excess borne by the private partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | | the need to review payments if inflation exceeds the expected rate by a certain percentage | |
| Risks related to partnership cancellation or liquidation and dissolution of the private partner | The private company may be dissolved or liquidated | Establish a Special Purpose Vehicle (SPV) to manage the project's cash flows/liquidity Provide insurance and guarantees for necessary project assets Impose restrictions on the private partner regarding indebtedness, credit, and financing constraints Notification obligations for financial data and information, lawsuits, or disputes with creditors | Private sector partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | | Replace the private partner with a new one under a direct agreement | |
| Insurance risks | Any insurable risk at the time of signing the project contract under an agreed insurance cover may become uninsurable There is a significant increase in insurance premium rates | In the first case, and at the sole discretion of the federal entity, coverage is provided in the form of self-insurance by the federal entity itself, or the federal PPP contract is terminated if insurance cannot be provided, such as termination due to force majeure events and the like, provided the private partner is compensated | If the private partner fails to provide insurance, they bear the responsibility. Otherwise, the risk is shared between partners |
| Interest rate risks | Factors that may affect the availability of financial credits and financing costs | Provide means and tools to protect against financial losses (such as resorting to | Private sector partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | | swaps) or borrowing at a fixed interest rate, or the private sector adopting an appropriate hedging strategy | |
| Latent defect risks | Losses or damages that may result from latent defects or deficiencies in equipment and facilities, including project assets | Facilities should be designed and constructed by the private partner unless the project requires handing over existing facilities. In such a case, bidders must exercise due diligence through extensive studies and necessary inspections to discover deficiencies. Procedures and costs related to discovered deficiencies can be pre-agreed with the private partner<br>The private | If the private partner undertakes the design, they bear the risk consequences. Otherwise, the sponsoring federal entity bears it, provided there is no sufficient insurance coverage to mitigate this risk |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | | partner must immediately report discovered defects | |
| Maintenance risks | Maintenance required to keep assets in a suitable condition for providing the required services may cost more than stipulated in the project's probabilities, or maintenance may not be performed at all | Prepare clear project output specifications<br>Apply a penalty system and performance monitoring<br>Prepare an operation and maintenance contract that includes and meets all requirements of the sponsoring federal entity<br>The sponsoring federal entity reserves the right to replace the private partner<br>Provide special insurance coverage and guarantees in the form of final maintenance guarantees | Private sector partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| Risks related to supply and demand, service volume, or market mechanism | The demand for services provided under the project may be lower than expectations or the desired rate (e.g., lack of need for those services, their obsolescence, low demand, market competition, or customer objections to services provided by major external partners) | For federal PPP projects paid per unit, payment should be based on service availability (not on actual usage by the sponsoring federal entity) Implement an effective plan with clear objectives for marketing the concerned services | For projects financed on a pay-per-unit basis, the sponsoring federal entity is responsible. For projects financed by charging fees to project users or beneficiaries, the private partner is responsible |
| Operating risks | All factors that may affect the project's operating requirements, including expected operating costs, required operating skills, and the like (except for force majeure), such as: | Define clear project output specifications Apply a penalty system and performance monitoring Prepare an operation and maintenance contract that includes and meets all requirements of | Private sector partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | 1. Labor disputes<br>2. Worker capabilities and proficiency levels<br>3. Fraud and forgery by employees<br>4. Technical field defects<br>5. Environmental factors<br>6. Failure to obtain necessary approvals for necessary maintenance and meeting its requirements | the sponsoring federal entity<br>The sponsoring federal entity has the right to replace the private partner<br>Provide special insurance coverage | |
| Planning risks | The proposed use of the project site under the terms and conditions of the federal PPP agreement may conflict with applicable laws and regulations in planning, land | The competent federal entity must provide all necessary approvals for the detailed design, construction, and installations proposal in the project regarding large-scale planning to | For any approval of zoning and land use, the sponsoring federal entity is responsible for the risk, unless the private partner is responsible for selecting the |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | use, real estate, or buildings (such as urban planning requirements) or with any other requirements or approvals required thereunder or Delay or failure to obtain necessary approvals, or even if approvals are obtained, the project will be implemented at a much higher cost than the original expected costs under the project plans | identify variances in the project's feasibility study. Approvals include everything related to land use and zoning, and should be obtained before the project is tendered The private partner must identify all necessary planning cases in the project and request approval from the competent authorities for the design and construction proposal, and the authorities must take all measures and precautions and include them in their work schedule to arrange for obtaining | project site. For all approvals of any specific planning, design, and construction, the private partner bears the responsibility |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | | approvals from the mentioned authorities | |
| Risks related to systems or practical measures | Federal entities or any government bodies may take unexpected actions that have a severe negative impact on the expected revenues from equity rights in the project or debt and credit service, or in any way increase the costs borne by the private partner | Identify risks of unexpected actions that have no other outlet in the federal PPP agreement and identify risks of actions leading to expropriation Distinguish between general and discriminatory acts. For unexpected discriminatory acts, special compensation is granted<br>For acts resulting in expropriation, the project is terminated, and compensation is provided | In case of any unexpected discriminatory act or any act leading to expropriation of public interest, for example, the sponsoring federal entity is responsible for these risks. Unexpected general actions are borne by the private partner |
| Regulatory risks | The necessary approval may be delayed or unobtainable, or | Legal survey/ study of the project's legal aspects by the | If any approvals can be obtained before concluding the |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | even if this approval is obtained, the project will be implemented at a much higher cost than the original expected costs under the project plans | federal entity during the feasibility study phase to identify approvals<br>The federal entity must take all necessary measures in coordination and consultation with various competent government bodies before starting the procurement phase<br>The private partner must exercise due diligence to identify the necessary approvals to meet operational requirements | contract and can be transferred to the private partner, the sponsoring federal entity is responsible for those risks<br>As for the operational requirements of the private partner, the private partner bears the responsibility |
| Facility and equipment risks | Project assets may not be in the agreed-upon condition for their return to the sponsoring | The private partner must fulfill its maintenance and repair obligations<br>Project assets | Private sector partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | federal entity at the end or termination of the federal PPP | must be inspected and reviewed when the project is about to be completed<br>The private partner must provide a guarantee to the federal entity responsible for the project. The guarantee may be in the form of final maintenance guarantees or deductions from payments made on a unit basis, for example | |
| Input or resource risks | A shortage of supplies related to project inputs or resources may occur (including financial credits), or there may be an inability to provide the necessary | Conclude supply contracts to meet project requirements, such as contracts based on direct supply for immediate payment<br>Take quick assistance measures only in | Private partner, unless inputs are obtained from the sponsoring federal entity |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
| --- | --- | --- | --- |
| | supplies for project operation, including defects related to the quality of available resources | case of deficiencies that are not the responsibility of the private partner | |
| Partner liquidation risks | Risks of subcontractor liquidation or failure of this subcontractor to meet its contractual obligations These risks may arise in the construction and/or operation phases | Key partners working on the project under subcontracts must have the necessary skills, knowledge, and experience to meet contractual obligations regarding the required performance level Obtain prior approval from the federal entity regarding subcontracting with alternative key partners The responsible federal entity must exercise due diligence by conducting | Private sector partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | | extensive studies that include reviewing the data of first-tier subcontracting partners to ensure their ability to overcome the risks they face | |
| Tax risks | A change in applicable tax fees (such as income or value-added tax) or the imposition of new taxes may reduce the expected revenues from equity rights in the project | If the changes are the result of unexpected discriminatory acts or behaviors, special compensation will be granted to the private partner | Federal public sector entity |
| Technical risks | The following may occur:<br>1- The technical inputs for activities outsourced by the government entity to external contractors may | The private partner must, from time to time, update the technologies used in the project to keep pace with developments and meet project | Private sector partner |

| Risk Type | Description | Mitigation Strategy | Responsible Party |
|---|---|---|---|
| | not provide inputs that match the required specifications<br>2- The technical inputs may not be suitable for recent updates and developments in technology | specifications and requirements<br>Apply penalties in case of non-compliance with project output specifications | |

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## Appendix 6
## Key Performance Indicators

### Key Performance Indicators

Key Performance Indicators (KPIs) are criteria used to evaluate a project's performance by comparing actual and expected performance in terms of effectiveness, efficiency, and quality. These indicators are based on technical and economic studies.

> KPIs can be qualitative or quantitative and reflect the nature, importance, and impact of the services provided.

### KPI Development Process

| Stage | Action |
|---|---|
| | The project team supports the concerned entity in developing KPIs. |

| Stage | Action |
|---|---|
| 1. Procurement phase within the Federal PPP project period | |
| 2. Tender issuance | Performance requirements are identified and defined, then area-specific KPIs are developed and detailed. |
| 3. Contract management | KPIs are measured and monitored to assess the extent to which the private partner meets the standards agreed upon in the contract. |

**Types of Key Performance Indicators**

| Type | Example |
|---|---|
| Service Quality | Road project: Road quality.<br>Water supply: Continuity of water supply. Non-compliance of treated water supply with specified quality |
| Financial Viability | Average cost of an ambulance trip. |
| Process Related | Airport project: Average arrival processing time and transfer time between flights.<br>Water project: Delay in recording water meter readings and entering them into the computerized billing system |

**Topics Related to Key Performance Indicators**

| 1. Project Characteristics | 2. Project Financial and Marketing Indicators | 3. Project Operations |
|---|---|---|
| The original characteristics and features of federal PPP projects that affect project performance from their inception. | Financial and marketing indicators, innovation and learning indicators, and stakeholder indicators. These are the specific project characteristics from the perspective of economy, innovation, culture, and stakeholder benefit. | Factors that may affect the construction, operation, maintenance, transfer, and post-transfer process. |

These indicators do not usually change during the entire period of federal PPP projects, but they strongly influence the choice of partners, the agreement between the federal public and private sectors, risk allocation, and the extent to which the project will succeed under the influence of the economic, legal, and political environment in a specific host country for the projects.

All indicators should be dynamic and measurable to reflect efficiency, customer satisfaction, business success, product requirements, and future potential of the projects. Any change in performance can be measured through these indicators.

| 1. Project Characteristics | 2. Project Financial and Marketing Indicators | 3. Project Operations |
|---|---|---|
| **Physical Characteristics of the Project**<br><br>• Building type<br>• Design complexity level<br>• Construction complexity level<br>• Technological advancement level<br>• Concessionaire's knowledge of Federal PPP and government's knowledge of Federal PPP<br>• Competitive bidding procedures<br>• Standard Federal PPP contract with sufficient flexibility<br>• Public/social support<br>• Stable and favorable macroeconomic conditions<br>• Stable and favorable legal environment | **Finance and Marketing Indicators**<br><br>• Sound financial analysis<br>• Sustainable profitability<br>• Increased marketing<br>• Financial capacity of all shareholders<br>• Cost of financing<br>• Optimal tariff/fee or price adjustment mechanism for the project<br>• Realistic investment and revenue schedule<br>• Insurance coverage<br>• Construction and concession period<br><br>**Innovation and Learning Indicators**<br><br>• Investment in R&D for new technology | **Process Indicators**<br><br>• High-quality controls<br>• Safety management<br>• Health control<br>• Environmental protection<br>• Effective risk management system<br>• Facility management<br>• Stress/conflict management<br>• Resource utilization (materials and equipment)<br>• Contract management<br>• Outstanding technical management and skill<br>• Interface management between organizations and phases<br>• Time management |

<table>
<tr><th>1. Project Characteristics</th><th>2. Project Financial and Marketing Indicators</th><th>3. Project Operations</th></tr>
<tr><td><ul><li>Stable and favorable political environment</li><li>Commitment and responsibility between the federal public and private sectors</li><li>Technical feasibility, constructability, and maintainability of the project</li><li>Appropriate risk allocation, sharing, and transfer</li></ul></td><td><ul><li>Establishment of a learning organization</li><li>Staff training</li><li>Technological innovation (e.g., design, construction, planning, etc.)</li><li>Technology transfer</li><li>Financial innovation (e.g., creative financial package)</li></ul>Stakeholder Indicators<ul><li>General customer satisfaction</li><li>General public/ social satisfaction</li><li>Good relationship between concessionaire, subcontractors, and suppliers</li><li>Good relationship in the project team</li></ul></td><td><ul><li>Cost management</li><li>Good governance</li></ul></td></tr>
</table>

## Appendix 7
## Dispute Resolution Summary

| Form | Time | Cost | Binding |
|---|---|---|---|
| Negotiation | Varies | Low | Non-binding |
| Mediation | Fast | Low | Binding if agreed |
| Arbitration | Slow | High | Binding |
| Expert Determination | Fast | Medium | Binding if agreed |
| Litigation | Slow | High | Binding |

## Appendix 8
## Tools and Templates

**Stage:** Phase I

**Checklist Name:** Checklist for Preliminary Feasibility Study

**User:** Ministry of Finance

| Evaluation Criteria | Yes | No |
|---|---|---|
| **A. General** | | |
| 1. All sections and subsections of the Preliminary Feasibility Study specified in the PPP Manual have been developed | | |
| **B. Assessment of Current Situation (for existing services only)** | | |
| 2. Current service delivery methods and beneficiaries have been clearly identified | | |

| Evaluation Criteria | Yes | No |
|---|---|---|
| 3. The current operational performance of the service or asset has been clearly identified | | |
| 4. The current financial performance including capital expenditure, operating expenditure, revenues and any other costs has been identified | | |
| 5. The historical demand growth for the service has been identified | | |
| **C. Market Assessment** | | |
| 6. The study has identified at least one project with a similar scope that has been successfully implemented | | |
| 7. A preliminary list of potential private sector companies has been listed and identified | | |
| **D. Technical Feasibility** | | |
| 8. A preliminary assessment of various engineering/ design options and the optimal option has been developed | | |
| 9. A preliminary estimate of the costs associated with each option has been identified | | |
| 10. A preliminary study of the impact of each option on the environment and society has been developed | | |

## Appendix 8

## Tools and Templates

**Phase: Phase 0 and 1**

Checklist Name: Opportunity Identification and Prioritization Checklist

User: Ministry of Finance

| Evaluation Criteria | Yes | No |
|---|---|---|
| **A. General** | | |
| The concerned entity has comprehensively developed its portfolio of services and assets (evaluated at a high level depending on the Ministry of Finance's knowledge of each sector, the organizational structure of the concerned entity, and the projects of the concerned entity) | | |
| **B. Evaluation Criteria** | | |
| 1. All prioritized opportunities are not related to policymaking and regulations, nor to the internal service of the concerned entity | | |
| 2. All prioritized opportunities achieve public benefit by improving the safety, health, financial situation, knowledge, or general lifestyle of citizens | | |
| 3. For all prioritized opportunities, the private sector has greater human resources and knowledge to implement the opportunity compared to the government | | |
| 4. For all opportunities - the risks incurred by the concerned entity can be partially or fully transferred to private sector partners | | |
| 5. The values of the opportunities (CAPEX), (OPEX) are significant and greater than the minimum required value (as stipulated in the manual) - value calculation included in the Excel "Project Identification & Prioritization" template | | |
| **C. Prioritization** | | |
| 6. All prioritization dimensions detailed in the manual have been used to evaluate the prioritized opportunities | | |

# Appendix 8

## Tools and Templates

| UAE PPP Manual - Template | |
|---|---|
| **Corresponding Phase** | Phase 0&1 |
| **Template name** | Project Identification & Prioritization Template |
| **User** | Concerned Entity or any contracted third party |

## Appendix 8

## Tools and Templates

**Phase: Phase 2**

Checklist Name: Feasibility Checklist

User: Ministry of Finance (Public-Private Partnership Department)

| | Yes | No |
|---|---|---|
| **A. General** | | |
| 1. All necessary studies, according to the manual, have been included in a single final deliverable | | |
| 2. The feasibility study template has been filled out and submitted with the final deliverable | | |
| **B. Preliminary Analysis** | | |
| 3. All analyses and assessments have been developed in accordance with the manual:<br>a. Assessment of the current situation (if any)<br>b. Market assessment (market sizing, benchmarking, preliminary potential partners)<br>c. Gap analysis<br>d. Procurement alternatives<br>Assessment: At least 10 potential private sector partners have been identified.<br>Similar projects have previously succeeded through public-private partnerships | | |
| **C. Financial Feasibility** | | |
| 4. All inputs and assumptions used are logical and the rationale behind each is clear (inputs and assumptions are usually leveraged from the concerned federal entity, benchmarks, or experts) | | |

| | Yes | No |
|---|---|---|
| 5. The Public Sector Comparator case has been conducted and includes all relevant costs (CAPEX, OPEX, etc.) and revenues. | | |
| 6. The PSC case has been conducted assuming the project achieves the targeted outcome while remaining under government management | | |
| 7. The cash flows for the PSC are mainly calculated for each year of the contract. The Net Present Value (NPV) of the PSC cash flow has been calculated | | |

## Appendix 9

## Mortgage on Assets and Rights of the Financing Entity

These rules should be clearly defined in the project agreement after negotiations, taking the following points into consideration:

**Approval of mortgage on project assets:**

Prior approval must be obtained from the concerned federal entity for any mortgage related to the project's assets. The terms of the mortgage, the assets involved, and the purpose of the mortgage should be clarified in the request.

**Disclosure of mortgage terms:**

The details of the mortgage arrangement must be disclosed comprehensively and transparently, including the lender, the loan terms, and its impact on the project's assets.

**Restrictions on asset disposal:**

The mortgage arrangement should not lead to the disposal or pledging of vital project assets in a way that affects its success and operation.

**Financiers' right to replace the partner:**

Any agreement that grants the financing entity the right to replace the implementing partner must be explicitly stipulated with the approval of the federal entity. This replacement is conditional on the new partner meeting all original criteria of capability, experience, and financial stability.

**Conditions for control or acquisition by financiers:**

If the financing entities seek to control or acquire the project, the conditions enabling them to do so should be clearly defined. This includes scenarios such as default, insolvency, or bankruptcy of the private partner.

The federal entity must approve the entity's control or acquisition of the project while ensuring its ability to meet the project's requirements.

**Compliance with legal and regulatory frameworks:**

All arrangements must comply with the relevant federal laws and regulations in the country, to ensure legal validity and adherence to national standards.

**Default and remedy procedures:**

Detailed procedures should be established to handle cases of default by the private partner, including remedy steps and the rights of the financing entities in such situations.

**Right of first refusal:**

The federal entity should retain the right of first refusal for any significant changes in the project's ownership or control, to ensure the protection of the public interest.