



# The Implementing Regulations of the Private Sector Participation Law

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# General Provisions

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## Part 1: Definitions

### Article (1):

Unless the context otherwise indicates, the words and terms of this Regulation shall have the same specified meanings as in the PSP Law and the PSP Governing Rules, and the following words and terms shall have the meanings specified herein:

<b>PSP Governing Rules:</b>	The Private Sector Participation (PSP) Governing Rules issued pursuant to the Law.
<b>Regulations:</b>	The implementing regulations of the Law.
<b>Approving Authority:</b>	The entity/entities identified as such by the PSP Governing Rules.
<b>Contracting Authority:</b>	The entity/entities identified as such by the PSP Governing Rules.
<b>Board of Directors:</b>	NCP's Board of Directors.
<b>Supervisory Committee:</b>	The Supervisory Committee formed pursuant to the PSP Governing Rules.
<b>Authority:</b>	Local Content & Government Procurement Authority.
<b>Main Members:</b>	The Main Members of the Supervisory Committee (or their delegates) according to the PSP Governing Rules.
<b>Secretariat:</b>	The secretariat of the Supervisory Committee.
<b>Concerned Entity:</b>	Ministries, government entities, public bodies, public authorities, bodies with an independent public juristic personality, or bodies concerned with a PSP Project subject to the provisions of the Law. This shall include the companies whose contracts are subject to the Law
<b>Director-Head:</b>	The Director-Head shall be the Supervisory Committee where the Supervisory Committee is also the Contracting Authority. If not, then the Director-Head shall be the minister, someone at an equivalent level, or the Board of Directors of the Concerned Entity where the Concerned Entity has such a board.
<b>Work Team:</b>	The Work Team of the Supervisory Committee or the Contracting Authority, or both, depending on the context.
<b>Advisor:</b>	A company or person providing professional or advisory services related to a PSP Project.

<b>PSP Project:</b>	A Public-Private Partnership (PPP) project, a Divestment Project, or both, depending on the context.
<b>PSP Plan:</b>	A sector-specific plan, identifying the objectives of PSP Projects within the sector, the list of PSP Projects within the sector and the timeline for their implementation.
<b>PPP Contract:</b>	The PPP Contract, including any Ancillary Contracts thereto.
<b>The Contract:</b>	The PSP Contract, including any Ancillary Contracts thereto.
<b>Business Case Documents:</b>	The documents of the PSP Project that include the detailed study developed for the PSP Project before tendering, including the technical, financial, legal and regulatory aspects of the project and other project-related aspects.
<b>Tendering Plan:</b>	It includes the technical components of the PSP Project, its tendering procedures and management, the applicable evaluation procedures and criteria, the Tender Documents and appendices thereto which shall be aligned with the needs of the PSP Project and achieving its objectives.
<b>Expression of Interest (EOI):</b>	A tender document issued by the Contracting Authority to the market to identify the size of the targeted market and interest in the proposed PSP Project.
<b>Request for Qualifications (RFQ):</b>	A tender document issued by the Contracting Authority to potential bidders to evaluate their qualifications and/or capabilities to be qualified to submit proposals for the PSP Project.
<b>Statement of Qualifications (SOQ):</b>	A written statement submitted to a Contracting Authority in response to a Request for Qualifications for a PSP Project.
<b>Request for Proposals (RFP):</b>	A tender document issued to bidders by the Contracting Authority to request proposals in relation to the PSP Project.
<b>Proposal Documents:</b>	Documents submitted to the Contracting Authority in response to an RFP for a PSP Project.
<b>Tender Documents :</b>	The tender documents shall include the EOI, RFQ and RFP.
<b>Required Period:</b>	Ten (10) working days from the date of announcing the list of persons who expressed their interest in bidding in the PSP Project tender, the list of qualified bidders, the shortlist of bidders, the results of the proposal and the best-preferred bidder, or the end of the negotiation procedures. Five (5) working days shall be added to this period in the event of any appeal in relation to bidding and selection procedures.



## Part 2: PSP Principles

### Article (2):

The Contracting Authority and its Work Teams shall exercise their tasks and powers in the PSP Projects, on the following principles:

1. Fairness: All competitors from the Private Sector shall be treated objectively and impartially.
2. Transparency: Implementing PSP Projects transparently, and enabling all competitors, Private Parties, and Governmental entities to access appropriate information on PSP Projects at all stages.
3. Contract Enforcement: Contracts concluded in accordance with the Law are the basis for determining the rights and obligations of the Contracting parties; the provisions of those Contracts are the foundation governing the relationship between the parties involved.
4. Planning: PSP Projects are initiated and implemented based on plans and studies prepared in advance to enable the public and Private Sectors to be prepared before tendering and implementing these projects.
5. Feasibility: PSP Projects shall achieve feasible outcomes for the government, and result in economic benefits to the public and Private Sectors.

## Part 3: PSP Project Value Threshold & the Application

### Criteria of the Law on PSP Projects

### Article (3):

1. Without prejudice to the provisions of the Law for a project to be treated as a PSP Project in relation to infrastructure or public service; a project related to infrastructure or public service shall not be treated as a PSP Project subject to the Law unless the value of the project reaches or exceeds the threshold under this Article.
2. The value threshold for a divestment project shall be fifty million (50,000,000) riyals. The value of the project is calculated based on the Contracting Authority estimated value of the asset.
3. The value threshold for a PPP project shall be two hundred million (200,000,000) riyals. The value of the project is calculated based on the projected total nominal value for the term of the PPP project as estimated by the Contracting Authority after calculating each of the following items independently and the threshold may be satisfied by any one of the following items:
  - a. CAPEX and OPEX and government-owned assets over which the Private Sector is granted any rights (including transfer of ownership) if any.
  - b. Possible financial obligations on the government.
  - c. The projected financial revenues for the government.
4. Contracting Authority may combine more than one project of a similar nature to meet the threshold under this Article.
5. In the case that the threshold under this Article is not achieved and the Concerned Entity decides to proceed with the infrastructure or public service project, the applicable laws and regulations with the initiating of this project shall be applied.

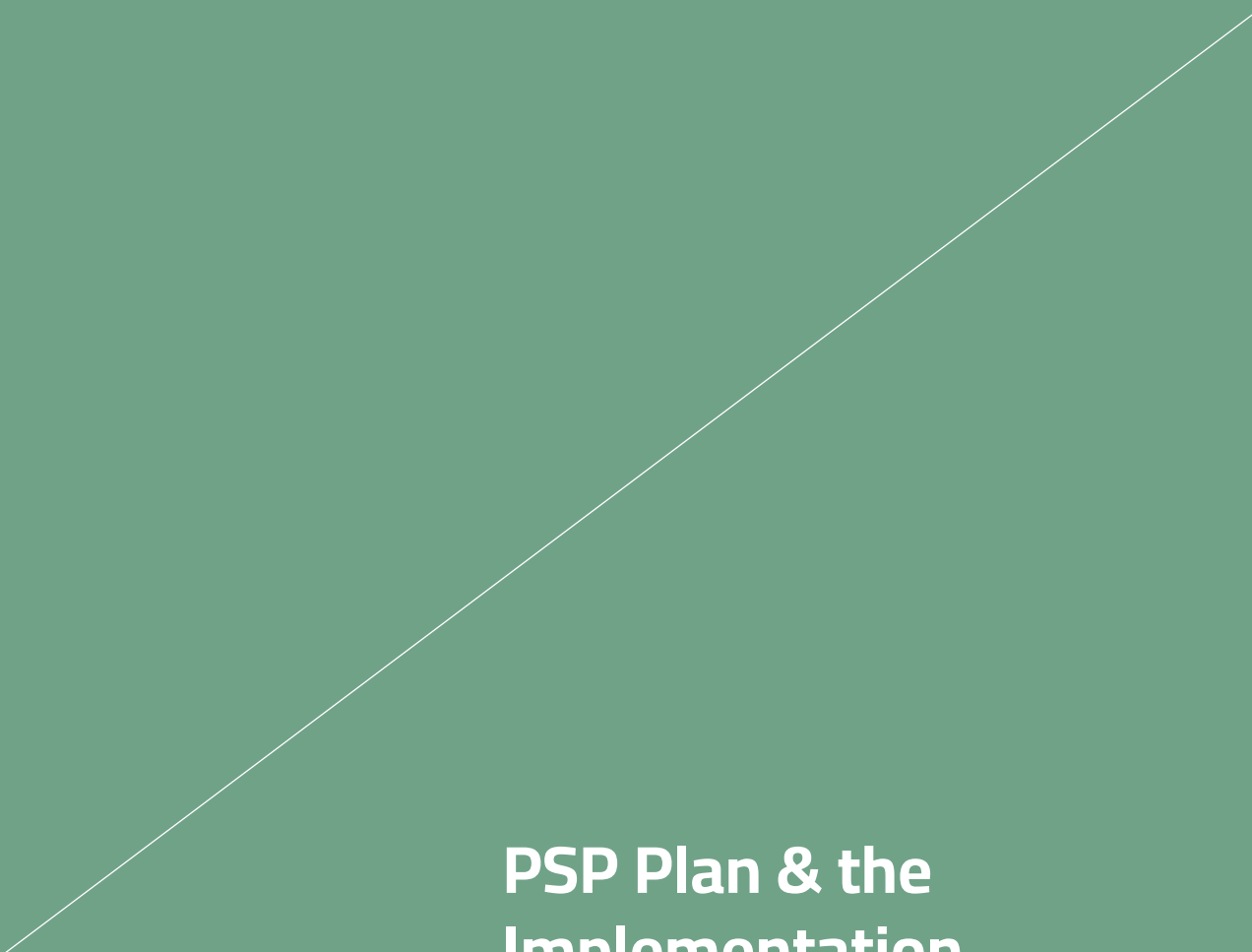


#### **Article (4):**

For the purposes of implementing the provisions of Article 4 (of the Law, the provisions of the PSP Law and Regulations shall apply to PSP projects that are tendered or contracted by companies established by the government, or where the government, either directly or indirectly, owns more than 50% of its capital, which the purpose of incorporation or ownership in these companies is for the tendering of a PSP project. A company is considered as a government-incorporated or owned for the purpose of tendering the PSP Project if one of the following criteria is met:

1. If the company is established with the approval of the Approving Authority based on the Business Case Documents, for the purposes of corporatization in preparation for Divestment.
2. If the incorporation of the company or its ownership by the government is for the purposes of tendering a project related to infrastructure or public services through PSP.
3. Companies wholly owned by the government and their incorporation included the transfer of infrastructure assets to it from the government.





# PSP Plan & the Implementation Prioritization



**02**



## Part 1: Identification Criteria for PSP Opportunities

### Article (5):

The PSP Plan shall identify the assets and services proposed for Private Sector participation in the sector, and shall identify the responsible Governmental entity for each PSP Project. The Concerned Entity shall list and assess all public facilities and Assets it manages, the public services it provides, the activities it performs, the objects and items of capital and operational expenditure in the Concerned Entity's budget, and its current and future capital projects (hereinafter referred to as the "Function"). Each Function shall be assessed separately in order to determine the possibility of assigning such a Function to the Private Sector through PSP. For the purposes of conducting this assessment, the following criteria shall be used:

#### 1. Nature of the Function:

- a. The Function results in the Concerned Entity being responsible for both the regulatory and operational functions at the same time or results in a lack of focus on the Concerned Entity's role as a sector regulator.
- b. The Function is not considered one of the Concerned Entity's core Functions (of regulatory nature) but rather a non-core Function (of operational nature).
- c. The Function is linked to providing public services to the community, producing goods that satisfy the community's general needs, or achieving public benefit.
- d. The Function is not an act of sovereignty or an act related to national security that must be exclusively undertaken by the Public Sector and this aspect cannot be taken into consideration through structuring the PSP process or through contractual relationships, and it has not been previously implemented using the PSP model.
- e. The Function does not involve state secrets that require legal or a court permission to enable any other person than the relevant government employees of the Concerned Entity and/or the Contracting Authority to access, unless there is another efficient method to protect such secrets.
- f. International relevant practices show that the Function may be assigned to the Private Sector.

#### 2. Sector Objectives:

- a. The Function being undertaken by the Concerned Entity is not in line with the Saudi Vision 2030 objectives.
- b. Achieving the sector objectives and plans requires the Function to be undertaken by the Private Sector or Private Sector participation in the sector to be expanded.
- c. The Concerned Entity continuing to practice the Function restricts competition and hinders the attraction of investors and the promotion of competition in the sector.

#### 3. Capital Expenditures (CAPEX):

- a. The Function requires designing and building new infrastructure or rehabilitating, renewing, expanding, or maintaining existing ones or any other capital expenditures.
- b. Technical solutions used in the Function are not in line with the technical developments in the same field and require capital investment or operational improvements to be developed or replaced.



#### **4. Quality and Efficiency:**

- a. The Private Sector has the human resources and ability to implement the Function more efficiently and in better quality than the Concerned Entity in the current situation.
- b. The quality or the availability of goods and services generated from the Function in the current situation is not at par with similar goods and services in the region's countries or other countries.
- c. The time required to deliver the service related to the Function to the end beneficiary in the current situation is not at par with the region's countries or other countries.

#### **5. Cost:**

- a. The Private Sector can implement the Function with less cost and operational expenditures than those incurred by the Concerned Entity in the current situation.
- b. There is an opportunity to improve the structure of the cost for providing services to beneficiaries.
- c. The Function is a cost center to the government, with a possibility of utilizing the Function more efficiently to cover its expenses and become a revenue center without adversely affecting the recipients of public services.

#### **6. Management Efficiency:**

- a. There are currently no clear objectives for the Function and no adopted indicators to measure performance in relation to the Function's outputs.
- b. The Function does not rely on the management by objectives and performance measurement, and there is a need to develop the management model, and to adopt a more efficient and effective management model, which led to the ineffectiveness of providing the service with efficiency and high quality.

#### **7. Operations:**

- a. There are risks associated with the Function that are incurred in full by the Concerned Entity (such as the risks related to the suitability of the facilities design and the achievement of their purpose, construction risks, supply and demand risks, operational risks, economic and financial risks), and it is possible to transfer some of these risks to the Private Sector considering among other factors its ability to manage and mitigate such risks more efficiently and cost-effectively than the Concerned Entity.
- b. The Function does not meet the recognized standards in international practices in relation to public safety, environment protection, sustainability, and natural resources reservation.
- c. The Function does not rely on output specifications and performance standards and does not consider the implementation method a core element in achieving the desired purpose.

#### **8. Bankability:**

The Function could be funded when assigned to the Private Sector.

#### **9. Previous Experiences:**

There are previous successful experiences of conducting the Function or a similar Function through PSP at the local or international level.

### **Article (6):**

The Contracting Authority shall consider any Function that meets ten (10) or more of the sub-criteria prescribed in Article (5) of these Regulations a potential opportunity for a PSP Project and add such Function to the list of proposed PSP Projects in the PSP Plan that will be studied in detail to determine the feasibility of implementing it as a PSP Project.

## **Part 2: Prioritizing PSP Projects at the Sector's Level**

### **Article (7):**

The Concerned Entity shall categorize projects in the PSP Plan into three categories according to their significance and relationship to the objectives of the PSP Plan:

1. Key PSP Projects, which include the proposed PSP Projects that must be implemented in order to achieve the PSP Plan objectives in full and the failure to do so, would lead to the failure in achieving the objectives.
2. Main PSP Projects, which include the proposed PSP Projects that, when implemented, would achieve part of the PSP Plan objectives and the failure to do so, would lead to the disruption in achieving the objectives.
3. Supportive PSP Projects, which include the proposed PSP Projects that, when implemented, would achieve part of the PSP Plan objectives and the failure to do so, would not compromise the PSP Plan objectives.

### **Article (8):**

1. The factors stipulated in this Part shall be adopted for prioritizing the implementation of the PSP Projects under the PSP Plan within the mentioned in Article (7) of these Regulations.
2. In applying these factors and determining priorities, the Concerned Entity shall:
  - a. Key PSP Projects shall generally receive a higher implementation priority than main and supportive PSP Projects, but high-priority projects within these latter categories may be selected for implementation in order to achieve a balanced PSP program within the sector. The rationale for this selection shall be stated in the PSP Plan.
  - b. Weight the applicable factors equally for each project, unless the sector's project characteristics and objectives are such that certain factors must be given greater emphasis than others in the prioritization process, in which case the paired comparison technique shall be used to determine the relative weightings of each factor.
  - c. Utilize both the factors in Articles (9) and (10) of these Regulations for PPP Projects, and the factors in Articles (9) and (11) of these Regulations for Divestment Projects, as applicable.
3. The Concerned Entity may adopt another methodology to prioritize the implementation of the PSP Projects, provided that the PSP Plan indicates the prioritization methodology to be followed, and the grounds for prioritizing the implementation, provided that the methodology must align with the prioritization frame work in the national prioritization strategy.



## **Article (9):**

Prioritizing PSP Projects shall take into account the following factors:

### **1. Achievement of sector's objectives:**

- a. The proposed project is required for or helps with the achievement of the Saudi Vision 2030 objectives.
- b. The proposed project is part of the requirements of achieving the sector objectives in general, the sector's strategies and its plans.
- c. The proposed project has clear objectives related to the sector objectives and the sector's PSP Plan.
- d. The project's objectives are measurable using controlled key performance indicators that define the extent to which the project has achieved its objectives.

### **2. Concerned Entity's scope of work:**

- a. The proposed project helps reinforce the Concerned Entity role as a sector regulator and transfer the operational role to the Private Sector.
- b. The proposed project helps lessen the non-core functions undertaken by the Concerned Entity by assigning such functions to the Private Sector and support the Concerned Entity in focusing its efforts on implementing its core functions.

### **3. Project risks:**

- a. The proposed project enables the transfer of some or all the risks that are currently or would be incurred by the Concerned Entity to the Private Sector.
- b. The proposed project will result in a greater degree of compatibility with the requirements and standards of public safety, environment protection, sustainability, and natural resources preservation recognized in international practices.

### **4. The efficiency of government spending:**

- a. The proposed project will help achieve a greater degree of efficiency in government spending and limit financial waste.
- b. The proposed project will help reduce the Concerned Entity capital or operational expenditures.

### **5. The efficiency of government administration:**

- a. The proposed project will help in increasing the efficiency of performance in the Concerned Entity.
- b. The proposed project will help in improving the quality of service.

### **6. Government revenues:**

- a. The proposed project will increase the non-oil government revenues.
- b. The proposed project will create new or increased sources of government revenues.

### **7. The project is planned:**

The technical scope of the project is approved by the government as part of the sector's approved plans funded by state budget.

## **8. Concerned Entity's Human Resources:**

There are sufficient human resources and necessary expertise available in the Concerned Entity to study, prepare, and tender the project, and to manage the Contract, especially when taking into consideration the human resources needed for the other PSP Projects of the Concerned Entity.

## **9. Infrastructure improvement:**

- a. The proposed project helps create new infrastructure or rehabilitate, renew, expand, update, or maintain the existing ones.
- b. The proposed project helps develop the technical solutions currently used in the sector.

## **10. Efficiency and quality of public services:**

- a. The proposed project helps increase the efficiency and quality of public services or goods provided to the community.
- b. The proposed project helps enhance the public services delivery time, and provide them in less time in the same or better quality.
- c. The proposed project applies a more efficient control over the quality of outputs.

## **11. The economic impact of the Project:**

- a. The proposed project helps promote competition in the sector and attract investors to the sector.
- b. The proposed project helps decrease the cost of public services or goods.
- c. The proposed project will create additional employment opportunities.

## **12. The project's social impact:**

The proposed project helps achieve public benefit and provide the public services and goods needed by the community.

## **13. Needs assessment:**

The needs that the project seeks to address are clear and, according to the initial assessment, there are no preferable alternative methods to address such needs.

## **14. The readiness of the regulatory environment:**

The readiness of the proposed project for implementation from a legal and regulatory perspective, and its need to enactment of new laws or regulations.

## **Article (10):**

Prioritizing PPP Projects shall take into account the following factors:

### **1. Affordability:**

- a. The Project is affordable without credit support from the government;
- b. project affordability by end users without a need to state subsidy.

### **2. Economic feasibility:**

The proposed project is economically feasible for the Private Sector and is likely to attract investors.





### **3. Market capacity:**

Market capabilities accommodate the proposed project, and there are operators or investors who are able and qualified to implement the project and have the desire to compete for it.

### **4. Bankability:**

- a. The proposed project can be funded by local or international sources and is likely to fulfil the requirements of funders.
- b. The funders are capable of and interested in funding the project.

### **5. Project nature:**

- a. Projects similar to the proposed project have been successfully implemented locally or globally.
- b. The risks associated with the project implementation (such as the environmental impact of the project, inability to implement the project, delayed implementation, or the Private Sector's administrative or financial risks) are low, and/or can be more efficiently or effectively managed and/or mitigated by the Private Sector.
- c. The proposed project is part of a portfolio of related and integrated PPP projects that are under implementation.

## **Article (11):**

Prioritizing Divestment Projects shall take into account the following factors:

### **1. Assets profile:**

- a. The government does not need to retain the Assets to perform core functions.
- b. The Assets will be attractive to potential buyers.

### **2. Affordability:**

The Concerned Entity can provide the necessary budget to cover any expenses that may be required for any pre-requisite activities prior to project tender, such as administrative or financial restructuring or corporatization.

### **3. Regulatory aspects:**

The Entity that owns the Assets proposed to be divested is identified and the regulatory requirements to complete the divestment are clear and achievable.

# Governance Framework

03





## **Part 1: Powers and Tasks of the Authorities in Relation with PSP Projects and Operations**

### **Article (12):**

Without prejudice to the competencies of the entities/authorities stipulated in the Law and the PSP Governing Rules, each of the entities/authorities specified in these Regulations shall exercise the powers and tasks granted to it under these Regulations. For any subject outside the jurisdiction of the entity/authority, such subject shall be submitted to the entity/authority with the jurisdiction for approval.

### **Article (13):**

The Board of Directors shall:

1. Without prejudice to the powers and tasks of the other bodies under the PSP Governing Rules, grant the necessary approvals for the PSP Project and exercise the powers and tasks in its capacity as the Approving Authority under the Law and the PSP Governing Rules.
2. Grant the necessary approvals for the PSP Project and its operations and exercise the powers and tasks in its capacity as the Board of Directors of NCP under the Law and the PSP Governing Rules.
3. Review the Business Case Documents, the Tender Documents, and the relevant Contracts prepared by the Contracting Authority, and decide on such in its capacity as the Approving Authority.
4. Study any request by the Contracting Authority relating to the PSP Project, and decide on such request in its capacity as the Approving Authority.
5. Study the recommendation submitted by the Contracting Authority regarding the non-applicability of any of the regulatory provisions regulating government tendering and procurement or the state's rental and vacating of real estate; in terms of the PSP Project that is subject to the Law.
6. Review the periodic report submitted by the Contracting Authority regarding the PSP Projects undertaken by that Authority, and direct the Contracting Authority to what the Board of Directors deems to be appropriate.
7. Determine the timeframe required to develop and update the PSP plan.
8. Study the recommendation submitted by the Contracting Authority regarding the issuance of a decision to enforce the Law on any PSP Project for which an approval was issued before the enforcement of the Law and no Contract was signed in this regard.

### **Article (14):**

Without prejudice to the provisions of Article (8) of the Law, MOF shall:

1. Study the Business Case Documents and related Contracts prepared by the Contracting Authority before submitting them to the Approving Authority, and issue the decision regarding the PSP Project within twenty-five (25) working days, MOF shall study the parts that are linked to financial obligations and the cost incurred due to the PSP project.
2. Take the necessary actions throughout the term of the Contract to ensure that the financial allocations required for the approved PSP Project are secured and that the government's financial obligations are fulfilled on their due dates.
3. Study the request of the Contracting Authority to provide financial and credit support for the PSP

Project that was not provided for in the Contract, and recommend in this regard within fifteen (15) working days.

4. Study the request of the Contracting Authority to include in the PPP Contract the provision for granting the Private Party the rights to collect the financial consideration or public revenues on its behalf directly or on behalf of the state's treasury, and to issue the decision in this regard under its capacity as the Approving Authority in this regard.
5. Monitor and identify any infrastructure or public service project for any Governmental entity to which the criteria specified in Article (7) of the Law are met, before tendering, concluding, renewing or extending any contract in respect of such project and to provide NCP with the documents and information, necessary to conduct the study specified in Article (7) of the Law. Furthermore, MOF shall review the results of the initial study submitted by NCP regarding the infrastructure or public service project, and take the appropriate actions regarding the results of NCP's study on the project within twenty (20) working days, including the submission of recommendations to the Board of Directors to decide whether to consider this project as a PSP Project that is subject to the Law.

#### **Article (15):**

When submitting to MOF, the Contracting Authority shall consider the following:

1. Submission to MOF shall only take place after the Contracting Authority carries out a comprehensive study and analysis on the subject matter of the request.
2. MOF shall be provided with all the necessary documents and information related to the subject matter of the request.
3. The Contracting Authority may only submit to the relevant Approving Authority after obtaining the written approval of MOF, and the approval of MOF shall be attached to the request submitted to the relevant Approving Authority.

#### **Article (16):**

1. MOF may present the request of the Contracting Authority to NCP to provide observations, and MOF shall consider any observations presented by NCP, and take the appropriate actions in this regard.
2. MOF may ask NCP to nominate representatives to participate on its behalf in reviewing the request submitted by the Contracting Authority and provide advisory support to MOF's team in this regard.

#### **Article (17):**

1. In the event that MOF rejects any request submitted by the Contracting Authority, the decision must be written and justified and must indicate the requirements (if any) that must be fulfilled for MOF to grant its approval.
2. The Contracting Authority must inform the Approving Authority and NCP of MOF rejecting to grant approval.
3. The Contracting Authority may re-submit its request to MOF to reconsider its decision to deny the request, provided that the Contracting Authority offers justifications for re-considering the request to MOF.



## **Article (18):**

Without prejudice to the powers and tasks of other entities under the PSP Governing Rules, the Supervisory Committee shall:

### **1. As the Approving Authority:**

- a. Grant the necessary approvals for the PSP Project and exercise its powers and tasks in its capacity as the Approving Authority under the Law and the PSP Governing Rules.
- b. Review the Business Case Documents, Tender Documents, and the related Contracts prepared by the Contracting Authority, and issue the its decision on such as the Approving Authority.
- c. Study any request by the Contracting Authority relating to the PSP Project, and issue the decision on such as the Approving Authority.

### **2. As the Contracting Authority:**

- a. Grant the necessary approvals for the PSP Project and exercise its powers and tasks.
- b. Study the Business Case Documents, Tender Documents, and the related contracts prepared by the Concerned Entity, before submitting to the Approving Authority and issue the decision regarding in this regard within twenty-five (25) working days.
- c. Supervise the implementation work related to the PSP Project for which the Supervisory Committee is the Contracting Authority.
- d. Directly supervise, monitor, and follow up on PSP Projects in the sector, including PSP Projects in sub-sectors, bodies and assets in that sector.
- e. Provide continuous coordination and cooperation with the Concerned Entity concerned with the PSP Project and directing the Concerned Entity regarding the support and assistance to be provided to the Supervisory Committee.
- f. Verify the continuous application of the governance rules under these Regulations regarding the work, meetings and decisions of the Supervisory Committee.

## **Article (19):**

The Contracting Authority shall submit to the Approving Authority for approval based on the following stages:

### **1. At the stage of preparing the Business Case Documents:**

- a. The Contracting Authority shall submit the Business Case Documents to the Approving Authority at the end of the preparation stage and before the PSP Project tender if the Business Case Documents indicated that the PSP Project tender is appropriate and feasible. It shall not be submitted to the Approving Authority if the Contracting Authority deemed it inappropriate and/or unfeasible for the project to be implemented as a PSP Project based on the results of the Business Case Documents, provided that the Contracting Authority shall notify NCP of such.
- b. If the Business Case Documents deemed the project tender appropriate and feasible after completing actions such as restructuring or corporatization, submission to the relevant Approving Authority shall take place on two phases:
  1. The submission shall take place at the end of the Business Case preparation stage to obtain approval for the PSP Project and to proceed with the required actions specified in the Business Case Documents.

2. After completing the required actions, submission to the Approving Authority shall take place to approve the PSP Project tender if the results of the required actions showed that a tender is feasible and appropriate. If the Contracting Authority deemed it inappropriate and/or unfeasible to implement the project as a PSP Project based on the results of the required actions, the Contracting Authority shall inform the Approving Authority and NCP of such.

## **2. At the PSP Project Tender stage:**

- a. The Contracting Authority shall submit to the Approving Authority at the end of the PSP Project Tendering phase and before signing the Contract to obtain approval for the outputs of the tender process, award the PSP Project to the preferred bidder, adopt the final version of the Contract, approve its signing, and approve any direct agreement or provide the necessary undertakings for the project, if needed.
- b. If the Contracting Authority deemed it necessary to cancel the PSP Project Tender, due to a procedural defect in the bidding procedures or the absence of the need to bid and implement the project, the Contracting Authority shall inform the Approving Authority for approval before announcing tender cancellation and before notifying bidders of such.

## **3. For other matters subject to the approval of the Approving Authority:**

The Contracting Authority shall submit an approval request to the Approving Authority on any other matters related to the PSP Project that are subject to the approval of the Approving Authority in the event of a case that requires such approval before the Contracting Authority takes any action in this regard.

### **Article (20):**

The Contracting Authority may, at any stage during the PSP Project, request for the Approving Authority to issue a preapproval for any of the matters related to the PSP Project that are subject to the approval of the Approving Authority, and the Approving Authority may if it deems that granting the preapproval helps to expedite the implementation of the PSP Project procedures, grant such approval provided that such preapproval contains any requirements or conditions that the Contracting Authority must fulfil for such approval to be valid.

### **Article (21):**

The Concerned Entity shall:

1. As a Contracting Authority:
  - a. Carry out the implementation works in connection with PSP Project whose Contracting Authority is the Concerned Entity. In particular, preparing the Business Case Documents, Tender Documents and related Contracts, managing procedures for tendering PSP Projects, including Requests for Expression of Interest, Requests for Qualifications, Requests for Proposals, opening, examining and evaluating tenders, negotiating and communicating with bidders, announcing the bidding results for each phase, managing procedures for the award, signing the contract with the Private Party and carrying out any other tasks associated with the bidding process, and submitting the said details to the Supervisory Committee for review and decision within twenty-five (25) working days of the end of any phase before being submitted to the Approving Authority within the limits prescribed by the PSP Governing Rules.



- b. Submit any request associated with PSP Projects to the Supervisory Committee for review and decision within fifteen (15) working days, before being submitted to the Approving Authority, if necessary.
2. Prepare the sector PSP Plan, including proposals for the development of the regulatory environment of the sector, and submit such Plan to the Supervisory Committee for approval within twenty-five (25) working days of preparation and then to be submitted to the Board of Directors for adoption, and the PSP Plan shall be updated regularly or when necessary.
3. Take necessary actions to complete procedures for the development of the sector regulatory environment, if any, and prepare progress reports every quarter, including any potential difficulties, challenges or risks and recommendations to address the same, and submit such report to the Board of Directors.
4. Support the Supervisory Committee and comply with its directives so that it can perform the tasks and functions entrusted to it as an Approving or Contracting Authority.
5. Ensure that PSP Project is implemented according to the Business Case Documents and the Tender Plan approved by the Approving Authority.
6. Ensure a just valuation of any state-owned assets associated with the Divestment Project.
7. Ensure that the PSP Plan which was agreed for the sector and any policies or decisions issued in respect of any PSP Project are complied with.
8. Take necessary actions to ensure that the procedures for qualification of bidders of PSP Projects, evaluation of proposals and selection of the preferred bidder are implemented according to the highest standards of integrity and transparency and equity and are consistent with requirements of the protection of the public interest.
9. Coordinate with the competent public authorities to overcome any obstacles facing the implementation of any PSP Project and the achievement of its objectives.
10. Keep all documents, instruments and decisions associated with the PSP Projects and record all actions carried out concerning the PSP Projects.
11. Manage the PSP Project execution phase and monitor the PSP Projects at the phase following signature of the Contract, and prepare a semiannual progress report, including any potential difficulties, challenges or risks and recommendations to address the same, and submit such report to the Approving Authority.

#### **Article (22):**

1. The Concerned Entity shall be responsible for authenticity, accuracy and inclusivity of the studies, documents and data provided by it to the Supervisory Committee.
2. The Concerned Entity shall be responsible for the actions of its employees and Advisors participating in the activities related to the PSP Project, and it shall continuously supervise and monitor them and remove any employee or Advisor for inadequate performance or for the public interest.
3. The Concerned Entity shall be considered the sponsor of the PSP Project, and it shall be responsible for any violation, default or failure in carrying out the tasks and functions entrusted to the Contracting Authority.

### **Article (23):**

The Work Team shall submit recommendations to the Contracting Authority for review and approval of completion of the necessary actions concerning PSP Projects in the following cases:

1. The cases set out in this Part of these Regulations to complete procedures for submission to the Approving Authority.
2. Before releasing an RFQ concerning the PSP Project.
3. After completion of qualification phase for the PSP Project and before announcing results of the evaluation of statement of qualifications and list of qualified bidders.
4. Before publishing the RFP related to the PSP Project.
5. After completing the proposals' evaluation phase concerning the PSP Project and before the announcement of results of bidding.
6. Before commencement and after completion of the final negotiations with the preferred bidder for the PSP Project.
7. for unsolicited proposals:
  - a. When an unsolicited proposal is received and before it is reviewed.
  - b. After an unsolicited proposal is reviewed.
8. Any other cases associated with PSP Projects that are identified by the Contracting Authority.



## Part 2: Powers and Tasks Delegation by the Contracting Authority

### Article (24):

1. In its capacity as the Contracting Authority, the Supervisory Committee may delegate certain of its powers and functions to:
  - a. The chairperson or any member of the Supervisory Committee.
  - b. The Concerned Entity or any committee formed by the Supervisory Committee or NCP.
  - c. Any government-owned company participating in PSP Project.
  - d. The Work Team.
  - e. Any public official at the Contracting Authority whose grade is not lower than (15) or its equivalent.
2. Without prejudice to Paragraph (1) of this Article, when any person exercises the powers and functions delegated to him/her by the Contracting Authority, such powers and functions shall be exclusive and non-delegable, and the delegatee shall exercise the delegated powers and functions on behalf of the Contracting Authority and he may not exercise them on his behalf.
3. The Contracting Authority may not delegate any of its powers or functions to any person mentioned in sub-paragraphs (b, c, d and e) of Paragraph (1) of this Article, or to any Advisor of relevant PSP Project or any company or entity from the Private Sector not owned by the government or a non-public official without consent of the Board of Directors. For the purpose of this Paragraph, making use of technical services provided by Advisors under the supervision of the Contracting Authority shall not be considered delegation by the Contracting Authority to such persons.

### Article (25):

1. The delegation shall be issued unanimously by the Main Members of the Supervisory Committee.
2. The delegation shall only be effective if it:
  - a. is written;
  - b. expressly specifies the powers and functions covered by the delegation and limits of the exercise of such powers and functions and is limited, and;
  - c. is fixed-term.

### Article (26):

1. The Contracting Authority may amend, extend, cancel, or add any restrictions or controls to the delegation issued by it.
2. If the Contracting Authority issues several delegations related to the same subject and such delegations conflict with each other, the latter delegation shall prevail. The Contracting Authority may resolve any dispute arising out of any problem in determining the delegate assigned with the powers and functions of the Contracting Authority.

### Article (27):

1. Issuance of the delegation shall not preclude the Contracting Authority from exercising its powers and functions during the term of delegation and the delegatee shall be informed of the same.

2. The delegatee shall be responsible for the decisions and actions made by him and shall be held liable for any violation, default or failure in carrying out the delegated functions and responsibilities, and for incorrect or imprecise data, information, or documents provided by him to the competent authorities for grant of approvals. The Contracting Authority shall take necessary actions to continuously oversee and monitor the delegatee while exercising the delegated powers and functions.

#### **Article (28):**

The delegatee shall inform the Contracting Authority of the decisions he makes and the actions he takes under the delegation given to him within five (5) business days of such decision or action, or as directed by the Contracting Authority.

### **Part 3: Steering Committee and Work Team**

#### **Article (29):**

1. As a Contracting Authority, the Supervisory Committee may form a Steering Committee that shall be responsible for the PSP Projects managed by the Supervisory Committee. The Supervisory Committee may form several Steering Committees, provided that the scope of work of each Steering Committee is expressly defined, including defining the PSP Projects for which it is responsible.
2. Each steering Committee shall be composed of two members representing the Concerned Entity and NCP. The Steering Committee may add further members on a permanent or temporary basis.

#### **Article (30):**

1. The members Steering Committee shall be Saudi and of high-level posts whose grade is not lower than (14) or its equivalent.
2. Members of the Steering Committee shall be nominated by the entity they represent. There shall be an alternative representative to take the place of any member in attendance and voting in case of absence.
3. Members or their alternative representatives may be replaced in writing by the entity they represent.
4. The highest level post shall chair the Steering Committee.

#### **Article (31):**

Without prejudice to the functions and responsibilities set out in these Regulations, the Supervisory Committee, in its decision related to forming the Steering Committee, shall identify the Steering Committee's mandate that may include all or any of the following:

1. Review any subject before being submitted to the Supervisory Committee, including any report, proposal, recommendation, suggestion or study, and make recommendations on such subject.
2. Consider any matters submitted by the Work Team to the Steering Committee in connection with PSP Projects, and receive reports and outcomes throughout the PSP Projects and make recommendations on such matters.
3. Provide necessary support to the Work Team in order to carry out its functions and responsibilities.
4. Communicate and coordinate with any entity to access any support or procure any required approvals to make progress in PSP Project related work.
5. Monitor activities of PSP Projects, and define cases of noncompliance with the provisions of the Law, the PSP Governing Rules, these Regulations and any other regulatory requirements and report such cases to the Supervisory Committee.



6. Supervise and monitor the PSP Projects, including supervision of the outcomes of the Work Team and work progress, and provide guidance.
7. Provide guidance, solve the problems and disputes faced by the Work Team and report the same to the Contracting Authority if necessary.
8. Provide explanations about the matters raised by the Work Team and the concerned stakeholders.
9. Carry out any other functions determined by the Supervisory Committee.

#### **Article (32):**

1. Meetings of the Steering Committee shall be held in closed sessions attended by all members unless the Supervisory Committee otherwise decides on a case-by-case basis.
2. Members of the Steering Committee may attend the meetings and vote on decisions in presence, through teleconference, or by circulation.
3. Meetings shall be held monthly or when necessary or at the request of a member of the Steering Committee. If there is a scheduled meeting for the Supervisory Committee (as applicable), the Steering Committee shall hold a meeting before the meeting of the Supervisory Committee.
4. The Work Team shall set agendas of the meetings of the Steering Committee and shall prepare pre-requisite activities of such meetings.
5. The notice of the meeting shall be issued by the chairperson of the Steering Committee three (3) days before the meeting date.
6. The Steering Committee may invite any person whose attendance is necessary other than the members, provided that such person shall not be entitled to vote or to access any confidential information or data, and shall not have any conflict of interest.
7. The minutes of meetings shall be written in Arabic language and shall be signed by all members present. The chairperson of the Steering Committee shall make necessary arrangements with respect to the preparation of the minutes and getting them signed by the members present. The minutes of the meeting may be translated into English, and in case of any discrepancy, the Arabic version shall prevail.

#### **Article (33):**

The decisions and recommendations of the Steering Committee shall be issued unanimously. No matter may be submitted to the Supervisory Committee without the approval of the Steering Committee unless the Supervisory Committee otherwise approves, and such approval shall be given on a case-by-case basis, in case the Steering Committee fail to reach an agreement, the subject matter and the Steering Committee members' arguments shall be submitted to the Supervisory Committee to decide upon.

#### **Article (34):**

The Steering Committee shall submit a report every six (6) months to the Supervisory Committee to inform it of the activities carried out by the Steering Committee and the Work Team. In particular, such report shall state the achievements made with respect to the decisions and directives of the Contracting Authority and the Approving Authority along with any potential obstacles, challenges or risks and the suggested recommendations to address the same.

### **Article (35):**

1. The Steering Committee may form several Work Teams for the PSP Projects managed by it, provided that the scope of work for every Work Team shall be expressly defined including the PSP Projects for which it is responsible.
2. Each Work Team shall be composed of:
  - a. A team leader nominated by the Concerned Entity.
  - b. Representatives from the Concerned Entity.
  - c. Representatives from NCP.

The Steering Committee may seek the assistance of Financial, legal and technical Advisors nominated by the Contracting Authority to be included in the Work Team.

3. Members of the Work Team shall be named by the entities they represent. And the Work Team shall include –if possible – individuals specialized in the following areas:
  - a. Public relations and communication.
  - b. Technical affairs related to the sector or the PSP Project.
  - c. Commercial and financial affairs.
  - d. Project management.
  - e. Legal and regulatory affairs.
  - f. Engineering and construction affairs.
  - g. Strategic affairs.
4. Members of the Work Team may be replaced in writing by the entities they represent.

### **Article (36):**

1. The leader and members of the Work Team shall have the necessary relevant skills, experiences, good judgment and any other qualifications the entities they represent deems necessary. such person shall:
  - a. Be a Saudi national.
  - b. Have sufficient experience in the public and Private Sectors whether inside or outside the Kingdom. The team leader shall have five years of experience in a management position and the team members shall have no less than 3 years' experience.
  - c. Have sufficient experience in PSP.
  - d. Be fluent in the Arabic and English languages.

The Contracting Authority may exempt whomever it deems appropriate from applying subparagraphs (a) and (d) of this article if there are justifications for that.

2. In all cases, if a professional Advisor is nominated to take part in the Work Team, such Advisor shall have no conflict of interest.





#### **Article (37):**

1. Without prejudice to the functions and responsibilities set forth in these Regulations, the team leader shall manage, monitor and oversee the activities related to the PSP Projects for which the Work Team is responsible, and shall:
  - a. Prepare, deliver and update the procedures related to the implementation of the PSP Projects according to directives of the Contracting Authority or the Steering Committee.
  - b. Manage the activities related to the PSP procedures according to the directives of the Contracting Authority, including managing, monitoring and supervising all procedures for tendering of PSP Projects.
  - c. Define the extent of the need for Advisory services.
  - d. Supervise, monitor and manage all procedures of tendering and bidding concerning the Advisory services.
  - e. Report any substantive issues related to the PSP procedures to the Steering Committee.
  - f. Divide the Work Team into sub-teams (as required), and define the functions to be carried out by each sub-team in proportion to specializations and experiences of members.
  - g. Implement any other tasks determined by the Contracting Authority or the Steering Committee.
2. Without prejudice to the tasks and responsibilities set out in these Regulations, the Work Team shall:
  - a. Assist the team leader in performing his duties.
  - b. Carry out, follow up, oversee and report on the functions related to the PSP Projects according to directives of the team leader.
  - c. Report to the team leader on any issues related to the PSP Project procedures for guidance, or escalate to the Contracting Authority or the Steering Committee.
  - d. Perform any other tasks assigned by the team leader.


#### **Article (38):**

1. Unless the Steering Committee otherwise approves, the Work Team shall hold its meetings in presence of the team leader and the members. Decisions and recommendations of the Work Team shall be issued by the majority. If the quorum is not met, the Steering Committee shall guide the Work Team as it deems fit.
2. The team leader shall submit a report every three (3) months to the Steering Committee to keep it informed of the activities carried out by the Work Team. In particular, such report shall state the achievements made with respect to the decisions and directives of the Contracting Authority and the Approving Authority, along with any potential obstacles, challenges or risks and the suggested recommendations to address the same.

## **Part 4: Meetings and Decisions of the Supervisory Committee**

#### **Article (39):**

1. The Supervisory Committee shall convene its meetings according to an annual schedule to be



approved at the beginning of every calendar year or at the request of a Main Member. In coordination with the Work Team, the Secretariat shall prepare the agenda of meetings of the Supervisory Committee.

2. The Supervisory Committee shall convene its meetings in the presence of all Main Members (or their delegates) upon the call of the chairperson. The Secretariat shall send notice of meeting to the members at least ten (10) working days before the meeting date, or at least two (2) working days before the extraordinary meetings. The members of the Supervisory Committee may take part in the meetings and vote on decisions through teleconference. The meeting shall be rescheduled if the quorum is not met.
3. The notice of the meeting shall contain:
  - a. Date, time and venue of the meeting.
  - b. Type of meeting (ordinary or extraordinary).
  - c. Names of persons expected to attend the meeting other than the members.
  - d. The agenda and the papers and documents prepared for the subjects to be discussed.
4. The Supervisory Committee may invite any person whose attendance is necessary, in addition to the members. However, such person shall not be entitled to vote, also, such person shall not be entitled to access any confidential information or data without the approval of the members of the Supervisory Committee with the aim of achieving the purpose of his attendance. Such persons may only attend the meetings if:
  - a. The Main Members agree to their attendance.
  - b. Their attendance is necessary for deliberations of the meetings or their work requires their participation in the meeting.
  - c. They have no conflict of interest.
  - d. The Secretariat sends the invitation to them at least five (5) working days before the ordinary meeting date, or at least two (2) working days before the extraordinary meeting date.
5. Meetings of the Supervisory Committee shall be held in closed sessions, and the Supervisory Committee shall determine those whose attendance is necessary while the meeting is held.
6. If a Main Member submits a request for convening a meeting, the Secretariat shall be notified of such request in writing or via email at least ten (10) working days before the date of the required meeting, or at least two (2) working days before the date of the extraordinary meeting. The notice shall contain the suggested date of the meeting, reasons for convening the meeting and the matters to be discussed.
7. In the circumstances where an urgent decision is required and where holding a meeting is difficult, the chairperson of the Supervisory Committee may request the members to vote on the decision by circulation, provided that the request and any decision reached shall be minted as part of the minutes of the first meeting held by the Supervisory Committee post-issuance of the circulated decision.



#### **Article (40):**

1. The Supervisory Committee shall issue its decisions by the unanimous vote of the Main Members in the following cases:
  - a. Approving the Business Case Documents, and tendering, awarding and signing the Contract of the PSP Project.
  - b. Decisions made by the Committee.
  - c. Urgent decisions that are voted on by circulation.
  - d. Approving Contracts and advisory services contracts and the tendering phases related to them.
  - e. Approving the PSP Plan.
  - f. Approving the delegation of powers.
  - g. Forming permanent or temporary sub-committees responsible to the Supervisory Committee.
  - h. Without prejudice to the registry provisions, approving disclosure of deliberations of the Supervisory Committee or access to or use of the confidential information and records of the Supervisory Committee.
  - i. Approving to hold meetings of the Supervisory Committee in open sessions.
2. Notwithstanding Paragraph (1) of this Article, all other decisions of the Supervisory Committee shall be issued by the majority, and in case of a tie, the chairperson of the Supervisory Committee shall have the deciding vote. In all cases, no decision may be issued upon approval of a single member of the Supervisory Committee's members.

#### **Article (41):**

The Secretariat shall report to the Board of Directors for consideration and guidance if:

1. The Supervisory Committee holds a meeting and unduly fails to issue a decision on any item of the agenda for two successive ordinary meetings.
2. The Supervisory Committee fails to vote or issue a decision due to conflict of interest or for an integrity-related reason.
3. The Supervisory Committee fails to take a decision on a matter that requires unanimous votes for two scheduled successive ordinary meetings.
4. The quorum of the Supervisory Committee that is required to make a certain decision is not met for two scheduled successive ordinary meetings.
5. The Supervisory Committee fails to hold two scheduled ordinary meetings in a row.
6. The Supervisory Committee or any of its members violates the Law, PSP Governing Rules, these Regulations, or any laws, resolutions or directives applicable in the Kingdom.

## **Article (42):**

1. The Secretariat shall minute the deliberations of the Supervisory Committee's meetings. The minutes shall be signed by the chairperson and members of the Supervisory Committee and the Secretariat. The minutes of the meeting shall include, as a minimum, the following:
  - a. Name of the relevant Supervisory Committee.
  - b. The agenda.
  - c. The number of the meeting.
  - d. Date, time and venue of the meeting.
  - e. Names and posts of attendees (whether members or non-members) and their participation method (in person or through teleconference).
  - f. Meeting type (ordinary or extraordinary, regular or circulated).
  - g. Subjects discussed by the Supervisory Committee.
  - h. Documents distributed at the meeting.
  - i. Decisions made at the meeting, including any indexing or numbering in connection with decisions, as well as the date and place of such decisions and the grounds and documents on which they are based.
  - j. Results of voting on the decisions and any reservations or objections made by any of the members.
  - k. Directives and recommendations made in the meeting on any subject discussed at the meeting.
  - l. Date, time and venue of the next meeting.
  - m. The time at which the meeting ends.
  - n. Any other data or information agreed to be added by the Supervisory Committee to the minutes at the meeting.
2. The Secretariat shall send the draft minutes of the meeting to the members of the Supervisory Committee (via email or any other method approved by the Supervisory Committee) within five (5) working days of the end of the meeting. The Members shall review the minute and express their comments on it within three (3) working days of receipt of the minutes. The Secretariat shall then finalize the minutes of the meeting and circulate them to the members for signature.
3. Deliberations of the Supervisory Committee shall be made in the Arabic language, save the cases in which the Supervisory Committee agrees to make the deliberations in another language, provided that the minutes of meetings and decisions shall be recorded in Arabic, and such minutes and decisions shall be translated into English at the earliest possible time. In case of any discrepancy, the Arabic version shall prevail.
4. The Secretariat shall inform the Steering Committee, the Work Team and the concerned parties of the Supervisory Committee's decision for necessary actions.



## **Part 5: Coordination with NCP**

### **Article (43):**

The provisions of this Part shall apply to any matter that any entity participating in PSP is required under the Law, the PSP Governing Rules or these Regulations to coordinate with NCP.

### **Article (44):**

Before commencing implementation of the matter that is required to be coordinated with NCP, the responsible entity shall notify NCP in writing about the target date for commencement of works, work plan, schedule, executing Work Team and the liaison officer nominated by such entity for coordination with NCP.

### **Article (45):**

1. The responsible entity for such matters may request NCP to nominate the NCP's representative(s) to participate in implementing the works related to the matter of coordination and provide advisory support to the Work Team of such entity.
2. NCP shall consider the request, and shall nominate its representative(s) if it sees that such a request is appropriate. Such representative(s) shall provide advice and advisory support and they may not make decisions, develop policies or directives related to the matter of coordination.

### **Article (46):**

1. Once the entity responsible for such matters completes, whether with or without the participation of NCP's representatives, the works related to the matter for which coordination is required, such entity shall report the work outcomes or the recommendations related to the matter to NCP for review and feedback. NCP may request any relevant information or documents it deems necessary.
2. The entity responsible for these matters shall consider any observations provided by the NCP and take the appropriate actions in that regard.

### **Article (47):**

The results of coordination in the matter for which coordination with NCP is required shall be recorded, including the procedures taken to coordinate with NCP, and any feedback given by NCP that has not been considered and the justifications for such. The said details shall be attached to the documents to be submitted if the matter requires submission to the decision-maker.

### **Article (48):**

Coordination with NCP concerning any matter shall not prejudice functions and powers of the Approving Authority and the Contracting Authority, and such coordination shall not preclude such authorities from exercising their powers and performing their functions in accordance with the Law, the PSP Governing Rules and these Regulations.

## Part 6: Appointment of Advisors

### Article (49):

1. The Supervisory Committee, the Contracting Authority and their Work Teams may contract with Advisors to provide support in the affairs related to PSPs governed by the provisions of the Law. Such support shall include, without limitation, preparation and development of the Business Case Documents, tendering, awarding, executing and managing PSPs and preparing PSP Plans for the sectors.
2. Procedures for contracting with Advisors shall be subject to the provisions of the Government Tender and Procurement Law. When making contracts with an Advisor, such Advisor shall:
  - a. Be independent and have no conflict of interest through the Contract term and for twelve (12) months after the expiration of such term.
  - b. Have no professional relationship or essential interest with any entity which might have an effect on the PSP Project(s).
  - c. Have sufficient experience in PSP Project(s).
  - d. Have appropriate qualifications and professional skills that are compatible with the scope, nature and degree of complexity of the relevant PSP.
  - e. Be licensed and classified by an approved international accreditation institution, if applicable.
  - f. Have provided advisory services in the Kingdom and other countries, if applicable.

### Article (50):

1. The Advisor shall be responsible for the duty of care for both the Contracting Authority and the Approving Authority.
2. The Advisor shall exercise the acceptable level of professional skills and diligence when providing advice to the Contracting Authority, and shall:
  - a. Protect the interest and rights of the sector and take into account the optimal use of its resources and assets.
  - b. Provide services efficiently, fairly and honestly.
  - c. Not engage in misleading or fraudulent acts that are contrary to the professional standers.
  - d. Not make false or misleading statements.
  - e. Avoid conflict of interest and disclose the same, if any.
  - f. Refrain from the use of influence and power to pursue personal gains or interests.
  - g. Refrain from making decisions on behalf of the Contracting Authority.
  - h. Refrain from taking actions outside the scope and limits of the work entrusted to him.

# The Business Case Documents

04



## Part 1: Preparation of the Detailed Study on PSP Project

### Article (51):

1. For the purpose of preparation of the Business Case Documents, a detailed study shall be conducted according to the requirements contained in these Regulations and the technical annexes issued thereunder. The Work Team shall be responsible for the preparation of the Business Case Documents.
2. When conducting the detailed study, the following matters shall be taken into account:
  - a. Related professional practices.
  - b. PSP Plan.
  - c. The data used in the detailed study are complete, correct and accurate.
  - d. The findings of the detailed study are concluded impartially and objectively.

### Article (52):

The detailed study shall be conducted according to Regulations, and include, as a minimum:

1. The Project's intended objectives and the sector's strategic objectives and priorities.
2. The required assessment analysis in accordance with the requirement of the Expenditure Efficiency and Projects Authority.
3. The current situation of the Asset or the service.
4. Procurement alternatives suitable to the Project and clarification of the negative and positive economic and social impacts of each alternative, and stating the recommended alternative and the grounds for such recommendation.
5. PSP methods suitable for the Project, and clarification of the recommended method and the grounds for the same and its negative and positive economic and social impacts.
6. The technical, financial, legal and regulatory aspects, including:
  - a. Analysis of market capacity and its viability to implement the Project.
  - b. Expected direct and indirect financial and economic benefits.
  - c. Any regulatory, technical, social or environmental difficulties related to the Project.
  - d. Any procedural acts required for the Project.
  - e. For Divestment Projects any restructuring or corporatization requirements.
  - f. Roles of concerned parties in the sector and their relationships in the Project.
7. Potential risks of the Project.
8. Procurement and other costs related to the PSP Project that do not fall within the Project scope.
9. The Contracting model for the PSP Project, which shall include, at a minimum, the following:
  - a. The Duration and Scope of the contract, scope of the Project (including works and services);
  - b. The financial, administrative and technical control, oversight and follow-up tools for the implementation of the contract, and the indicators for evaluating the performance of the Private Party.





- c. The ownership and nature of the Project's assets, intellectual property rights, the parties' obligations in relation to project site handover and receipt, and the terms of transfer of ownership at the end of the project.
  - d. The responsibility for issuing the necessary licenses, permits, and approvals.
  - e. The financial obligations between the parties, including any revenue regime/payment mechanism, and the currency used in payments, provided that the parties should seek for the currency to be Saudi Riyal.
  - f. A framework of the provisions related to contract suspension, modification, or termination, and the compensation payable as a result.
  - g. Identifying the key project risks and their allocation basis, including a proposed risk allocation matrix and risk mitigation strategies.
  - h. The fines and compensation that could be payable as a result of either party breaching its Contractual obligations.
  - i. The procedures to ensure project continuity upon expiry of the Contract or in the event of Private party breaching its Contractual obligations.
10. Study the requirements of the development of the local content in accordance with these Regulations.
  11. Study the direct or indirect public offering of the project in the Saudi Capital Market in accordance with the rules and regulations issued by the Board of Directors.
  12. Study the financial impact if the project includes leasing a property from the government to the PSP Project Company.
  13. The stakeholder engagement plan.

## **Part2: Requirements for the Detailed Study on the PPP**

### **Project**

#### **Article (53):**

The detailed study of the PPP project shall include the following:

1. Affordability analysis in the short and long term, and the necessary information in this regard, and shall, as applicable, include the following information within the financial and economic analysis:
  - a. The impact of each financial obligation annually.
  - b. The impact of annual financial obligations required.
  - c. The impact of each financial obligation throughout the project duration.
  - d. The overall impact of all financial obligations required throughout the project duration.
  - e. The impact of the annual revenues.
  - f. The impact of the annual revenues throughout the project duration.
2. Value for money analysis

#### **Article (54):**

Subject to the definition of the term (PPP) defined in the Law, and the minimum threshold for PSP Projects, PPP projects shall be implemented through a contracting model to be defined in the Business Case Documents for each project. These models can include:

1. Build-operate-transfer (BOT).
2. Build-own-operate (BOO).
3. Build-own-operate-transfer (BOOT).
4. Build-transfer-operate (BTO).
5. Design-build-maintain (DBM).
6. Design-build-operate (DBO).
7. Design-build-finance-maintain (DBFM).
8. Design-build-finance-operate-maintain (DBFOM).
9. Design-build-finance-operate (DBFO).
10. Design-construct-manage-finance (DCMF).
11. Rehabilitate-own-operate (ROO).
12. Any other Contracting model to which the PPP concept applies that is approved by the Approving Authority that approved the Business Case Documents.

### **Part 3: Requirements for the Detailed Study of a Divestment Project**

#### **Article (55):**

Where the detailed study on the Divestment project indicates the importance of taking some actions such as restructuring of the Assets or corporatization as part of the project, the detailed study shall:

1. Analyze the potential options for restructuring the Assets or corporatizing them, including identifying any legal or regulatory obstacles.
2. Analyze the legal position of the Assets and their restructuring or corporatization including the position of the existing employees and contracts.
3. Analyze the financial and economic impact of restructuring the Assets, including undertaking a valuation and a cost-benefit analysis.
4. Prepare the work plan and controls for restructuring the assets or corporatizing them.
5. Develop the timetable for restructuring the assets or corporatization.



#### **Article (56):**

A valuation of the Assets for Divestment shall be part of the financial and economic analysis in the detailed study, the Contracting Authority shall take the following into consideration:

1. The valuation of the Assets shall be based on at least two valuations performed by experts who are independent of each other.
2. Each expert shall provide a valuation report in line with their scope of work and in accordance with the relevant laws and regulations.

#### **Article (57):**

Subject to the definition of the term (Divestment) defined in the Law, and the minimum threshold for PSP Projects, the detailed study shall determine a divestment method, including:

1. Selling to strategic investors.
2. Selling through the Saudi Capital market.
3. Selling through competitive tendering.
4. Any other divestment method to which the definition of divestment applies and approved by the Approving Authority upon the approval of the Business Case Documents.

### **Part 4: Requirements of the Business Case Documents**

#### **Article (58):**

1. The Business Case Documents shall be prepared according to the findings of the detailed study, and shall include:
  - a. An executive summary of all contents of the detailed study.
  - b. Essential commercial, technical, financial and regulatory matters.
  - c. Approvals required from the Contracting and Approving authorities, including approvals to prepare Tender Documents, and approvals for any required exceptions and authorizations, etc.
  - d. A statement that the information, data, findings and recommendations contained in the Business Case Documents accurately reflect findings of the detailed study and that the detailed study has been conducted in accordance with the requirements contained in these Regulations.
2. The Business Case Documents shall be submitted for approval, including:
  - a. Approval to commence the tendering phase and any other necessary procedures.
  - b. Determination of the approvals to be procured from other approving authorities.
  - c. Any prior approval to any actions required for the tendering, awarding or contracting phases and any other actions to be taken in advance.
3. Subject to Paragraph (4) of this Article, if at any stage of the PSP Project, new data, information or procedures appear in a way that affects contents of the approved Business Case Documents, the Business Case Documents will be updated and reported.
4. The Approving Authority may delegate to the Contracting Authority or any other Authority for approving any amendments to the Business Case Documents- save the financial obligations- upon a request submitted by the Contracting Authority in the application for approval of the Business

Case Documents. In such a case, the delegation shall define the contents of the Business Case Documents that may be amended and the limits of such an amendment.

5. The Contracting Authority may include a set of similar Projects in a single Business Case Documents and tender them in one or several tendering processes.

#### **Article (59):**

Notwithstanding Article (58) of these Regulations, the Business Case Documents may be submitted for initial approval before completion of the detailed study in order to commence implementation of some works, provided that the application for approval shall identify:

1. The aspects that have not yet been completed in the Business Case Documents,
2. The works that require approval.
3. The time frame required to complete the Business Case Documents.

In all cases, the works that receive approval in the initial approval may not include the issuance of the RFP.

#### **Article (60):**

1. The Board of Directors may exempt any PSP Project from the requirement of preparing Business Case Documents, provided that a detailed study for a similar PSP Project is available and that such project has been approved, and provided that the detailed study has not been approved more than five (5) years ago.
2. A PSP Project may not, in any case, be exempted from the requirement of financial and economic analysis and determining the feasibility of the project and the ability to bear the costs, including, where applicable, a value for money analysis.

#### **Article (61):**

Without prejudice to the approvals and responsibilities of other entities, the approval of the Approving Authority on the Business Case Documents is an approval to proceed with the stage of implementing the Business Case Documents, implementing the procedural work - if any - and tendering the PSP project.

# Tendering Plan

05



## Part 1: Requirements of the Implementation Plan for the Business Case Documents

### Article (62):

Subject to the Business Case Documents, the approval decision thereon and any other approvals or procedures and the templates issued by the Board of Directors, a detailed plan shall be prepared to implement the approved Business Case Documents, including:

1. Procedural work plan (if any), and that shall mean the works to be implemented under the Business Case Documents for the purposes of the PSP Project, such as restructuring of the assets, services or activities, or transforming into a company
2. The Tendering Plan according to the requirements contained in this Part.

### Article (63):

1. The works required by the Business Case Documents may only be implemented after the detailed plan set out in this Part is approved.
2. Notwithstanding Paragraph (1) of this Article, some tendering procedures may be carried out, provided an initial Tendering Plan is approved and such Plan shall contain:
  - a. Documents for tendering procedures to be carried out.
  - b. The aspects that have not yet been completed in the Tendering Plan.
  - c. Items included in clauses (1-4) of Article (64) of these Regulations, as to the procedures to be carried out.
  - d. Details of the established procedures and standards of evaluation, if the procedures include bidder qualification activities.
  - e. The schedule required to complete the Tendering Plan.

In all cases, procedures for issuing the RFP may only be carried out after the detailed Plan is approved.

### Article (64):

The Tendering Plan shall include, as a minimum:

1. A summary of the PSP Project containing the need for the project, objectives of the project and how they are achieved, technical elements of the project, contracting model and details of risk allocation.
2. The expected market for the PSP Project whether the target market is local or international; the advertising and marketing program; and any other steps to be implemented according to the approved Tendering Plan to attract investors and engage the concerned bodies.
3. Necessary preparations for tendering, including employees and organizational structure, employee's roles, and any outsourced advisory services.
4. Steps and schedule of the tendering process, number of requests for clarification, the schedule for activities and responsibilities at each phase.
5. Detailed procedures and mechanisms for tendering, and tendering method, grounds and budget.
6. Description of the provisions on communication with the Private Sector, qualified investors or bidders in order to submit their proposals and documents.



7. The established method for adding comments and amendments to the Tender Documents, the suggestions permitted to be submitted by the bidders concerning the alternative technical concepts that might improve the PSP Project.
8. Details of established evaluation procedures and standards.
9. Tendering risks and how to reduce and mitigate them.
10. The language used to prepare the Tender Documents and determining the main language if the documents are prepared in more than one language.
11. Expected budget for the tendering procedures.
12. Draft Tender Documents, including notices, general and special provisions for the tendering process, draft PSP Project Contract and any other documents attached to the Tender Documents.
13. The tendering procedures carried out under the initial Tendering Plan (if any) and their results.
14. A statement whether the Tendering Plan and the Tender Documents contain any change to the data and information contained in the Business Case Documents or the approval decision and the actions and measures taken with respect to such change.

#### **Article (65):**

The Tendering Plan and related documents shall be submitted to the Director-Head who will decide either:

1. To approve the Tendering Plan and request the Work Team to start implementing such a plan, or
2. To reject the Tendering Plan and request the Work Team to make amendments to the Tendering Plan.

In all cases, the Tendering Plan and its documents shall be refused if it lacks a statement that it does not contain any data or information that are different from those contained in the document or the approval decision thereon.

## **Part 2: Formation of Committees**

#### **Article (66):**

1. The Director-Head shall form the "Competition Committee". The Competition Committee shall oversee and manage processes of tendering, evaluating and awarding in addition to the following four sub-committees:
  - a. Committee to opening proposals.
  - b. Committee to evaluate the qualifications of bidders.
  - c. Committee to evaluate technical proposals.
  - d. Committee to evaluate financial proposals.
2. The Competition Committee may form one or more additional sub-committees to perform its functions. The scope of work and members of the sub-committees shall be determined by the Competition Committee. In all cases, a sub-committee shall submit the results of their activities to the Competition Committee for review and approval.

### **Article (67):**

The following conditions shall be met for the membership of the committees:

1. The members of the committee shall be qualified and experienced in the issues related to the work of the committee, including technical, financial or legal issues.
2. A member shall undertake that he is partial and has no conflict of interest, and shall disclose his present and previous relationships with bidders if any.
3. A member shall undertake in writing that he shall perform his obligations professionally and independently, and shall keep confidentiality of the committee's operating procedures and that he shall implement the required functions in accordance with the relevant laws and regulations.
4. A member of the Competition Committee may not be a member in more than one sub-committee, and a person may not be a member of the Financial Evaluation Committee and a member of the Technical Evaluation Committee.
5. The number of members of the Competition Committee may not be less than three and the number of members of the sub-committees may not be less than two.

### **Article (68):**

The Contracting Authority shall provide administrative support to the committees formed under Article (66) of these Regulations. At the request of the Competition Committee, the Contracting Authority may provide Advisors to assist such committees in performing their functions, provided that the Contracting Authority shall be responsible for validity, accuracy, objectivity and impartiality of the Advisors' works and shall ensure that such responsibilities are incorporated in the contracts entered into with the Advisors.



# Tendering

06



## Part 1: PSP Project Tender

### Article (69):

PSP shall be tendered through public competition in accordance with the provisions of these Regulations, and no other method may be used for tendering the Project except as provided under these Regulations and on the conditions and terms contained therein.

### Article (70):

1. PSP Project shall be tendered through public competition at the following phases:
  - a. Expression of Interest Phase,
  - b. Pre-qualification Phase, and
  - c. RFP Phase.
2. Two or more phases of the phases set out in sub-paragraphs (a, b and c) of paragraph (1) of this Article may be merged, provided such merger is provided for in the Business Case Documents and the approved Tendering Plan.
3. In case of a merger, the first phase of tendering shall meet the following conditions:
  - a. The period of the first phase shall not be less than twenty-eight (28) days if it includes pre-qualification, and not less than a hundred and eighty (180) days if it includes RFP. Such periods shall be calculated from the working day following publication and announcement of documents of the first phase according to subparagraph (b) of this paragraph.
  - b. Documents of the first phase shall be published on the websites of the Contracting Authority and NCP. The PSP Project and the method for collection of documents of the first phase shall be announced in at least three local and international media outlets and social media accounts of the Contracting Authority and NCP.
  - c. Without prejudice to the terms and conditions set forth in documents of the first phase, every person is permitted to submit his documents in the context of response to the requests contained in documents of the first phase within the initial period and under the conditions contained in such documents.

The tendering process shall not be deemed to have met the requirements of the public competition if any condition contained under this paragraph is not fulfilled and no remedial actions have been taken to meet such conditions.

## Part 2: Expression of Interest Phase

### Article (71):

The Contracting Authority shall issue the request for expression of interest as follows:

1. The request for expression of interest shall contain:
  - a. A summary of the PSP Project and its expected schedule.
  - b. Information on the expression of interest and how it is submitted.
  - c. The date of receipt of expression of interest.
  - d. A statement that RFQ will only be sent to the persons who has expressed their interest in the PSP Project.



2. The request for expression of interest shall be published on the websites of the Contracting Authority and NCP, and such request shall be announced in at least three local and international media outlets and social media accounts of the Contracting Authority and NCP.
3. The expression of interest phase shall last at least for fourteen (14) days starting from the working day following the publication and announcement set forth in Paragraph (2) of this Article. Such period may be reduced to less than (14) days, provided that it shall not be reduced to less than (7) days, and the Tendering Plan shall contain the same.

#### **Article (72):**

The Contracting Authority shall prepare a list of the persons who have expressed interest in the PSP Project on its website, and such list shall be announced the same way used to publish the request for EOI.

### **Part 3: Pre-qualification**

#### **Article (73):**

Subject to Paragraph (3) of Article (71) of these Regulations, the Contracting Authority shall issue the RFQ after the lapse of the Required Period from publishing the list of persons who have expressed an interest in competing in accordance with the following:

1. The RFQ must include the information and data mentioned in this Part.
2. The RFQ is published on the website of the Contracting Authority and NCP, and it is announced in at least three local and international media and on the social media platforms of the Contracting Authority and NCP. In the event that the EOI stage is implemented, the RFQ is issued to the persons who have expressed their interest to compete for the PSP Project.
3. The period between the publication of RFQ and the deadline for submitting the SOQ shall not be less than twenty-eight (28) days starting from the working day following the issuance of the RFQ.
4. The criteria used to identify the applicant should be objective and fair and not be designed in a way that restricts any qualified applicant from competing for the project. In all cases, the approved Tendering Plan must include these criteria.

#### **Article (74):**

The RFQ shall include the following information and data:

1. The RFQ timetable and the preliminary PSP Project timetable.
2. Instructions on the SOQ contents, requirements, supporting documents and required format, and an electronic or physical address to submit the SOQ and supporting documents
3. The deadline for submitting SOQs along with a statement that SOQs will no longer be accepted after the specified date and time.
4. Setting a single point of contact to answer the bidders' inquiries and provide clarifications.
5. A statement regarding the minimum requirements for applicants, unless an exception is made in the approved Tendering Plan.
6. A description of the pre-SOQ inquiries process, including the procedures and schedule for receiving and responding to inquiries.

7. Identification of how bidders' information, documents, and intellectual property rights will be handled.
8. A description of the PPP project, the Public Sector's expectations, and the project site and other relevant features, or a description for the assets to be transferred in the divestment projects, the objectives of selling the asset, the process structure, including ongoing contractual obligations - if any -.
9. The qualification procedures, and the evaluation criteria and methodology.
10. A statement of the method of PPP and any other commercial or contractual details related to the SOQ.
11. A statement that the government and the Contracting Authority shall not bear any costs incurred by bidders in preparing and submitting SOQs.
12. The consortia rules and requirements, bidders' eligibility restrictions, and disclosure and avoidance of conflict of interest.
13. A statement that the Contracting Authority may, at any time and for any reason, amend, change, or cancel the RFQ and tender process as a whole and that the government shall not be liable for any costs incurred by bidders.
14. A prohibition on communication between bidders, except where expressly permitted by the RFQ,
15. A prohibition on communication, collusion, conflicts of interest, bribery or other corruptive behavior between bidders and government officials, and a statement that bidders shall be required to confirm their compliance with all the above and stating any previous sanctions or restrictions for violations, if any.
16. A description of the process of receiving requests to extend the deadline for submitting SOQs.

#### **Article (75):**

The SOQ, shall as a minimum, include:

1. General information on the bidder and its consortium members, if applicable.
2. Administrative and legal structure and the certificates of incorporation of the bidder and its consortium members, including:
  - a. Full description of the individuals and bodies of which a bidder is composed.
  - b. Roles and responsibilities performed by every member of the consortium.
  - c. The persons or bodies that will provide SOQ.
  - d. Property rights of the members of the consortium.
  - e. Controls or conditions on changes in equity.
  - f. Employees who are appointed for the PSP Project.
3. Evidence of meeting the following by the bidder:
  - a. Experience related to the PSP Project, the sector or similar Projects.
  - b. The ability to execute the PSP Project.
  - c. Solvency and the ability to fund the project costs.
  - d. Experience with comparable Projects that included the essential elements of PSP such as financing, design, construction, ownership, operation and maintenance.



- e. The ability to fulfil requirements of shares and financing, if any.
- f. Previous experience in the development of Projects, including success and innovation, and addressing their social and environmental impacts.
- g. Experience in human capital development, transfer of technology and capacity and promotion of local content.
- h. Understanding of Public Sector services and PSP Project needs and the ability to interact and work with Public Sector entities.
- i. Ability to manage risks throughout the PSP Project and maintain quality of services and infrastructure.

#### **Article (76):**

The bidders shall submit a letter along with SOQ, containing:

1. An undertaking that the qualified bidders will comply with the procedures for RFQ and RFP.
2. A statement that the SOQ is correct and accurate.
3. An acknowledgement that the cost incurred by bidders in preparation and submission of SOQ shall not be borne by the government.
4. A confirmation to avoid collusion, conflict of interest, bribery and other corruptive behaviors.

#### **Article (77):**

1. All received SOQs shall remain sealed until the RFQ closing date, and all SOQs shall be opened simultaneously after the RFQ closing date in accordance with any procedures stipulated in the RFQ.
2. The Proposals Opening Committee shall open the received SOQs and submit such to the Qualification Committee.
3. The Qualification Committee shall study and evaluate SOQs, and shall identify the qualified bidders and announce the SOQs evaluation results and the list of qualified bidders in the same manner as specified in the RFQ.

## **Part 4: Request for Proposals (RFP)**

#### **Article (78):**

After the expiration of the Required Period from the announcement of SOQs evaluation results and shortlist of qualified bidders, the Contracting Authority shall issue the RFP to all pre-qualified bidders to submit their proposals.

#### **Article (79):**

RFP shall be issued based on the following provisions:

1. The information and data required by this Part shall be included in the RFP.
2. The criteria used for evaluating submitted proposals shall be objective and fair and such criteria may not be designed in a manner that restricts any bidder qualified to implement the PSP Project. In all cases, the approved Tendering Plan shall include such criteria.
3. The technical proposal shall be submitted in a separate sealed envelope and the name of the bidder and the term "technical proposal" shall be displayed thereon. The technical and financial proposals may be submitted in a single envelope with respect to the divestment project, provided such procedure is provided for in the approved Tendering Plan.

4. The financial proposal shall be submitted in a separate sealed envelope and the name of the bidder and the term "financial proposal" shall be displayed thereon.
5. Bidders shall be given sufficient time to submit proposals and comply with requirements, and such period may not be less than (60) working days after the issuance of the RFP.

#### **Article (80):**

The RFP shall include, as a minimum:

1. A description of the RFP, its role in the bidding process, and a description of how the proposals will be evaluated.
2. The time frame for implementing the PSP Project.
3. An overview of the PSP Project and its objectives, financing assumptions and expectations, as applicable, (unless excluded in the approved Tender Plan), contracting model, due diligence process, and the available data or reference materials, including access to a data room or other information resources relevant to the PSP Project.
4. For Divestment projects, a description of the Assets subject to the Divestment, the proposed tendering method (such as assets, shares, etc.), any problems related to the Divestment, technical issues, studies, technical drawings related to the asset, any stipulations related to the Contract (such as treatment of employees, the right to use the land, investment commitments, treatment of debt, financial derivatives, etc.), and alignment with any Divestment strategy (such as: identifying how the proposed project will achieve the objectives of the sector, linkages with the structuring of the legal and regulatory framework for the sector, and the timetable for implementing any legislative changes).
5. For Divestment projects, the following information shall be included, as applicable,
  - a. A description of the asset.
  - b. Reference to Asset status and any pertinent title related issues.
  - c. A brief description of any technical or other information available including any studies undertaken, technical drawings, etc., relevant to that particular asset.
  - d. An overview of the company's structure, its legal and regulatory status, the status of its employees, and its existing Contracts and obligations.
  - e. The market in which the company operates.
  - f. A brief description of the company's business (such as products, assets, customers, etc.).
  - g. The company's financial status, financial history and future forecasts.
6. A statement about the possibility of submitting alternative technical concepts by the competitors for the PSP Project and how these concepts are approached in terms of confidentiality if stipulated in the approved Tendering Plan.
7. A description of the pre-bid clarifications process, including the procedures for receiving and responding to clarifications, and the timetable and number of clarification rounds.
8. A description of the process for receiving requests to extend the bidding timetable.
9. Reference to the applicable legal instruments for the PSP Project, including any decrees, orders, laws, rules, and regulations upon which the process relies.



10. Instructions on the information and materials which bidders must provide in their proposals, and instructions on submitting proposals including a requirement for submitting technical and financial proposals separately, any proposal format requirements, and an electronic or physical address for submitting proposals and any supporting materials. For Divestment projects where the selection process will be based solely on price, a combined proposal may be requested.
11. The deadline for submitting proposals including a statement that proposals will no longer be accepted after the specified date and time.
12. A single point of contact for the Contracting Authority.
13. A requirement to identify a single point of contact for the bidder.
14. A statement that the government and the Contracting Authority shall not bear any costs incurred by bidders in preparing and submitting proposals. In the event that the Board of Directors approved that the Contracting Authority or any other government entity may bear such costs, this may be included in accordance with the approved decision.
15. A statement that the Contracting Authority may, at any time and for any reason, amend, change, or cancel the RFP and tender process as a whole and that the government shall not be liable for any costs incurred by bidders as a result thereof.
16. A prohibition of communication between bidders unless expressly permitted in the RFP.
17. A prohibition of collusion, conflicts of interest, bribery or other corruptive behavior between the bidders and the concerned employees and staff in the Concerned Entity and the Contracting Authority. In addition to the statement that bidders shall be required to confirm their compliance with the same, and noting applicable sanctions or restrictions for violations.
18. Identification of how bidders' information, documents, and intellectual property rights shall be processed.
19. Rules and requirements where the bidder is a consortium, limitations on the eligibility of bidders, and disclosure of conflict of interest.
20. A description of the proposal evaluation criteria and methodology, and whether pass/fail criteria will be used, and detailed statement of the financial and technical requirements and the evaluation process as a whole.
21. A description of the proposals' validity period and a requirement that proposals submitted must be valid for at least one hundred and eighty (180) days from the date of receipt, unless the Contracting Authority agrees to a different period.
22. A statement on whether a best and final offer (BAFO) round may be conducted.
23. A prohibition for a bidder or any member of the bidding team to submit more than one proposal.
24. A prohibition of providing misleading information and for fraudulent behavior in the tender process and excluding those who do so.
25. Identification of required preliminary or final bid bond or any other forms of bid guarantee, and setting any subsequent fees that may be payable upon completing the tender process, and the amounts and beneficiaries thereof.
26. Appending to the RFP a draft PPP Contract, aligned with the requirements of the Business Case Documents, and any other relevant documents.

### **Article (81):**

Provided that it is expressly permitted in the approved Tendering Plan, the Contracting Authority may do the following:

1. Issue a preliminary RFP to all qualified bidders to obtain feedback thereon. In light of the feedback received, the Contracting Authority shall update and re-issue the initial preliminary RFP.
2. Issue an RFP through two stages in which bidders submit non-binding preliminary proposals followed by their final proposals which shall be subject to evaluation, and based on which the preferred bidder shall be determined.

### **Article (82):**

The Proposal Document shall include the following:

1. A technical proposal in a separate sealed envelope and the name of the bidder and the term "technical proposal" shall be displayed thereon unless these Regulations require otherwise.
2. A financial proposal in a separate sealed envelope and the name of the bidder and the term "financial proposal" shall be displayed thereon.
3. An acknowledgement that evaluation of proposals may be affected by:
  - a. Total or partial non-compliance with the RFP.
  - b. Listing reservations, conditions, comments or other qualifications in their proposals or the RFP.
4. An acknowledgement that the representations provided by the bidder in response to the RFP including any documents submitted with its proposal to the Work Team, may be considered part of the contractual obligations in the PSP Project.
5. An acknowledgement that no change has been made to the composition of the bidder, its organizational structure and the proposed activity of the bidder and that it is still a qualified bidder. If such a change is made, information and details of such a change shall be clarified and the documents containing such a change shall be submitted.
6. Evidence that the bidder and its affiliates have a proper legal status in the country of incorporation.
7. A letter attached to the bidder's proposal containing:
  - a. An undertaking that they will comply with the RFP process and an undertaking that no comments or suggestions will be expressed except under the procedure set out in the RFP.
  - b. Undertakings and representations that the proposal documents are correct and valid.
  - c. An acknowledgement that the cost incurred by the bidder in the preparation and submission of proposals is in accordance with the RFP.
  - d. An acknowledgement that the Government and the Contracting Authority shall not bear the cost incurred by the bidder in preparation and submission of the proposal.
  - e. An undertaking that the bidder and its affiliates have never been involved in collusion, conflict of interest, bribery, conspiracy, fraud, or misrepresentations and that no penalties or restrictions have been imposed on them.
8. Any further undertakings or documents that are required under the RFP.





### **Article (83):**

1. All proposals shall remain sealed until the closing date for submission of proposals and the proposals shall not be opened until at least three proposals are received. In the event that fewer than three proposals are received, the Approving Authority may either:
  - a. Approve the opening of the received proposals; or
  - b. Direct the amendment and re-tendering of the RFP.
2. Notwithstanding paragraph (1) of this Article, proposals received may be opened even if they are less than the required number, provided that the Approving Authority has approved this.

## **Part 5: Opening of Proposals**

### **Article (84):**

Once the requirements contained in Part (4) of Section (6) of these Regulations are fulfilled, the Contracting Authority shall transfer the proposals unopened to the Proposals Opening Committee.

### **Article (85):**

Before evaluating received proposals, the Work Team shall provide the Proposals Opening Committee with the materials received from bidders and the documents that might be necessary for evaluation, including, for example, evaluation instructions, guidelines, proposal evaluation templates, etc. All such documents shall reflect the structure, process and standards of documents of the relevant competition.

### **Article (86):**

The Proposals Opening Committee shall:

1. Receive all technical and financial proposals.
2. Ensure that all proposals are sealed and have not been opened.
3. Ensure that all proposals and related documents have been entirely received according to the proposal receipt document that states the date, time, number and type of documents for the submitted proposal.
4. If it is found that not all proposals were sealed or that they were not according to the proposal receipt documents, the Proposals Opening Committee shall record such event on a special report and submit it to the Director-Head. In such case, the Director-Head may either order the committee to complete its works if such event has not affected integrity and fairness of proposal opening procedures, or take necessary actions to correct the fault.
5. Open the technical proposals and accurately record such process, transfer such proposals to the technical proposals Evaluation Committee, and keep the financial proposals sealed.
6. If the proposal evaluation methodology requires the evaluation of the technical proposals prior to the evaluation of the financial proposals, following receipt of notice from the technical proposal Evaluation Committee that it has completed its evaluation and has submitted the technical evaluation report to the Competition Committee, the Proposals Opening Committee shall open the financial proposals and accurately record such process, and transfer the financial proposals of the successful technical proposals to the financial proposal Evaluation Committee.
7. Invite bidders to attend the proposal opening event, if so required by the approved Tendering Plan and the RFP.

### **Article (87):**

After receipt of technical proposals from the Opening of Bid Committee and before conducting the technical evaluation, the Technical Proposal Evaluation Committee or any other sub-committee formed for this purpose shall examine the completeness of proposals as follows:

1. The Technical Proposal Evaluation Committee shall prepare a checklist of the documents, data and information that are required to be provided in the technical proposals, based on the requirements of the RFP. The checklist shall identify which of these items are mandatory.
2. The Technical Proposal Evaluation Committee shall receive and review the technical proposals and confirm their completeness based on the requirements of the RFP, without evaluating the contents of the proposals.
3. The Technical Proposal Evaluation Committee shall prepare a report identifying for each proposal whether it is complete or incomplete and the items missing based on the checklist.

### **Article (88):**

The Technical Proposal Evaluation Committee or any other sub-committee formed for this purpose shall examine the technical proposals and for this purpose, the committee shall:

1. Review the report prepared under Paragraph (3) of Article (87) of these Regulations, and for each proposal deemed incomplete, shall assess whether the documents missing or incomplete are so essential that such proposals cannot be objectively evaluated.
2. Evaluate technical proposals that are complete and those that are incomplete but their incompleteness does not affect the proposal objectively.
3. Prepare a detailed evaluation of strengths and weaknesses of the evaluated technical proposals based on the evaluation criteria contained in Article (89) of these Regulations and identify areas for clarification, any other technical issues and record any other remarks.
4. Classify the evaluated technical proposals as either successful or unsuccessful. If the approved Tendering Plan and RFP contain other classifications, the proposals shall be classified accordingly.
5. Prepare a detailed and comprehensive report on the evaluation and classification results. The report shall identify the nature of the clarifications, the proposed clarification process, and the schedule. The report shall be provided to the Competition Committee.
6. Following approval from the Competition Committee, undertake the clarifications based on the approved process and schedule.
7. Update the report prepared under paragraph (5) of this Article based on the outcome of the clarification activities expressly identifying any change to the classification of proposals as a result of the clarification process and the reasons for the changes. The updated report shall be submitted to the Competition Committee.
8. Notify the Proposal Opening Committee of the successful bidders according to the results of the report prepared under this Article.



### **Article (89):**

Technical proposals shall be evaluated according to the evaluation criteria contained in the approved Tendering Plan, provided that the following elements shall be taken into consideration during evaluation, where applicable:

- a. The ability of a bidder to implement the PSP Project.
- b. The amendments to the draft Contracts suggested by a bidder.
- c. The following elements shall be considered in PPP Projects:

#### **Project Management Approach:**

1. Project implementation schedule.
2. Management Plan for each implementation phase.
3. Systems for cost control, quality and performance management.
4. Risk management and mitigation procedures.
5. Strategic plan to source human resources, equipment and materials.
6. Public relations and communication procedures and a plan for reporting.
7. System for complying with statutory requirements.

#### **Design and Construction Approach:**

1. Descriptions, drawings and other schematics showing the project and site.
2. Determining the materials to be used in the project and their sources of supply.
3. Proposed technological solutions, innovation and/or integration with existing systems.
4. The value of the alternative technical concepts, if any.
5. The sequence of construction, staging, testing and commissioning, and the critical path.
6. Approach to mitigating construction impact (e.g. traffic, stakeholder engagement, environmental).
7. The human resources plan, management plan, skills and training.

#### **Operations Approach:**

1. The procedures for quality management, efficiency and compliance with operational requirements.
2. Procedures for managing operational issues.
3. Security, safety and emergency systems.
4. Employees and sub-contractors' recruitment and contracting mechanisms.

### **Maintenance Approach:**

1. Planned maintenance regime and life cycle approach.
  2. Provision of maintenance materials and supplies.
  3. Short and long-term sustainability measures.
  4. Plan for the renewal and replacement of capital assets.
  5. System for mitigating interruptions to operations.
  6. Handover plan.
- d. In evaluating Divestment projects, the following elements shall be considered, where applicable:
1. Quality of the business plan including its marketing, operations.
  2. Quality of the asset management plan.
  3. The degree of support from a bidder (including the investment plan, if any) and the level of innovation and skills that will benefit the Project.
  4. Mechanisms for dealing with existing contracts and employees.
  5. How to implement continuing contractual obligations.

### **Article (90):**

After receipt of the notice set out in paragraph (8) of Article (88) of these Regulations, the Opening of Proposals Committee shall:

1. Open financial proposals of the bidders whose technical proposals are successful according to the notice.
2. Refer the financial proposals that have been opened to the Financial Proposal Evaluation Committee.

### **Article (91):**

After receipt of the financial proposals from the Proposals Opening Committee, the Financial Proposal Evaluation Committee or any other sub-committee formed for this purpose shall:

1. Evaluate complete financial proposals.
2. Undertake a detailed assessment of strengths and weaknesses of the financial proposals according to the evaluation criteria included in Article (92) of these Regulations, and identify the need to clarify any aspects contained in the financial proposal and record any other observations.
3. Classify the evaluated financial proposals as either successful or unsuccessful. If the approved Tendering Plan and RFP contain other classifications, the proposals shall be classified accordingly.
4. Prepare a detailed and comprehensive report on the evaluation and classification results. The report shall identify the nature of the clarifications, the proposed clarification process, and the schedule. The report shall be provided to the Competition Committee.
5. Following approval from the Competition Committee, undertake the clarifications based on the approved process and schedule.



6. Update the report prepared according to Paragraph (4) of this Article based on the outcome of the clarification activities expressly identifying any change to the classification of proposals as a result of the clarification process and the reasons for the changes. The updated report shall be submitted to the Competition Committee.

#### **Article (92):**

The financial proposals shall be evaluated according to the evaluation criteria contained in the approved Tender Plan, provided the following elements shall be considered in the evaluation:

1. For PPP Projects:
  - a. The financial capacity to implement the Project.
  - b. Details of the financial consideration or details of the percentage of revenues.
  - c. Pricing sheets and cost details.
  - d. The financing model, the underlying assumptions, the sensitivity of the assumptions and the results of the sensitivity analysis.
  - e. Feasibility of the financing plan, including cash flow and debt service coverage ratio analysis.
  - f. Bill of Quantities.
  - g. Net present value and value for money.
  - h. Schedule for Contract signing and financial closure.
  - i. Financial risk management plan.
  - j. Adequacy of guarantees and related information.
  - k. Details of the proposal and sufficiency of the performance bond.
  - l. Financing term sheets.
  - m. Details of insurance and its variables.
  - n. Bank support details including a commitment letter, structure and hedging strategy.
2. For Divestment Projects:
  - a. The financial proposal and the basis of its calculation.
  - b. Bank support details including bank guarantee details, commitment letter, structuring strategy, and the funding plan.

#### **Article (93):**

After receipt of the final reports from the Technical Proposal Evaluation Committee and the Financial Proposal Evaluation Committee, the Competition Committee shall:

1. Examine the reasons for the change in the bid classification, if any, based on the clarification process.
2. Ensure that the processes of classification and clarification were carried out in accordance with the provisions of these Regulations and the decision to approve the process of clarification, its mechanism and schedule.
3. Classify the technical and financial proposals using the methodology contained in the approved Tendering Plan and the RFP.
4. Prepare a report on the results and recommendations from the assessment required by Paragraphs (1, 2 and 3) of this Article and submit it to the Director-Head.

#### **Article (94):**

With respect to the report submitted by the Competition Committee, the Director-Head shall:

1. Return the technical and financial proposals of those bidders that did not comply with the PSP Project requirements according to the report of the Technical and Financial Proposal Evaluation Committees.
2. If the Director-Head believes that the reasons for the change in the classification of the proposals as a result of the clarification process are not justified, he may direct remedial actions that he deems appropriate or cancel the tendering process.
3. Approve the classification of the technical and financial proposals contained in the report, and identify the preferred proposal and the reserve proposals. Upon recommendation of the Competition Committee, the Director-Head may order a best and final round of bidding to determine the preferred proposal, provided that this is permitted in the RFP and that the recommendation of the Competition Committee states:
  - a. That there is the possibility that more than one proposal could be the preferred proposal, for example, the difference between the first two proposals is less than 5%.
  - b. There is an opportunity to improve the value of the PSP Project to the government by permitting bidders to clarify and review their financial proposals.
  - c. The expected benefit of taking this action compared to the additional time and cost is justifiable.
  - d. Determine the proposals to be included in the best and final round of bidding.

#### **Article (95):**

If the Director-Head decides to conduct a best and final round of bidding to determine the best proposal, the Competition Committee shall send a notice to each of the included bidders that a best and final round of bidding will be conducted. Such notice shall:

1. State that the clarification rounds have finished.
2. State that the best and final round is the opportunity to submit a best and final offer.
3. State that the bidders included in the best and final round shall be excluded if they fail to take part in the round.
4. Determine the place, date and deadline for submitting the best and final offer, provided that bidders shall be given a reasonable period to prepare and submit the best and final offer.

#### **Article (96):**

The financial proposals submitted in the best and final round of bidding shall be opened, examined and evaluated according to the provisions on opening and examining the financial proposals set out in this Part. Once an agreement on the commercial matters and other issues is reached with bidders, the Competition Committee shall submit to the Director-Head its recommendations on identifying one bidder whose proposal is the preferred proposal and no more than two reserve bidders.

#### **Article (97):**

1. Following approval by the Director-Head, the Contracting Authority shall announce the preferred bidder and the reserve bidders (if any).
2. After the lapse of the Required Period from the announcement of the preferred bidder, the Contracting Authority shall start the final negotiations with the preferred bidder.



#### **Article (98):**

In case of final negotiations, the Contracting Authority shall:

1. Form a negotiations team. Such team shall be composed of the Work Team and additional Advisors, if required, experienced in the expected negotiation subjects and the PSP Project details, and appoint a lead negotiator to lead the final negotiations.
2. Request the preferred bidder and the reserve bidder(s), if necessary, to extend their guarantees so that it covers the points and matters agreed upon during the negotiations and to agree on setting up a mechanism.
3. Determine place, date, time and mechanism of final negotiations and set the detailed schedule for such negotiations taking into consideration the requirements of the bid guarantee.
4. Communicate with the preferred bidder with respect to details and requirements of the final negotiations.
5. Formulate and document the negotiation strategy, including identifying each negotiation point as being of high, medium or low importance, especially with regard to legal clarifications and determining the preferred position of the negotiation team on each point.
6. Document the negotiation with the bidder and the final position reached on each point.
7. Send a copy of the record of the final negotiation positions to the bidder for signature within ten (10) days of receipt of such copy, stating that all points of the final negotiation contained in the record shall form part of the proposal and the Contract.

#### **Article (99):**

The Business Case Documents shall be updated for the outputs of the final negotiations with the preferred bidder and submitted to the Approving Authority to approve the award unless the Approving Authority has previously approved the award.

### **Part 6: Awarding the PSP Project**

#### **Article (100):**

1. After the lapse of the Required Period starting from the Contracting Authority announcing the tender results and the preferred bidder, and the completion of the negotiation procedures with the preferred bidder, the Contracting Authority shall submit to the relevant Approving Authority to request approval for awarding and signing the Contract.
2. In the event of receiving any appeal from a bidder during the Required Period, the Contracting Authority shall inform the Approving Authority of such, and provide its recommendations regarding the appropriateness of awarding and signing the Contract, suspending or stopping the tendering procedures, postponing the approval of the award until the appeal is decided upon, or recommend as it deems appropriate.

### **Article (101):**

1. If the Approving Authority gave prior approval for signing the Contract in accordance with these Regulations, the outputs of the Business Case Documents require no update and no appeal was received, a submission to the Approving Authority for a new approval is not required to move to the financial and commercial close stage, and the award and Contract signing procedures shall be completed in accordance with the prior approval.
2. Notwithstanding Paragraph (1) of this Article, if there are updates to the Business Case Documents or if an appeal was received, the Contracting Authority shall submit a request for the approval to the Approving Authority before proceeding with the Contract signing procedures, unless the Approving Authority has already approved such.

### **Article (102):**

Any award of the PSP Project shall not be valid unless all necessary approvals are obtained in accordance with these Regulations.

## **Part 7: Financial and Commercial Closing**

### **Article (103):**

Once the tendering process is complete, and after the necessary approvals are obtained and updating the PSP Project Documents for consistency with the approved Business Case Documents, the Contracting Authority shall sign the Contract and work to fulfill any conditions precedent of the Project, including:

1. Ensure that all approvals necessary for awarding and signing the Contract are obtained.
2. Enable parties to the Contract to sign the Contract. If the successful bidder has not established a PSP Project company yet, he shall sign the Contract provided that the contractual rights and obligations shall be transferred to the PSP Project company upon establishment, as a pre-condition for the effectiveness of the Contract.
3. Prepare protocols for financial and commercial closure that define the conditions precedent for the effectiveness of the Contract and to achieve financial and commercial closure.
4. Prepare and complete the PSP Project documents.
5. Determine the date and place of signing the PSP Project documents and coordinate with the successful bidder to whom the Project has been awarded.
6. Commence implementation of the PSP Project and fulfilment of the conditions precedent, including the issuance of performance bonds and releasing the reserve bidder.
7. Complete procedures for financial closure of the PSP Project, including any amendments to the financial model, and changes to the Contract to reflect the final financing conditions.
8. Work to finalize any required procedures related to an offering in the Saudi Stock Market.
9. Complete any other requirements for financial and commercial closure.





## Part 8: Limited Competition

### Article (104):

After obtaining approval of the Approving Authority, the Contracting Authority may tender PSP through the limited competition method in any the following cases:

1. The presence of a limited number of no more than three qualified bidders (inside and outside the Kingdom) who possess the technology or technical capacity necessary to implement the PSP Project based on the approved Business Case documents.
2. The PSP Project has been tendered through public competition according to these Regulations and the participating bidders did not meet the required standards for qualification or their proposals have lacked the required standards for selection of the preferred bidder.
3. Urgent Cases in which there is a certain and unexpected threat to public safety, public security or public health, or where there is a breach that threatens the loss of life or property, or the cessation of public service provision, which cannot be dealt with through public competition procedures.

### Article (105):

The request for approval of the limited competition method shall contain:

1. The grounds for use of the limited competition method for tendering and the circumstances and rationales on which the request is based.
2. Names of bidders nominated for taking part in the limited competition process and the basis for their nomination, as well as their qualifications, experience, and composition of ownership including respective percentages.
3. Procedures and measures for tendering.
4. Proposed schedule for every phase of the PSP Project tendering through the limited competition method and the deadline for signing the Contract.

### Article (106):

Without prejudice to the provisions of the Law and these Regulations, the following provisions shall apply to tendering of the PSP Project through limited competition:

1. Invitations shall be sent to the bidders listed in the decision approving the use of the limited competition method.
2. No change may be made to the list of bidders who are invited to take part in the tendering process without the approval of the Approving Authority.
3. The provisions on the publication and announcement, EOI, and pre-qualification contained in these Regulations shall not apply to the limited competition procedures. The provisions on public competition applicable to the limited competition procedures shall apply to any matter not specifically provided for in this Part.

## Part 9: Direct Contracting

### Article (107):

After obtaining approval of the Approving Authority, the Contacting Authority may tender the PSP Project through the direct contracting method in the following cases:

1. Urgent cases where there is a certain and unexpected threat to public safety, public security or public health, or where there is a breach that threatens the loss of life or property, or the cessation of public service provision, which cannot be dealt with through public competition or limited competition procedures.
2. The PSP Project was tendered through limited competition in accordance with these Regulations, and an agreement could not be reached with any of the bidders or no SOQs or proposal was received for such Project, and it was likely that no SOQs or proposals would be received if the Project was re-tendered.
3. There is only one qualified person that possesses the technology or technical capacity necessary to implement the PSP Project based on the Business Case Documents.
4. The PSP Project requires the use of intellectual property rights (such as patents) owned by a single party, and there are no alternatives for such intellectual property rights.

### Article (108):

The request for approval of the direct contracting method shall include the following:

1. The reasons for proposing the use of the direct contracting method and the circumstances and rationales on which the request is based.
2. The negotiating plan, including:
  - a. The name of the bidder proposed for the negotiations, the rationale for direct negotiations, the bidder's qualifications and his experiences.
  - b. The technical, financial, commercial, and legal matters that are non-negotiable (if any), and which the bidder must agree to or refuse the Contract entirely.
  - c. The technical, financial, commercial, and legal matters that are negotiable, provided that they can be classified into several levels unless the Approving Authority deems that this is not practical.
  - d. The proposed schedule for each stage of the PSP Project tender and the deadline for signing the Contract.
3. Clarify the procedures and measures for the tendering process and the bidders' composition of ownership and related percentages.
4. Details of the expected benefits to the Contracting Authority from direct Contracting, and the mechanism for ensuring and verifying the achievement of such benefits.



### **Article (109):**

The bidder for direct negotiation must meet the following conditions:

1. Have at least five years of experience working in the relevant sector.
2. Have the technical and financial ability to implement the PSP Project and implement the contractual obligations.
3. Not to be convicted of a crime, or a violation of honor, trust or public order inside or outside the Kingdom (including crimes of tax evasion).
4. Not have been declared, or ordered or commenced bankruptcy or insolvency in the past five years.
5. Not to be a party to a contract with a public entity in the Kingdom and that contract was terminated or withdrawn (wholly or partially) as a result of his breach of contractual obligations in the past five years.
6. That no member of its senior management (the chairman and members of the Board of Directors, the executive management, and the like) has been previously convicted of a crime, or a violation of honor, trust or public order inside or outside the Kingdom in the past five years.

### **Article (110):**

After obtaining the approval of the Approving Authority for the direct contracting method and the negotiation plan, the Contracting Authority shall:

1. Notify the bidder of the approval for tendering the project through direct contracting.
2. Sign a memorandum of understanding with the bidder for the purpose of regulating negotiations between the Contracting Authority and the candidate, which shall include, at least, the following:
  - a. Clear identification of the PSP Project to be tendered through direct contracting.
  - b. That neither party to the memorandum of understanding is entitled to claim any compensation from the other party arising from the cancellation of negotiations or failure to reach an agreement on the PSP Project unless the approval from the Approving Authority includes otherwise.
  - c. That each party shall bear their expenses and costs in relation to preparing and participating in the direct negotiations, and providing the required guarantees for the project, and that neither party may claim such costs and expenses from the other party regardless of the outcome of the negotiations for the PSP Project.
  - d. The work plan and the schedule of each stage of the negotiations and the Contracting Authority's right to cancel the tender at any time and/or in the event that any deadline in the schedule passes without completing the procedures related thereto or for any other reason determined by the Contracting Authority.
  - e. The mechanism and procedures of calling for and holding the meetings between the parties and meetings must be held in the Contracting Authority's headquarters and may not be held at the bidder's headquarters.
  - f. The mechanism, procedures and timeline for preparing and signing minutes of meetings.
  - g. The parties' obligations in relation to protecting the confidentiality of the information, procedures, meeting proceedings, and the results of tendering the PSP Project through direct contracting.
  - h. The candidate's commitment to attending meetings in person or sending representatives authorized with making decisions on his behalf.

- i. The candidate's commitment to disclose any direct or indirect relationship with the Concerned Entity or the Contracting Authority, or the employees of either of them, or any matter that would lead to a conflict of interest.
  - j. The means of communication between the parties during the PSP Project tender period through direct contracting.
  - k. Single point of contact for the Contracting Authority, and a single point of contact for the bidder.
3. Issue the terms and specifications document.

#### **Article (111):**

1. The bidder shall, upon being notified of the relevant Approving Authority's approval to tender the PSP Project through direct Contracting and signing the memorandum of understanding, submit his technical and financial proposals for the project which shall be binding on him unless otherwise agreed by the Contracting Authority.
2. The Contracting Authority shall be responsible for opening, studying, and evaluating the proposal, and shall do either of the following:
  - a. Complete the contracting procedures with the candidate if the candidate's proposal meets or exceeds the specified thresholds defined in the negotiations plan, or
  - b. Reject the offer and notify the candidate if the candidate's proposal does not meet the specified thresholds defined in the negotiations plan.

#### **Article (112):**

1. In the event of failure to reach an agreement with the bidder regarding the PSP Project, the Contracting Authority shall notify the candidate in writing that the parties have failed to reach an agreement, identify the areas of difference and the Contracting Authority's final position regarding these.
2. In this case, the guarantee, if any, that was provided by the bidder for the project, shall be called upon in accordance with the previously agreed terms and the approval of the Approving Authority.

#### **Article (113):**

For any matter not specifically provided for in this Part; and in relation with the tendering through direct contracting, the provisions of these Regulations on PSP Project tendering through public competition shall apply.

## **Part 10: Communication Provisions**

#### **Article (114):**

1. The Director-Head and members, committees, sub-committees and Advisors of the Competition Committee may not communicate with any person who has submitted SOQ or a proposal concerning the PSP Project except in accordance with the provisions of clarification procedures, and procedures for negotiation and commercial and financial closure contained in these Regulations or any other procedures set out in the approved Tendering Plan.
2. No other party involved in a PSP Project may communicate with any person who submitted a proposal or SOQ except as set out in these Regulations or any other procedures set out in the approved Tendering Plan.



#### **Article (115):**

The Qualification Committee may communicate with any party who submitted an SOQ and the Financial and Technical Proposal Evaluation Committees may communicate with any person who submitted a proposal, in accordance with the following provisions:

1. The communication is for inquiring about the information and data contained in the SOQ or proposal.
2. The communication is permitted by the Competition Committee.
3. For each bidder, the matters that require clarification are defined. Requests for clarification are sent in writing simultaneously to all bidders and bidders are given a reasonable time to respond to the clarification requests in writing.
4. A meeting may be held with a bidder, upon approval of the Competition Committee, and the following provisions shall apply:
  - a. The meeting is held after the requests for clarification have been sent in writing and a bidder has responded to those clarification request in writing, within the given period.
  - b. There is a need for holding a meeting with a bidder.
  - c. The questions are prepared in writing and sent to a bidder at least five (5) working days prior to the meeting date.
  - d. The meeting discussions are recorded as minutes of the meeting, and such minutes shall state the date, time and venue of the meeting, names of attendees, details or clarifications. The clarifications contained in the record shall be part of the proposal and a copy of which shall be sent to the bidder for signature and then returned to the Work Team within ten (10) days of receipt.

#### **Article (116):**

Information on examination and evaluation of proposals and related clarifications may not be disclosed to bidders or any other person without the approval of the Competition Committee and in the following cases:

- e. To be disclosed to all bidders.
- f. After the Contract is awarded.

#### **Article (117):**

1. No bidder may communicate with the Approving Authority, Contracting Authority, Work Team, the Director Head or the Competition Committee or its members, sub-committees or Advisors, directly or indirectly, to inquire about the results of the evaluation or to affect the evaluation process.
2. The Competition Committee shall exclude a bidder from the tendering process if it finds that he affects the integrity and fairness of the tender procedures.

#### **Article (118):**

1. If required, and according to the amount of data related to the PSP Project, the Contracting Authority shall ensure that there is a safe data room in which the documents needed by bidders are kept in order to facilitate their access to the information.
2. To access the data room, the bidders shall sign a confidentiality agreement and shall comply with the confidentiality requirements under the RFP, the Law, these Regulations and any other laws on the protection of confidential information applicable in the Kingdom.

### **Article (119):**

The Contracting Authority shall ensure that there is a secure electronic process to manage the tendering process in accordance with the applicable law, and ensure its safety and functioning before it is operated. The electronic process for managing the tendering process shall be at an appropriate level in terms of design and operation to allow both the Contracting Authority and the Competition Committee to manage all phases of tendering effectively and safely.

## **Part 11: Marketing of PSP Projects**

### **Article (120):**

According to the approved Tendering Plan, the Contracting Authority may, before initiating the tendering process, launch a marketing campaign for the PSP Project in the form of field campaigns, advertisements and communication with potential investors, financiers, contractors and suppliers inside and outside the Kingdom as well as communication with the concerned parties.

### **Article (121):**

1. The Contracting Authority shall announce the PSP Projects and its tendering stages, in coordination with the Ministry of Investment, in order to attract a sufficient number of bidders, promote competition and achieve the intended results in the PSP Projects.
2. PSP Projects and related details shall be announced through:
  - a. Websites of the Contracting Authority and NCP.
  - b. Platforms and websites determined by the Ministry of Investment.
  - c. Social media accounts of the Contracting Authority and NCP.
  - d. Local and international newspapers and any other electronic or traditional media outlets.
  - e. Websites of concerned entities and any other relevant websites.
  - f. Local and international PSP Projects' tender websites.
  - g. Industry publications, trade journals, and other relevant sector journals and periodicals.
  - h. Industry conferences and meetings, and PSP Project introduction tours.
  - i. Bidder records and lists of companies, as applicable, that have previously expressed interest or been qualified.
  - j. Any other media able to widely disseminate the investment opportunity in PSP Projects.

The announcements must be consistent with the official announcement and shall refer to the Contracting Authority and NCP websites for more information.

## **Part 12: Investor Conferences**

### **Article (122):**

In accordance with the approved Tendering Plan, the Contracting Authority may hold an open conference for the interested parties after issuance of request for EOI or RFQ, provided that the conference shall only clarify the PSP Project including its key benefits, its schedule, and its required actions.



### **Article (123):**

The Contracting Authority may, in accordance with the approved Tendering Plan, hold a conference for bidders, provided that:

1. A conference is held within thirty (30) days of issuance of the RFP.
2. Such a conference is not considered as a negotiation with bidders. The conference shall be limited to clarifying the PSP Project, including its procedures and requirements, and schedule, and to clarifying the bidders quantitative and qualitative requirements.

### **Article (124):**

When holding conferences, the Contracting Authority shall:

1. Publish the notice at least (10) days before holding the conference and such notice shall state requirements, venue and time of the conference.
2. Explain that the purpose of the conference is to clarify the PSP Project and the answers given in the conference shall not be considered an amendment or a change to the documents introduced by the Contracting Authority.
3. Request the invitees to submit their questions before the conference in order to answer them in its presentation.
4. Record inquiries raised in the conference after issuance of the request for EOI or RFQ and shall respond to such inquiries in writing and the responses shall be available on its website. Such answers shall not be binding on the Contracting Authority and shall not constitute part of the documents introduced by the Contracting Authority.
5. Record the inquiries raised in the conference after publishing the shortlist of qualified bidders or issuance of RFP and shall record answers to such inquiries in writing and shall send the same to the bidders. Such answers shall not be binding on the Contracting Authority and shall not constitute part of the documents introduced by the Contracting Authority.
6. Start the conference with a presentation on the PSP Project, investment opportunities, relevant tendering procedures, and shall offer a time at the end of the conference for questions and answers with the investors.
7. If the Contracting Authority decides to make some changes to the Tender Documents, such changes shall be made according to the procedures in these Regulations.

## **Part 13: Cancelling the Tender Process**

### **Article (125):**

1. The Contracting Authority may, after obtaining the approval of the Approving Authority, cancel the PSP Project Tender at any time prior to the signing of the Contract in the following cases:
  - a. If the public interest so requires.
  - b. In urgent cases in which a threat to public safety, public security, or public health is certain and unexpected, or where there is a breach that threatens the loss of life or property, or the cessation of public service provision in the event that the tender procedures continue.
  - c. The existence of material errors in the tender procedures, which cannot be addressed within those procedures.

- d. The need for the PSP Project no longer exists
  - e. If all or most of the proposals contain reservations that are not in line with the RFP, or if it was not possible to evaluate all the financial and technical proposals.
  - f. Where the preferred bidder has not been able to comply with the project's conditions precedent for signing the Contract according to the approved Business Case Documents and Tendering Plan;
  - g. If it was proved that the tender process involved collusion, conflict of interest, bribery, or any other corruptive practices; or
  - h. If an appeal was received in accordance with the Law and Regulations, and a decision was issued by the appeals committee to accept the appeal as valid before signing the Contract and it was not possible to rectify the procedures resulting in the violation of the Law and Regulations.
2. The decision to cancel must be justified and communicated to the bidders.
  3. In all cases, Approving Authority may decide what it deems fit regarding cancelling the tender process.

#### **Article (126):**

No bidders shall be entitled to compensation as a result of the cancellation of the tender at any time before signing the Contract, unless the Board of Directors decides otherwise based on the recommendation of the Contracting Authority, and after obtaining the approval of MoF. In all cases, the compensation shall not exceed the actual and direct costs for participating in the tender according to the estimation of advisors based on the supporting documents submitted by the bidders for such costs that are accepted by the Contracting Authority.

## **Part 14: Contract Management**

#### **Article (127):**

1. The Concerned Entity shall be responsible for managing the Contract, including:
  - a. Communicating with the parties to the Contract and conduct correspondence and notifications to assist in the implementation and oversight of the Contract.
  - b. Follow up on the requirements of the Contract implementation, including - as applicable - its establishment, processing, provision of services and others in accordance with the provisions of the Contract and any other procedures related to planning for the termination of the contract.
  - c. Verify the compliance of the Private Party and any other related parties with their contractual obligations including achieving the quality levels specified in the Contract and specific implementation schedules.
  - d. Ensure that the Private Party and any other related parties implement any decisions issued by the Approving and Contracting authorities throughout the Contract term, in accordance with the powers stipulated in the Law, the Governing Rules, and these Regulations.
  - e. Ensure that the Private Party provides all information, documents and reports that allow the supervisory authorities to exercise their control over the implementation of the Contract, and enable these authorities to conduct any inspection tours during the stages of contract implementation, and their commitment to all regulations, instructions and decisions in force in the Kingdom.





2. The Concerned Entity may assign to another party the function of monitoring the Private Party's implementation of the PSP Project in accordance with the provisions of the contract, these Regulations and the relevant decisions, provided that the Concerned Entity notify the Contracting Authority prior to the assignment.
3. The Concerned Entity shall submit periodic reports to MoF that include all direct and expected cash flows from the project.

#### **Article (128):**

The Concerned Entity shall develop contract management and monitoring plan to be used as a reference guide provided that the plan includes, as a minimum, the following:

1. An overview of the Contract and its main contractual provisions, its implementation timetable, the obligations and responsibilities of the parties to the contract.
2. Contract management and monitoring mechanism, and performance evaluation indicators.
3. Identification of the parties related to PSP Project implementation, control and management in the Concerned Entity and relevant government entities, and the mechanism of communication and coordination amongst them.
4. A schedule for the progress of the procedures for implementing the signed Contract and governance procedures.
5. Mechanisms for addressing the difficulties and problems in the implementation of the PSP Project.
6. Procedures and requirements for reviewing, preparing reports and notices.
7. Any other procedures and requirements that the Concerned Entity deems appropriate.

#### **Article (129):**

1. Subject to Article (27) of the Law, the Contracting Authority shall undertake by itself or through another party it chooses to implement some or all of the obligations of the PPP Contract and shall enjoy the rights associated with the Contract unless the Contract stipulates otherwise, and for this purpose, it may take corrective actions to avoid a breach or failure caused by the Private Party.
2. In the event that the Contracting Authority takes over the implementation of the PPP Contract by itself or through another party, and this results in any additional financial obligations on the government, the Contracting Authority must submit a request for its approval in advance to the MoF and notify the Approving Authority of such before taking any action in the matter.

### **Article (130):**

1. Without prejudice to Paragraph (3) of Article (8) of the Law, the Contracting Authority may not suspend the implementation of a PPP Project or amend its terms and conditions except after the approval of the Approving Authority if the public interest so requires, and that it be within the framework of the provisions and controls stipulated in the Contract, taking into account the following:
  - a. Provide the reasons, justifications and effects of this request.
  - b. Not to increase the financial obligations on the government without the approval of the MoF.
  - c. To not completely disable the Contract.
  - d. That amending the terms and provisions of the PPP Contract does not change the general nature of the Contract, wherein it results in the creation of a new contract.
2. The PPP Contract shall specify the procedures for suspending or amending its implementation, the provisions for sending notifications and their duration, the effects of the suspension or modification, the amount of compensation to which the Private Party is entitled and the mechanism for calculating it.
3. In the event that the PPP Contract does not specify the amount of compensation to which the Private Party is entitled as a result of suspending or amending the Contract and the mechanism for calculating it, the Board of Directors, based on the recommendation of the Contracting Authority, shall determine the amount of compensation, the mechanism for its payment, and the conditions and controls regulating this, provided that the Contracting Authority takes into account when submitting a recommendation, it shall be guided by recognized local and international practices and the opinions of experts in determining the amount of compensation.

### **Article (131):**

1. The Contracting Authority may extend or renew the PPP Contract in accordance with the Law and within the provisions, standards and limits agreed upon in the PPP Contract.
2. The Contracting Authority shall submit a proposal to extend the PPP Contract or a proposal to renew it to the relevant Approving Authority for approval prior to taking any action in this regard, provided that the request includes justifications and effects of this request.
3. The PPP Contract shall define its extension and renewal procedures, the provisions for sending notices in this regard and their periods, the effects of extension or renewal, and the financial obligations resulting therefrom.
4. If extending or renewing the PPP Contract would incur additional financial obligations for the government, the Contracting Authority shall obtain the MoF approval before taking any action in this regard.



#### **Article (132):**

1. The Contracting Authority may unilaterally terminate the PPP Contract before the end of its term in accordance with the controls and provisions of the Law and the Contract.
2. The Contracting Authority shall submit a proposal to terminate the PPP Contract to the Approving Authority for approval prior to taking any action in this regard, provided that the request includes justifications and effects of this request.
3. The PPP Contract shall define termination procedures, the provisions for sending notices and their periods, the effects of termination, and the compensation to which the Private Party shall be entitled and how it is calculated.
4. If terminating the PPP Contract would incur additional financial obligations to the government, the Contracting Authority shall obtain the MoF's approval before taking any action in this regard.

#### **Article (133):**

1. The PPP Contract shall stipulate the provisions of the ownership of the project's assets and the intellectual property rights associated therewith, the parties' obligations in relation to project site handover and receipt, and if any, the provisions of transfer of asset ownership and the specifications and standards that the project assets must meet at the end of the PPP Contract term, including at least, the following:
  - a. The timetable of project handover and receipt
  - b. The condition of assets at the end of the PPP Contract and their assessment by an independent Advisor as stipulated in the PPP Contract.
  - c. Allocation of responsibility for cost and delivery of any handover requirements.
  - d. The compensation to be paid to the Private Party (if any).
  - e. The Plan for recruiting, training, and transferring employees (if any).
2. If the PPP Contract provides for a lease of a Private Party's property by the Contracting Authority, vacating and handing over the property shall be done as agreed between the parties.

# Unsolicited Proposals

07





#### **Article (134):**

By allowing Unsolicited Proposals for proposed PSP Projects, the government is seeking to achieve the following objectives:

1. Achieve the PSP Projects objectives prescribed in the Law.
2. Find innovative solutions to fill the gaps in infrastructure and public services or enhance them and promote their efficiency and quality.
3. Encourage the Private Sector to submitting technical solutions, preparing studies and making initiatives to achieve developmental and economic benefits
4. Increase the number of PSP Projects that can be studied tendered and implemented.

#### **Article (135):**


To submit Unsolicited Proposals, the following conditions must be met:

1. The Unsolicited Proposals must be in a sector that has a PSP Plan.
2. Unsolicited Proposals preparation must not be based on the request, participation, supervision or guidance of a governmental entity
3. Unsolicited Proposals must include innovative solutions.
4. Unsolicited Proposals must achieve value for money, if applicable.
5. The party submitting an Unsolicited Proposal must not be a government entity or government employee, or an Advisor appointed for the purpose of providing advisory services in relation to infrastructure or public service projects.

#### **Article (136):**

For the Unsolicited Proposal to be studied and considered by the Contracting Authority, it must include, on the following information following, at least:

1. Justification to grant the Unsolicited Proposal the priority to be studied and tendered, in addition to detailed information about the bidder, his experience and his qualifications.
2. Detailed study that meets the requirements stipulated in the Regulation, based on publicly available government financial data.
3. Detailed information on the innovative solutions including any intellectual property rights, trade secrets, or any other rights related to the Unsolicited Proposal.

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4. The impact on the government, including financial and/or credit support required.
  5. Granting the right to exploit intellectual property rights and trade secrets related to the Unsolicited Proposal in the event that the Contracting Authority agrees to tender the PSP Project.
  6. Acknowledgment that the preparation of the Unsolicited Proposal was not at the request of a government entity, or with the participation, supervision or direction of it.
  7. Specify the costs incurred for preparing the Unsolicited Proposal. The Contracting Authority may request any information or documents supporting these costs, and negotiate such costs applicant without any obligation on the Contracting Authority to reimburse such costs or arrange such reimbursement.

**Article (137):**

Unsolicited Proposal shall be submitted to the Contracting Authority. The Contracting Authority shall be under no obligation to study and consider them. For this purpose, the Contracting Authority may, within thirty (30) working days from receiving the Unsolicited Proposal:

1. Decide to study the Unsolicited Proposal
2. Return the proposal unopened to the submitting party, with a written statement that proposals for this project or for the sector are not being considered at this time.

**Article (138):**

1. If the Contracting Authority wishes to study the proposal, it shall take into account the following:
  - a. Notify the unsolicited bidder of receiving the proposal and its desire to study and consider it.
  - b. Study the Unsolicited Proposal in accordance with Article (139) of these Regulations.
  - c. Communicate with the bidder for clarification or request additional information without this being a negotiation or any kind of arrangement resulting in a contractual relationship with the bidder.
  - d. The review shall be completed within ninety (90) working days from the date of receiving the proposal
2. The Contracting Authority, after obtaining approval of the Board of Directors, may request the unsolicited bidder to pay a fee as a precondition for studying the Unsolicited Proposal, provided that the financial consideration reflects the expected costs of studying the Unsolicited Proposal.



### **Article (139):**

1. When studying the Unsolicited Proposal, the Contracting Authority shall verify the following:
  - a. The Unsolicited Proposal includes all the requirements stipulated in the Regulations.
  - b. The Unsolicited Proposal is in line with the sector's PSP Plan and strategic objectives and priorities.
  - c. The affordability of the proposed PSP Project, and whether the proposal's financial impact is in line with any restrictions on the government's budget and the ability to finance it.
  - d. The PSP Project proposed in the Unsolicited Proposal reflects the market's normal parameters and the optimal risk allocation
  - e. The PSP Project proposed in the Unsolicited Proposal has no technical, financial, legal or regulatory or environmental, social issues which are not resolvable if the project is implemented, and the costs of resolving such issues are considered in the affordability analysis.
  - f. The proposed PSP Project in the Unsolicited Proposal is not included in the sector PSP plan. If the PSP Project is included in the sector's PSP Plan and it has not been announced, the Contracting Authority cannot start the tendering procedures based on the Unsolicited Proposal without the approval of the Board of Directors.
2. Upon completing the study and consideration of the Unsolicited Proposal, the Contracting Authority may decide that:
  - a. The proposal does not merit further consideration. The Contracting Authority shall then notify the party which submitted the proposal of such and return all the documents of the Unsolicited Proposal.
  - b. If the Unsolicited Proposal is incomplete or lacks sufficient information to make a decision, the Contracting Authority may request further information, as it deems appropriate, and direct the party, which submitted the proposal to supplement the proposal and/or resubmit its proposal to include this information.
  - c. If the proposal merits further study and consideration, the Contracting Authority shall then notify the owner of the Unsolicited Proposal and NCP, then complete the procedures of studying, preparing, tendering, and awarding the proposed PSP Project in accordance with the Law and Regulations.
3. If the Approving Authority does not approve the PSP Project proposed in the Unsolicited Proposal during any of its preparatory stages before issuing an RFQ, the Contracting Authority shall notify the party which submitted the proposal of such.

## **Article (140):**

1. The Contracting Authority shall upon completing the Business Case Documents based on the Unsolicited Proposal submit them to the Approving Authority for approval, and the Approving Authority may decide to:
  - a. Not approve the Business Case Documents prepared based on the Unsolicited Proposal. The Contracting Authority shall then notify the party, which submitted the proposal of the decision and return the Unsolicited Proposal to the party with a written statement that the Approving Authority does not approve the Project.
  - b. Approve the Business Case Documents based on the Unsolicited Proposal.
2. If the Approving Authority approves the Business Case Documents that were prepared based on the Unsolicited Proposal and begins the procedures of tendering the PSP Project in accordance with the provisions of the Law and these Regulations, the Contracting Authority shall take the following into consideration:
  - a. Not to communicate, in particular with the unsolicited bidder, regarding the tendering process, except for what is mentioned in paragraph (b) of subparagraph (2) of this Article, and taking into account the requirements of transparency, publicity, equal opportunities and fairness with other competitors.
  - b. In the case of a public tender, the RFQ shall state that the Contracting Authority may add the unsolicited bidder to the shortlist of eligible bidders to submit its proposal, without requiring the submission of the SOQ.
  - c. If the unsolicited bidder is not awarded the Contract as a result of the tendering process, the Contracting Authority may, after the approval of the Board of Directors and MoF, compensate the applicant for direct and reasonable costs, not exceeding what has been identified per Paragraph (7) of Article (136) of these Regulations, that is incurred by the applicant to prepare and submit the Unsolicited Proposal, based on inputs from advisors and the evidence submitted by the applicant for such expenses accepted by the Contracting Authority. For this purpose, the Contracting Authority may include the tender documents provisions stipulating that the preferred bidder awarded the project proposed in the Unsolicited Proposal shall pay the compensation to the applicant. In such cases, the tender documents shall identify the amount of such compensation.



# Final Provisions

08



## Part 1: Local Content Requirements for PSP Projects

### Article (141):

1. When preparing a detailed study on the PSP Project, a study on the requirements of Local Content should be conducted as follows:
  - a. Together with the Authority, identify the local content requirements applicable to the PSP Project and Tender Documents.
  - b. Contracting Authority may conduct initial market analysis to measure the effect of the local content requirements in the PSP on the following:
    1. The negative impact on investors' interest in the PSP Project.
    2. The possibility of PSP Project unsuccessful tender.
    3. The extent of increasing obligations or risks in the PSP Project on the government.
2. Contracting Authority shall consult with the Authority in all phases of the study mentioned in Paragraph (1) of this Article.
3. Contracting Authority shall include the results of the study mentioned in Paragraph (1) of this Article and its recommendations in that regard in the Business Case Documents. The Contracting Authority shall provide a copy of the study to the Authority.

### Article (142):

1. In the event that the study stipulated in Paragraph (1) of Article (141) of these Regulations shows that it is appropriate to include local content requirements in the Tender Documents, the Contracting Authority together with the Authority, shall prepare a list of those requirements to be included in Tender Documents, and It shall include, as a minimum, the following:
  - a. Local content requirements.
  - b. Local content templates that bidders have to use in their proposal.
  - c. The mechanisms and standards for monitoring the obligation of the Private Party in relation to local content requirements during the implementation of the PSP Project, and the mechanisms for measuring the performance of the Private Party; and the commitment of the Private Party to submit reports and information related to the local content requirements to the Contracting Authority and the Authority during the implementation stages of the PSP Project and at the end of the Contract.
2. In the event that the study stipulated in Paragraph (1) of Article (141) of these Regulations shows that it is not appropriate to include local content requirements in the Tender Documents, the Contracting Authority must present the results of the study to the Authority and request the Authority to study the appropriateness of including local content requirements in the Tender Documents, and determine whether to require bidders to provide their recommendations regarding developing local content in performing the project, and whether to consider compliance with local content requirements as one of the criteria for evaluation of offers, and include the outcome in the Business Case Documents. The Authority shall provide its recommendations on this.
3. The Contracting Authority shall, after receiving the recommendations from the Authority, or within fifteen (15) working days from the date of providing the Authority with the results of the study, whichever is earlier, include the results and justifications it reached in the Business Case Documents.



4. In the event of disagreement between the Contracting Authority and the Authority regarding the local content requirements proposed to be included in the Business Case Documents, the Authority may, after coordination with NCP, submit directly to the Approving Authority its statement and suggestions, and the Approving Authority, if it deems appropriate, shall direct the Contracting Authority to reconsider the recommendations submitted by the Authority.

#### **Article (143):**

1. When the Contracting Authority agrees to include the local content requirements for the PSP Project, it shall:
  - a. Include local content requirements in the Tender Documents.
  - b. Ensure that the results of the local content requirements are reflected in the detailed study of the PSP Project
  - c. Clarify the coordination procedures with the Authority and the Authority's opinion on these procedures.
  - d. Provide the Authority with copies of Tender Documents and PSP contracts.
2. The Contracting Authority, in conjunction with the Authority, shall verify that the Contract (as applicable) includes the following:
  - a. The obligations of the Private Party related to the local content requirements, the effects of a breach by the Private Party, any financial fines or deductions resulting therefrom, the mechanism for calculating them, the upper limit thereof, and the procedures for imposing them.
  - b. The mechanisms for measuring the performance of the Private Party, and the commitment of the Private Party to the requirements of local content during the implementation of the PSP Project.
  - c. The commitment of the Private Party to submit reports and information related to the requirements of local content to the Contracting Authority and the Authority during the implementation stages of the PSP Project and at the end of the Contract.

#### **Article (144):**

The Contracting Authority, in conjunction with the Authority, shall monitor the implementation of the Private Party's Contractual obligations related to local content requirements over the contract term Contract.

## **Part 2: Stakeholder Engagement**

#### **Article (145):**

For the purposes of this Part, stakeholder shall include the following:

1. The beneficiaries of or the affected by the PSP Project
2. Not-for-profit organizations relevant to the PSP Project.
3. Private Sector persons and/or entities that include:
  - a. Potential investors, and/or funders of the PSP Project;
  - b. Potential PSP Project participants such as Contractors, sub-Contractors, infrastructure developers and technical, financial and legal consultants.

### **Article (146):**

Stakeholder engagement may include engagement to:

1. Provide information to or gather information from stakeholders related to the PSP Project.
2. Determine the appropriateness of tendering the PSP Project.
3. Obtain necessary information on available alternatives for addressing the needs, which the PSP Project aims to address.
4. Identify the available PSP methods for implementing the project, and the best method for the project.
5. Identify any gaps, obstacles, or potential risks related to the PSP Project in order to define the solutions and preventive measures necessary to address or mitigate them.
6. Identify and/or verify the Private Sector's interest, capacity, and/or capability of participating in the PSP Project.
7. Identify and/or address stakeholder concerns or issues related to the PSP Project.
8. Promote the project's chances of success and achievement of the desired objectives, including where applicable identification of amendments to the technical, legal, and/or commercial structure of the PSP Project that would enhance the project's effectiveness, attractiveness and/or viability.
9. Promote transparency in the PSP Project implementation procedures.

### **Article (147):**

The Contracting Authority shall include a stakeholder engagement Plan, in the Business Case Documents. This plan shall cover all the PSP Project stages, including:

1. Identification of the PSP Project stakeholders at each of its stages, and their interest in the project.
2. The necessity and/or purpose of engaging with the identified stakeholders.
3. The proposed means of communication and/or engagement with stakeholders, the responsible parties for conducting such activity, and the proposed timeline.
4. The topics to be addressed with each category of stakeholders, and the objectives of communication and/or engagement with each category.
5. The PSP Project data and documents to be disclosed to the stakeholders and how this will be made available, including whether any sensitive or confidential public information may be disclosed and how such information will be protected.
6. The proposed methodology for documenting stakeholder engagement and maintaining the information gathered.
7. The proposed methodology for studying and analyzing the feedback received from the stakeholders and identifying the procedure for addressing it.
8. Any media or awareness campaigns necessary for introducing the PSP Project to the community, defining its objectives and benefits, and the proposed plan for carrying out such campaigns and its financial and non-financial requirements.

### **Article (148):**

If confidential or sensitive governmental information is provided and/or discussed as part of the stakeholder engagement, the Contracting Authority and/or Work Team may require the signing of a confidentiality agreement(s) between the respective parties.



## Part 3: Fair Competition and Limitation of Monopoly

### Article (149):

The options analysis in the Business Case Document of each PSP Project shall include a detailed study of the project's impact on fair competition or the interest of beneficiaries of services or goods related to the PSP Project. The study must include, at a minimum, the following:

1. An assessment of the exclusive rights enjoyed by the Private Party by virtue of the project and the justifications thereof.
2. An assessment of the extent of the project's impact on the market, and whether the implementation of the Project would adversely affect or restrict competition, and this includes:
  - a. Increasing, decreasing or setting prices in the market.
  - b. Determining requirements to buying or selling in the market, sizes, weights, or quantities of production of goods, or the performance of services.
  - c. Prohibiting some companies or commercial institutions from entering or participating in the market, in whole or in part.
  - d. Dividing or limiting markets.
  - e. Creating an economic concentration in the market.
  - f. Encouraging collusion or coordination behaviors in the market.
  - g. Encouraging the misuse of a dominant position in the market.
  - h. Freezing or limiting investments.
  - i. Limiting market development in terms of efficiency, diversity, growth and productivity
  - j. Reducing the freedom of goods and services and their flow to the market in whole or in part
  - k. Reducing the government's ability to implement similar projects in the future.
3. Submitting recommendations to avoid and mitigate monopoly and its effects, taking into consideration fair competition and the beneficiaries' interests, enhance the market environment and economic development to the Approving Authority for approval as part of approving the Business Case Documents, taking into consideration any controls defined by the relevant Approving Authority in its approval in this regard.

### Article (150):

Unless the Contract stipulates such, the Private Party may not follow any restrictive practices in providing works and services to beneficiaries of goods or services relevant to the PSP Project, including:

1. Inequality between beneficiaries in providing works and services.
2. Refraining from providing works and services to beneficiaries.
3. Making the delivery or availability of works and services to beneficiaries' conditional on incurring an obligation or accepting other services not related to the service subject of the original contract or transaction.
4. Decreasing or increasing the available quantities of works and services thus creating a shortage or abundance thereof.
5. Imposing any additional monetary consideration on beneficiaries of works and services.

## Part 4: PSP Project Company

### Article (151):

1. The Contracting Authority may include in the Tender Documents mandatory provisions obliging the preferred bidder to establish a company in the Kingdom to implement the PSP Project for a duration not less than the duration necessary to implement the PSP Project, and such company shall be the Private Party in the Contract. If this is required, the sole purpose of the company must be to implement the relevant PSP Project in accordance with the controls, conditions, and provisions stipulated in the Law and Regulations and Tender Documents.
2. The PSP Project company shall be subject to the Companies Law and the applicable laws in the Kingdom.
3. Unless specifically permitted by the Contract, it is not permitted to make any amendments to the legal form of the PSP Project company, decrease its capital, sell or pledge shares, amend shareholders' shares, merge, split, acquire, introduce new shareholders, or transfer ownership through assignment or sale, except after obtaining the written approval of the Approving Authority.
4. In all cases, the PSP Project company's shares may not be transferred before completing the construction, preparation, or development works and starting the operation or utilization of the project, except with the approval of the Contracting Authority.

## Part 5: Confidentiality

### Article (152):

1. For the purposes of these Regulations, confidential information shall mean all information whose disclosure may be detrimental to the Kingdom's national security, interests, policies, or rights, or the PSP Project.
2. Confidential information shall include all relevant information to the Kingdom's PSP related activities and documents, including financial, legal, technical, and administrative matters, and the deliberations and decisions of the Contracting Authority or Approving Authority.
3. The Concerned Entity or any other relevant government entity shall ensure that their internal procedures, Tender Documents, Contracts, and all other documents and communications related to PSP activities enforce the confidentiality of information requirements.
4. No party shall disclose, use or exploit confidential or otherwise protected information except in accordance with the limits and controls as permitted by the Law, Regulations, and any other applicable laws, resolutions or instructions in the Kingdom.

### Article (153):

If confidential data or document(s) are compromised, confidential information is disclosed, or intellectual property rights or trade secrets were breached, the Contracting Authority shall:

1. Report the incident to NCP and any other relevant entities within one day of discovering the incident.
2. Coordinate with NCP and any relevant entities on an appropriate response.



## Part 6: Conflict of Interest

### Article (154):

1. For the purposes of these Regulations, conflict of interest shall mean any actual or potential conflict of interest related, directly or indirectly, to the PSP Project which arises before, during or after implementing the PSP Project activities.
2. Interest shall mean one of or both of the following:
  - a. An "organizational interest": is a person's relationship or association with an organization that has an interest in the work or activity related to the PSP Project or related to any other organization with which the person has a relationship or connection.
  - b. A "personal interest": is a person's private interest in the work or activity related to the PSP Project that is outside their professional obligation to the PSP Project. A "personal interest" may include an interest of a family member or relative up to the fourth degree or financial or professional interest of mentioned persons in work or activity related to the PSP Project.

### Article (155):

Without prejudice to the laws and regulations applicable in the Kingdom, any person who participates in activities related to the PSP Project shall:

1. achieve the Kingdom's higher interest and ensure the success of its economic and development plans, taking into consideration the public interest over their own;
2. seek to take all the necessary actions to identify and avoid conflicts of interest as much as possible, and disclose and address or mitigate them if they occur;
3. consider the public interest in performing the tasks and duties, and avoid any actions that may result in a conflict of interest;
4. refrain from using the office title or public position or the information obtained by virtue of the job for his interests, and not to use the authorities and powers of the office to achieve gains;
5. not accept, receive, offer, request, or share monetary or in-kind benefits, additional services, or gifts to/from others;
6. not have an interest in any matter related to PSP activities presented to the Approving or Contracting Authority, or any other government entity. If he has an interest, he must disclose its nature immediately to the Contracting Authority and refrain from participating in deliberations or voting or any other procedures or work as long as the conflict of interest exists, or;
7. disclose any conflict of interest to the Contracting Authority in writing, and notify NCP if any incident occurs, and take the corrective measures defined by the Authority, which may include, without limitation, prohibiting participation in the relevant PSP Project, or attending relevant meetings, discussing and voting on the matter, or attempting to influence others' votes or work. Such disclosure shall include the following:

- a. Description of the interest or relationship which is or may be considered a conflict of interest.
- b. Description of the work or activity that creates a conflict of interest.
- c. Description of the corrective measures that may be implemented to reduce the conflict of interest, if any.

#### **Article (156):**

1. The Contracting Authority shall take all the necessary procedures and measures to avoid any conflict of interest that may arise during any of the PSP Project stages, identify the nature and type thereof, and address it effectively and objectively to avoid affecting the tender's fairness and ensure fair treatment of all bidders and comply with the requirements of transparency, openness, equal opportunity, equality, and protection of public interest.
2. The Contracting Authority shall, in coordination with NCP, develop a conflict of interest policy aimed at minimizing conflict of interest risks and addressing conflicts of interest in PSP Projects. The policy must include, at a minimum, the procedures to be undertaken to avoid, minimize, disclose, discover and address conflict of interest.
3. The Contracting Authority shall include provisions regulating conflict of interest in accordance with the Law and other relevant laws and these Regulations in the Tender Documents and Contracts concluded in relation to the PSP Project.
4. The Contracting Authority may request any person participating in activities related to the PSP Project to declare or confirm in writing that he is free of any conflict of interest during all the PSP Project stages.

## **Part 7: Templates and Reference Technical Documents**

#### **Article (157):**

The Board of Directors may issue the necessary technical annexes related to the technical aspects to the PSP projects.

#### **Article (158):**

The CEO of NCP may issue the necessary indicative reference guidelines related to the PSP projects.

## **Part 8: Entering into Force**

#### **Article (159):**

These Regulations shall enter into force based on the decision to approve and issue, and shall be published in the Official Gazette.







المركز الوطني للتخصيص  
NATIONAL CENTER FOR PRIVATIZATION & PPP



## Contact US

+966118352354

info@ncp.gov.sa

www.ncp.gov.sa

@NCPSaudi | @NCPSaudi\_en

in National Center for Privatization & PPP