

Official Gazette

We, Abdallah II Ben Al Hussain, King of the Hashemite Kingdome of Jordan, by virtue of article (31) of the Constitution and based on the Council of Ministers resolution dated 14/4/2021, we order enactment of the following Regulation:

Regulation Number (23) of 2021

Public Private Partnership Regulation

Issued in pursuant of Article (20) of the Public Private Partnership Project (PPP) Projects Law Number (17) of 2021

Article 1- This Regulation shall be called “Public Private Partnership (PPP) Regulation of 2021 and shall come into force on the date of its publication in the Official Gazette.

Article 2- The following words and phrases, wherever they appear in this Regulation, shall have the meanings assigned to them hereunder unless the context indicates otherwise:

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| The Law | : | The PPP Projects Law. |
| The High Committee | : | The committee formed pursuant to the provisions of the Law. |
| The Unit | : | The PPP Projects Unit established pursuant to the provisions of the Law |
| The Registry | : | The National Registry for Public Investment Projects established in the Ministry of Planning and International Corporation. |

- The Public Authority : Any ministry, department, official public institution, public institution, commission, council, authority, municipality, or a company wholly owned by the government or which the government shareholding exceeds (50%)
- The Contracting Authority : The Public Authority that concludes the PPP Contract.
- Project Company: : The company established for the purpose of implementing the PPP Project in accordance with the provisions of the Law.
- PPP Contract : The agreement concluded by and between the Public Authority and the Project Company in accordance with the provisions of the Law for the purpose of implementing the PPP Project in which the terms, conditions, procedures, and the rights and obligations of the parties are specified.
- PPP Project: : Any activity which aims to provide a public service with an economic, social, or service impact, or to enhance the provision of public services, under the supervision and responsibility of the Public Authority and is listed in the Registry.
- Small-Scale PPP Project : The PPP Project which capital expenditure is less than the amount set by the Council of Ministers pursuant to the provisions of the Law.
- Project Advisor : A person, whether natural or legal person appointed by the Public Authority in accordance with the provisions of the Law and the regulations issued pursuant thereto.
- Technical Committee : The technical committee for Fiscal commitments formed at the Ministry of Finance in accordance with the provisions of the Law to evaluate the Fiscal

Commitments of the PPP Projects.

- Fiscal Commitments : The long-term fiscal impact of the PPP Project, on the general budget whether directly or indirectly.
- Fiscal Commitments Report : The report prepared by the Technical Committee in consultation with the Public Authority, which specifies the long-term impact and Fiscal Commitments which will be borne by the Contracting Authority
- Preliminary Feasibility Study : The preliminary analysis of the economic feasibility of the PPP Project.
- The Feasibility Report : The detailed analysis of the feasibility of the PPP Project from an institutional, legal, technical, environmental, social, economic, financial, public safety aspects and reviewing the sustainability, and verifying the Value for Money, the Affordability of the Contracting Authority of the PPP Project, analyzing the risks of the project and the reduction and allocation of its risks to the party best able to manage them.
- Value for Money : The additional economic return for the Contracting Authority throughout the project's cycle phases
- Affordability : The financial ability of the Public Authority to meet its Fiscal Commitments under the PPP Contract from its budget allocations, and the ability of the end user to afford the tariffs or prices of the services provided by the PPP Project.
- The Steering Committee : The committee formed in accordance with this Regulation by the High Committee to prepare and implement the PPP Project.

- PPP Project Technical Committee : The committee formed in accordance with this Regulation by and under the supervision of the Steering Committee to assist it in its work during the preparation and implementation phases of the PPP Project.
- Direct Proposal: : The offer submitted by a private sector to implement PPP Project concept.
- PPP Project Concept Note : A brief presentation of the PPP Project concept prepared by the Public Authority in accordance with the template prepared pursuant to this Regulation.
- Project Summary Document : A brief report for the PPP Project prepared by the Public Authority that includes the main objectives and components of the PPP Project, the risk allocation structure in addition to the financial requirements, opportunities for achieving returns for the project, and any other information that will help investors and financiers to make the decision regarding investment in the project.
- Tender Documents : All the documents relating to the PPP Project tendering and awarding in accordance with this Regulation.
- Invitation for Expression of Interest: : An invitation announcement issued by the Public Authority to the private sector to express interest in participating in the PPP Project.
- Pre-Qualification Invitation : An invitation issued by the Public Authority that includes information relating to the PPP Project, its implementation terms, the terms and procedures, and the technical and financial criteria necessary to prequalify the bidders.
- Request for Proposals : An invitation issued by the Public Authority to the pre-qualified bidders to

submit their proposals and it shall include Tender Documents, description of the Project, and terms and procedures for submitting proposals.

Article 3- A. The PPP Project's Phases according to the procedures stipulated in this Regulation, are as follows:

- 1- PPP Project Selection Phase.
- 2- PPP Project Preparation Phase.
- 3- PPP Project Tendering Phase.
- 4- PPP Project Implementation Phase.

B- The Unit shall prepare guidelines manuals for the PPP Project's phases and the implementation of its procedures, contracts and the approved templates, and publish them on its website, including the following:

- 1- guideline manual for PPP Projects phases.
- 2- guideline manual for standard requirements for the Financial Commitments Report and periodic follow-up reports for the evaluation of PPP Project.
- 3- PPP Project Concept Note template.
- 4- PPP Project Preliminary Feasibility Study template.
- 5- PPP Project Expression of Interest invitation, Pre-Qualification Invitation, and Request for Proposals templates.
- 6- PPP Contract key conditions and provisions template.
- 7- PPP Project Advisor Terms of Reference template.
- 8- Any other guideline manuals or templates which the High Committee or Unit deems necessary for the implementation of the PPP Project.

Article 4- a project that is viable for PPP is selected by the Public Authority according to the following procedures: -

A- The Public Authority submits the PPP Project Concept Note which wants to list in the Registry in accordance with the template prepared by the Unit, which should include the following data:

1. A brief description of the PPP Project and its duration.

2. Quality of the expected service and its positive impact on the end user.
3. Estimated overall costs of the PPP Project.
4. PPP Project compliance with needs, objectives, and national strategies.
5. Previous experiences in presenting and developing a PPP Project, if any.
6. PPP Project economic benefits.
7. PPP Project extent of interest from the private sector and its capability of implementing it.
8. The possibility of allocation financial, technical, and operational risks to the private sector, and mitigating their impact.
9. Affordability.
10. Identify whether the PPP Project requires financial support from the Treasury in case sufficient information is available in this phase.
11. Any other data required by the nature of the PPP Project.

B. The competent unit in the Ministry of Planning and International Cooperation undertakes an initial evaluation of the PPP Project Concept Note and refer it to the Unit to review it in accordance with the PPP Projects criteria for qualification stipulated in paragraph (c) of this article, and then to the Technical Committee to verify the ability of the Public Authority to meet the Affordability.

C. The following qualifications criteria are taken into consideration when selecting projects viable to PPP:

1. The nature of the project and its compatibility with the general policy of PPP Projects.
2. Project level of priority and sector's need.
3. The marketability of the project to the investors.
4. The capacity of the Public Authority to perform the project and the availability of appropriate expertise.
5. The existence of successful precedents at the international level that are similar to the proposed project.
6. The ability to develop a bankable PPP Contract.

Article 5 A- The Unit shall prepare a report lists the qualified PPP Projects and its recommendations in accordance

with the general policy of PPP Projects and sectors priority and shall submit it to the High Committee to take the appropriate decision about it.

B- The High Committee shall select the qualified PPP Projects and approves their registration in the Registry. The Unit will inform the Public Authority of the decision of the High Committee regarding the project registration in the Registry.

Article 6- A- any entity from the private sector may submit a PPP Project Direct Proposal to the Public Authority provided that:

1. the concept of the project is not included in the list of PPP Projects under study by the Public Authority or listed in the Registry at any previous time.
2. The project concept includes innovation in designing, developing or managing an economic project to provide a service or product.
3. The concept of the project does not conflict with the Government development programs and Public Authority priorities.
4. The Direct Proposal must not include any government support request for the project.

B- The Direct Proposal applicant is obligated to submit the Preliminary Feasibility Study for the PPP Project in accordance with the template prepared by the Unit.

C- The Public Authority is obligated, within (60) sixty days from the date of receiving the Direct Proposal, to study it, and in the event that it finds that the Direct Proposal meets the conditions stated in Paragraph (a) of this Article and the qualification criteria stated in Paragraph (c) of Article (4) of this Regulation, it will prepare a report with its recommendations and submit it to the competent unit at the Ministry of Planning and International Cooperation for an initial evaluation and shall proceed with it in accordance with the provisions of Paragraph (b) of Article (4) of this Regulation.

Article 7- A- If the Direct Proposal is listed in the Registry, the Public Authority may sign an agreement with the Direct

Proposal applicant to define his following rights: -

- 1- to be qualified without passing through the Invitation for Expression of Interest or the Pre-Qualification phase.
- 2- to be granted preference an in the technical evaluation of (5%) five percent provided that it has achieved the minimum technical qualification.
- 3- to be compensated for the cost of the Preliminary Feasibility Study and the Feasibility Report according to the High Committee decision.
- 4- Intellectual property of the PPP Project Concept is in accordance with the legislation in force.

B-The Direct Proposal Applicant may not combine all rights stated in Clauses (1), (2), and (3) of Paragraph (A) of this Article, but he has the right to choose one of them.

C- It is required for the technical qualification of the Direct Proposal that Direct Proposal Applicant has the financial ability of the same value of the Direct Proposal submitted by him in addition to proof that it has implemented three similar projects to the Direct Proposal submitted by him.

Article 8- The Public Authority shall prepare the Terms of Reference for the Project Advisor, recommend their appointment, prepare the Preliminary Feasibility Studies and Feasibility Reports and submit them to the High Committee for approval.

Article 9- The Feasibility Report as appropriate for each project should include:

- A- Determine the levels of service expected to be provided by the PPP Project.
- B- Analyzing the Affordability of the PPP Project with the private sector and comparing it with the total cost of implementing the project by the Public Authority.
- C- Analyzing the Fiscal Commitments of the PPP Project information's including the direct commitments and contingent's liabilities.
- D- Analyzing the legal, institutional, technical, financial, economic feasibility to the PPP Project.
- E- Environmental & social impact assessment to the PPP Project

- F- Analyzing the demand of the PPP Project.
- G- Identifying the risks of the PPP Project, its analysis and, mitigation.
- H- Recommend risk allocation structure for the PPP Project.
- I- Analyzing the Value for Money for the PPP Project.
- J- Assessing the private sector market interest on the PPP Project.
- K- Any other assessment or analysis required by the nature of each PPP Project.

Article 10

- A- The High Committee shall form a Steering Committee based on the Public Authority recommendation to prepare and implement the PPP Project, it consists of representatives of relevant Public Authorities, representative of the Unit, Project officer at the Public Authority and any other officer whenever the need arises, the Steering Committee formation decision shall the nominate chairman and deputy and shall set the mechanism of its operation and decision- making.
- B- The Steering Committee shall form a PPP Project Technical Committee to assist it in performing its duties ,headed by the project officer at the Public Authority and members with sufficient PPP Project legal, financial, and technical experience, as well as other experience necessary for supervising the preparation and implementation of the PPP Project phases.

Article 11

- A- The High Committee, based on a joint recommendation from the Public Authority and the Unit, may exempt the Public Authority from the obligation to form the Steering Committee and appointing the Project Advisor for the Small-Scale PPP Project.
- B- The Public Authority shall form a PPP Project Technical Committee for the Small-Scale PPP Project consist of members with the necessary legal, financial, and technical experience, as well as other experience necessary for the preparation of the Small-Scale PPP Project and supervising its implementation.

Article 12 A- The Unit shall review the Feasibility Report and shall submit its recommendations to the High Committee

after ascertaining the feasibility of the PPP Project, and its compliance with the requirements stated in the Law and this Regulation, the Unit shall refer the Feasibility Report and any other reports to the Technical Committee to prepare the Fiscal Commitments Report.

B- The Ministry of Finance shall submit the Fiscal Commitments Report with the recommendations to the High Committee.

C- The High Committee shall decide to approve or disapprove the PPP Project in light of the Feasibilities Studies Reports and the Fiscal Commitments Report.

Article 13- A- after the High Committee approval of the PPP Project the PPP Project Technical Committee shall prepare the Summary Document for the PPP Project which includes the following information:

- 1- A brief description of the PPP Project.
- 2- General overview of Kingdom economy performance, investment environment, foreign investment and, any other key economic issues important to the PPP Project.
- 3- The legal & regulatory framework for the PPP Projects, its objectives, and accomplishments in this field.
- 4- Description of the relevant sector, its scope and performance; sector investment plans, institutional roles, demand levels in this sector.
- 5- The level of services required to be provided in the PPP Project.
- 6- Description of key elements of the PPP Contract including risk-allocation.
- 7- The proposed timeframe for the tendering procedures of the PPP Project.
- 8- Any additional information required by the nature of the PPP Project

B- The PPP Project Technical Committee shall prepare the Tender Documents, with the assistance of the Project Advisor, and shall submit them to the Steering Committee and the Unit to be reviewed and approved.

Article 14- A- After Adopting the Summary Document for the PPP Project, the PPP Project Technical Committee shall determine whether there is a need for an Invitation for Expression of Interest or not.

B- If Invitation for Expression of Interest is needed, the Public Authority shall define the contents of

Invitation for Expression of Interest, the information to be submitted by to interested applicants and shall publish the Invitation for Expression of Interest in Arabic and English languages in two widespread daily newspapers and also on the Public Authority and the Unit websites. It is permissible, when necessary, to publish the Invitation for Expression of Interest in any advertising methods outside the Kingdom.

C- Upon review of the responses to the Invitation for Expression of Interest, the Public Authority shall determine the procedures to be taken by the Public Authority in order to ensure the highest response from the private sector.

D- If the PPP Project Technical Committee decides that there is no need for the Invitation for Expression of Interest, shall proceed with the Tender in accordance with the provisions of this Regulation.

Article 15- The High Committee, based on a joint recommendation of the Public Authority and the Unit, may exempt the Small-Scale PPP Project from preparing the Summary Document for the PPP Project, Invitation for Expression of Interest and from any other procedures decided by the High Committee provided that this does not affect the principles of fairness and transparency, the clarity and the comprehensiveness of Tender Documents of the Small-Scale PPP Project.

Article 16- In the Pre-Qualification Invitation, the Steering Committee shall determine the qualification standards for the bidders provided that these standards shall include the minimum of the followings:

A- The technical capability to implement the PPP Project, including any necessary qualifications or experiences related to the implementation of similar PPP Projects.

B- Financial solvency, including the ability to provide financing and equity required for the PPP Project.

C- If the interested party is a consortium it shall Identify each member of the consortium, and suggested role in the PPP Project.

D- Any other standards required based on the nature of the PPP Project as assigned by Steering Committee.

Article 17- A- The Public Authority shall publish the Pre-Qualification Invitation in both Arabic and English languages in accordance with Article (14) of this Regulation.

B- The Pre-Qualification Invitation must include brief description of the nature of the PPP Project, its objectives, the procedures for obtaining the Pre-Qualification documents, the deadline and the method to submitting to the prequalification applications and any other necessary information.

C- The Public Authority may determine the Tender Documents price and payment methods..

Article 18- The Pre-Qualification document must include the following information:

A- The qualification standards stated in Article (16) of this Regulation

B- Procedures for submitting the application to the Pre-Qualification Invitation, site and deadline for submitting.

C- Instructions for submitting the technical and financial documents for Pre-Qualification and other supporting documents that the Public Authority indicated in the Pre-Qualification Invitation.

D- Any other information deems necessary by Public Authority.

Article 19- A- The Steering Committee shall supervise the Pre-Qualification procedures.

B- The PPP Project Technical Committee shall perform the following functions:

1- Prepare the Pre-Qualification Invitation and the list of necessary documents and informative data.

2- Respond to interested parties' inquiries concerning the Pre-Qualification.

3- Receive, register, review and evaluate the Pre-Qualification Invitation applications in accordance with the qualification standards and prepare a report in this regard.

Article 20 - It is permissible for interested parties from the private sector to apply for the Pre-Qualification phase individually or in the form of a consortium of companies from the private sector. In case of submission of the Pre-Qualification application by a consortium of companies, the consortium must appoint a representative under an official power of attorney to represent it.

Article 21

- A- The PPP Project Technical Committee shall prepare a Pre-Qualification Assessment Report to the Steering Committee, including its recommendations and the short list of all prequalified bidders.
- B- After the approval of the Steering Committee for the Pre- Qualification Assessment Report the Public Authority Shall perform the following:
 - 1- Formulate the short list of prequalified bidders and notify them through their official registered mail or by approved electronic mail stated in their application for Pre-Qualification Invitation.
 - 2- Publish the Short list of the prequalified bidders on its website and on the website of the Unit.
 - 3- Notify the bidders who have not been pre-qualified or excluded through their official registered mail or approved electronic mail stated in their application for the Pre-Qualification Invitation.

Article 22-The Public Authority shall set up a data room for the PPP Project to enable the prequalified bidders to access to the information and documents related to the PPP Project and Tender Documents by providing the prequalified bidders with the conditions to enter into the data room.

Article 23- A- It is permissible for the PPP Project Technical Committee to invite the prequalified bidders to a preliminary meeting, preceding the submission of proposals, to discuss matters relating to the Project specifications and preliminary conditions provided that the inquiries and replies are provided to all the prequalified bidders whether they attended the preliminary meeting or not.

B- The PPP Project Technical Committee shall not disclose any data or confidential information relating to applicants economic or financial situation in the market or any information relating to its expectations and assumptions and forecasts for the market or the sector, which were submitted to the Steering Committee.

C. It is permissible for the PPP Project Technical Committee to decide to reconsider the Tender Documents and to amend them, or to extend the duration of the tender, based on the preliminary meeting referred to in Paragraph (A) of this Article, without affecting the prequalification qualification standards, provided

that the Public Authority distributes the amendments or changes to the prequalified applicants within the time period stated in the Tender Documents.

Article 24- The PPP Project Technical Committee shall prepare:

A- Request for Proposals, including

- 1- Integrated information relating to the PPP Project.
- 2- Conditions and procedures for preparing and submitting proposals, the number of copies to be submitted, site, and the deadline for submission of proposals.
- 3- The minimum requirements and technical specifications of the PPP Project, the requirements of the Public Authority and other Public parties related to safety, security, and environmental protection.
- 4- The technical and financial standards and conditions required for the proposals and the evaluation methodology of technical and financial proposals and the procedures followed in this regard.
- 5- The validity period of the proposals.
- 6- Value of the bid bond, and the method of calculating of the performance guarantee, in accordance with the nature of the PPP Project and the phases of its implementation, and the validity of the guarantees.
- 7- Estimated timeline for the process of selecting the preferred proposal.
- 8- Any other documents which in the view of the Steering Committee need to be added.

B- PPP Contract draft, which shall include the non-negotiable terms and conditions in accordance with provisions of this Regulation provided that the Unit shall review of the PPP Contract draft and submit its recommendation in this regard to the High Committee.

Article 25- A. After the Steering Committee has approved Tender Documents and the PPP Contract draft in Arabic and English language, the Public Authority, shall invite the prequalified bidders to submit their proposals.

Article 26-

A- The proposals shall be submitted in three separate and closed envelopes with the following data clearly printed:

- 1- Name and address of the bidder.
- 2- The Public Authority to which the proposal is submitted.
- 3- Name of the PPP Project.
- 4- Envelope type whether financial, technical, or legal.
- 5- Identify the type of documents submitted whether original or copies.

B. The financial envelope shall include all the financial documents specified in the Request for Proposals, which includes the financial proposal of the PPP Project and any other information stipulates in the Request for Proposals (RFP), in all cases, the following shall be considered:

1. In case the proposal included prices or cash values, these should be written in digits and letters, and in case of discrepancy between them the prices or cash value written in letters shall be considered.
2. Financial envelopes shall not be opened and evaluated except for the bidders with qualified technical proposals.

C- The technical envelope shall include all the technical documents specified in the Request for Proposals, the technical details for the implementation of the PPP Project to reach the required service level, and the required specification for achieving the PPP Project targets, in addition to any other information stated in the Request for Proposals, and in all cases the following shall be considered:

- 1- The technical envelope must not contain any reference or information related to the financial proposal under the jeopardy of being rejected.
- 2- If the Request for Proposals includes a notice that the technical envelope must include the legal documents; the requirements of Paragraph (b) of this Article shall be considered as requirements of the technical envelope.

D- The legal envelope shall contain the following legal documents specified in the Request for Proposal:

1. Bidder Legal registration documents and if the bidder is a consortium it shall include consortium member agreement of commitment to the submitted proposal.
2. Bid bond guarantee.
3. Official power of attorney for representing the consortium members.
4. Any other information in the Request for Proposals.

E. Any proposal submitted after the deadline for proposal submission shall be excluded.

F- No bidder shall be allowed to withdraw his proposal after the deadline for proposal submission.

G- Proposal modifying, altering, correcting, or completing shall not be allowed after the deadline for proposal submission.

H- The proposals shall remain valid throughout the validity period shown in the Request for Proposals, and the Steering Committee may request an extension thereto.

Article 27-

- A- Any changes in the ownership or management of the Pre-Qualified bidders are not permitted, unless approved by the Steering Committee.
- B. A member of the consortium which has submitted a proposal shall not be allowed to submit a proposal whether, individually or with another consortium, or through a subsidiary company, or a company which directly or indirectly exercises management control over it unless that is allowed in the Request for Proposals.

Any proposal submitted to the contrary shall be considered canceled.

Article 28

- A. The bid bond guarantee shall be submitted in accordance with the form included in the Request for Proposals as an unconditional and irrevocable guarantee, from a bank licensed in the Kingdom.
- B. The bid bond shall include an undertaking by the bank to pay the sum stated in it to the Public Authority upon its first request, notwithstanding the objection of the bidder.

Article 29-

- A. The Public Authority shall receive the legal, technical and financial envelopes at the time, date and site specified in the Request for Proposals. The receipt date must have documented in the evaluation report.
- B. After the Public Authority receives the proposal envelopes, the PPP Project Technical Committee shall be responsible for opening the legal, and technical envelopes and verifying that contents comply with the requirements of this Regulation and the Request for Proposals. Non-complying proposals will be disqualified and will not be included in the evaluation.
- C. The PPP Project Technical Committee shall evaluate the technical proposals that are in compliance with this Regulation and the requirements of the Request for Proposals in accordance with the evaluation criteria set out in the Request for Proposals and it may request clarifications from the bidders.
- D. The PPP Project Technical Committee PPP Project, upon completing the evaluation of the technical proposal, shall submit its report to the Steering Committee.

Article 30-

- A. The technical proposals which do not meet the minimum limit of the technical standards stated in Request for Proposals and the Tender Documents shall be rejected by virtue of a justified written decision issued by the

Public Authority based on the Steering Committee recommendation.

- B. The Public Authority shall send the rejection decisions to the submitters of the rejected proposals by registered mail or official approved electronic mail mentioned in the Pre-Qualification invitation application.
- C. The financial proposal envelopes of the rejected bidders shall not be opened. Bidders are entitled to recover it after the rejection of the complaint or the expiry of the period referred to in Article (34) of this Regulation.

Article 31-

- A. The Steering Committee shall announce the date, time and, site of the opening of the financial envelopes for the proposals that which are technically qualified.
- B. The PPP Project Technical Committee shall be responsible for opening the financial envelopes and verifying that its contents meet the requirements of this Regulation and the Request for Proposals, subject to disqualifying the non-complying proposals, and not including them in the evaluation.
- C. The financial proposals shall be evaluated by the PPP Project Technical Committee in accordance with the evaluation criteria set out in the Request for Proposals and the provisions of this Regulation.
- D- The attending bidders, or their representatives, who attended the process of opening the financial envelopes shall sign the attendance registration form prepared by the PPP Project Technical Committee prior to opening the envelopes.

Article 32-

- A. Upon completion of evaluating of the financial proposals, the PPP Project Technical Committee shall submit the evaluation report to the Steering Committee, provided that the report includes the qualified proposals which meet technical and financial standards in descending order and a recommendation to the Steering Committee of the preferred bidder.
- A. In the event that the members of the PPP Project Technical Committee disagree about accepting or rejecting the offers technically, this must be noted in the report after consulting with the Project Advisor. In all cases, the

Steering Committee shall review the evaluation report and takes the appropriate decision, including determining the preferred bidder.

Article 33-

- A. The Public Authority shall notify the preferred bidder via registered mail or an approved electronic mail mentioned the Pre-Qualification invitation application.
- B. The Public Authority shall return the bid bond guarantee to the non-winning bidders upon expiry of the validity period of the bond, as stated in the Request for Proposals or during (10) working days following the signing of the PPP Contract, whichever comes first, and the Public Authority may request extending the period of the validity of the bond.

Article 34

- A. It is permissible for any of the bidders of the PPP Project to submit a complaint against the decisions related to the Pre-Qualification, and the technical and financial qualification of the submitted Proposals within seven (7) working days from the day after the date of the notification of the decision.
- B. A written complaint shall be submitted to the High Committee. The Unit shall study, and verify the complaint, and submits its recommendations regarding that to the High Committee.
- C. The High Committee may, prior to deciding on the complaint, request clarifications which in its view is necessary from the petitioner of complaint or from the Steering Committee. The High Committee may form a special committee to look into any of the complains submitted.
- E. The High Committee shall issue its decision regarding a submitted complaint by its majority of its attending members within fifteen (15) working days from the submitting date. The decision of the High Committee shall be final.

Article 35-

- A. Its permissible to the Public Authority to cancel the PPP Project tender based on the recommendation of the Unit which is based on the recommendation of the Steering Committee and with the approval of the High

Committee, at any time, in the following cases:

1. In case the public interest necessity.
 2. In case there was only one bidder who passed the Pre-Qualification phase.
- B. The bidders in the PPP Project tender is not entitled to claim any compensation based on the consequence of the cancellation decision, unless the Request for Proposals states otherwise.

Article 36

- A - For purposes of preparing the final version of the PPP Contract, it is permissible to the Steering Committee to have negotiations with the preferred bidder and invite the Project Advisor to participate in the negotiations.
- B - The negotiations shall be without prejudice to the non-negotiable terms and basic conditions of the PPP Contract.
- C - During the negotiations phase, no alteration would be allowed to the following:
- 1- The technical and financial terms based on which the preferred bidder was selected.
 - 2- The risks allocation bases set out in the Feasibility Report.
- D - In case negotiations with the preferred bidder fail, the Steering Committee may end negotiations and notify the bidder in writing of the reasons for ending them. In this case, the Steering Committee shall initiate negotiations with the second preferred bidder in accordance with the evaluation report.
- E- In case negotiations with the preferred bidder succeed, the Unit shall do the following:
1. Refer the contracts and the final negotiations to the Technical Committee, provided that the Minister of Finance shall submit his recommendations on the Fiscal Commitment Report to the High Committee.
 2. Recommended to the High Committee to obtain The Council of Minister's approval of the final award of the PPP Project tender and the winning bid.

3. Submit recommendation jointly with the Public Authority to the High Committee to obtain the Council of Minister's approval to the final PPP Contract draft, the Council of Minister decision shall include authorizing the Public Authority to sign the Contract as per the approved draft.
4. Notify the preferred bidder of the above award decision via registered mail or electronic mail at his address mentioned in the Pre-Qualification invitation application

Article 37 The entity which awarded the tender, and prior to signing the PPP Contract, shall establish a Project Company in accordance with the following conditions:

A - The Company shall be Jordanian and registered in accordance with Jordanian law.

B - The objective of the company shall be to implement the PPP Project activities and any other complementary or necessary objectives to implement activities related thereto.

C. The capital of the Company shall not be less than the minimum decided by the Public Authority in the Request for Proposals and in accordance with the provisions of the Companies Law.

Article 38- The Project Company shall be committed upon signing the PPP Contract to submit a performance guarantee in favor of the Contracting Authority, unconditional and irrevocable and shall be issued by a licensed bank in the Kingdom in accordance with the followings: -

A - Its value shall represent the absolute value as agreed between both parties according to the bases set out in the PPP Contract.

B - It must be submitted to the Public Authority before the deadline specified in the award decision.

C- Its terms and validity period must be as set out in the PPP Contract.

Article 39 – A- The Contracting Authority and the Project Company, after signing the PPP Contract, are obligated to satisfy the conditions precedent set out in the PPP Contract to reach financial close for the PPP Project.

B - The Contracting Authority shall monitor the Project Company's performance of its contractual obligations.

C – The Unit shall undertake the followings:

3- Publish a report on the PPP Project on its website and in the Official Gazette, the report must include the following: -

A. The name of the PPP Project and the procedures followed in it, including the tendering process.

B- The name and address of the entity which whom the PPP Project financial close has been achieved or the beneficiaries and local agents of such entity, if any.

C- A summary of the PPP Project scope, including its subject, term and pricing.

D- Basic information on financing, including financial arrangements, borrowing, and lending institutions.

E - Any other information which in the view of the Unit is necessary.

2- Reviewing the periodic reports related to PPP Projects referred to it by the Contracting Authorities and submitting their recommendations regarding them to the High Committee.

3- Maintain, archive, and update the PPP Projects documents electronically.

4- Assist the Contracting Authority in monitoring the Project Company's performance of its contractual obligations including service levels, financial obligations, and risks arising from the project.

Article 40 It is prohibited for the Project Company to operate the Project or to collect any charges, tariffs, prices, or other amounts of whatever kind in return for the works and services agreed upon under the PPP Contract, unless the Contracting Authority approved it according to the standards, and level of performance agreed upon in the PPP Contract.

Article 41- The PPP Contract must include the basic terms that govern the PPP Project, organize the relationship between its parties, and define their rights and obligations, including the following:

A. a detailed description of the PPP Project, the scope and nature of works and services that the Project Company must be provided and performed, and the terms, specifications, and implementation

requirements.

- B. the specifications of the end products or service levels that the Project Company must comply with, according to the performance indicators; safety, security, and environmental protection standards, and any other standards; in addition to electronic systems and programs that must be used by the Project Company;
- C. the quality assurance methods; the financial, administrative, and technical audit and supervision tools required from the Contracting Authority to operate, utilize, and maintain the Project; and the performance indicators for evaluating the Project Company performance;
- D. conditions precedent for the PPP Contract effectiveness;
- E. the mutual financial and technical obligations of both contracting parties, the financing arrangements and the financial model;
- F. tariff or prices of the product or charges of the service and the principles and rules of determining and changing them according to the indicators agreed upon;
- G. The extent the Project Company benefitting from the exemptions or privileges provided in the applicable laws.;
- H. the ownership of assets and intellectual property rights to the PPP Project, and the terms of acquisition of assets, and transfer of ownership at the expiration of the PPP Project or at the early termination;
- I. the responsibility for obtaining licenses, permits, and approvals necessary to implement the PPP Project;
- J. the situation where the Contracting Authority may unilaterally terminate the PPP Contract and its financial consequences.;
- K. Amendments to the PPP Contract terms after signing;
- L. the required insurance coverage for the PPP Project;
- M. performance guarantees issued in favor of the Contracting Authority and the procedures related thereto;
- N. risk allocation structure and management including the risks related to change of law, unforeseen events or force majeure and compensation mechanism;
- O. financial, technical, and management monitoring, and the methodology of monitoring the multiple stages

of the PPP Project and following up on its implementation, and the requirements of preparing the reports relating to monitoring activities and the party who will bear the monitoring costs,

- P. the term of the Contract, early termination events, fully or partial termination, and the rights and obligations of the contracting parties;
the penalties that may be imposed on the Project Company if it fails to meet its contractual obligations;
- Q. the procedures for ensuring the continuity of the PPP Project and works covered by it upon expiry or termination of the PPP Contract, or upon a breach by the Project Company to its contractual obligations;
- R. Handover of the assets upon expiry of the term, or early termination whether fully or partially of the PPP Contract;
- S. the measures that must be taken by the Project Company to preserve the environment;
- T. dispute settlement resolutions; and
- U. any other terms which in the view of the Unit or the Contracting Authority or High Committee needed to be included in Contract.

Article 42- The PPP Contract must include the following basic, non-negotiable terms contract that the Project Company is committed to adhering to it for the term of the PPP Project: -

- A. Project Company contract or its articles of association must comply with the provisions of the PPP Contract;
- B. the duration of the Project Company is not less than the term of the PPP Contract;
- C. the Project Company shall not breach any of the Pre-qualification requirements or any of the PPP Contract terms. The shareholders in the Project Company and their respective shareholding percentage therein may be changed only after specific period of time after commissioning the Project and providing the service/product as per the agreement of the parties to the Contract and based on the High Committee prior approval;
- D. does not liquidate the Project Company or change its legal form, or decrease its capital, or be assigned to a third party, unless it first obtains the relevant approval of the High Committee upon the recommendation of the Contracting Authority;
- E. protect, maintain, and preserve the assets of the Project and use them only for their intended purpose;

- F. do not sell the Project establishments, assets, and moveable and immovable property it owns under the PPP Contract. This will not apply to any sale conducted in implementation of a replacement and renovation in accordance with the terms of the PPP Contract and after first obtaining the relevant approval from the Contracting Authority;
- G. submit the papers, data, and information requested by the Contracting Authority, including the annual audited financial statements of the Project Company, during the first three months of the following fiscal year.
- H. cooperate with the employees of the Contracting Authority and allowing them to enter the sites of the Project Company for inspection at any time.
- I. transfer knowledge and expertise to the Contracting Authority, and train and qualify the employees of that Authority as agreed upon by the parties in this respect;
- J. submit periodic reports to the Contracting Authority on the Project implementation, including any construction works, provision of supplies, development, operation, maintenance, management, and other work required by the Contracting Authority;
- K. comply with environmental and health standards in the Project, and meet the requirements for the safety of Project workers and beneficiaries;
- L. do not enter into any Contract with any sub-contractors unless it first obtains the relevant written approval from the Contracting Authority. This Contract must not affect the obligations of the Project Company prescribed by the terms of the PPP Contract, the Law, and Regulations issued pursuant to the Law.

Article 43 A- The PPP Contract must grant the right to the Contracting Authority to terminate it in the following situation: -

- 1 If the project company is unable to fulfill its obligations due to insolvency.
- 2 A material or gross breach by the Project Company of the technical standards stipulated in the PPP

Contract.

- 3 Failure of the Project Company to reach financial close within the time agreed upon in the PPP Contract.
- 4 Any other situation agreed upon by the parties for early termination.

B- The Contracting Authority must obtain recommendations from the Technical Committee and the approval of the High Committee before terminating the PPP Contract.

Article 44- The term of a PPP Contract will be determined based on the Feasibility Report and the requirements of each project provided that it does not exceed (35) thirty-five years starting from the date of signing the contract or from the date specified by the High Committee.

Article 45- A- PPP Contract will be governed by the provisions of laws, regulations, instructions, and decisions issued pursuant to it. The applicable Jordanian legislation shall apply in the situations which are not covered under the afore-mentioned provisions or the PPP Contract.

B - The PPP Contract may include a provision to refer any dispute between the parties to a council called (the Dispute Resolution Board), as a precondition before resorting to alternative dispute resolutions or courts.

C- The Dispute Resolution Board shall consist of one or three members as agreed upon between the parties on the PPP Contract.

D - The method for appointing the members of the Dispute Resolution Board, its working mechanism, and issuing its decisions shall be specified in an appendix of the PPP Contract.

H- Dispute Resolution Board decision must be reasoned and binding on the parties to the PPP Contract and they must enforce it unless it is repealed or amended by virtue of an amicable settlement or a judicial or

arbitral decision and in accordance with the provisions of the PPP Contract.

Article 46- The Contracting Authority shall present the proposed amendments to the PPP Contract to the Technical Committee to ensure that the proposed amendments to the PPP Contract will not lead to a fundamental difference in the distribution of risks or on the Fiscal Commitments. The Minister of Finance shall submit the report on the Fiscal Commitments and his recommendations to the High Committee to take the appropriate decision.

Article 47- The High Committee shall issue the necessary instructions to implement the provisions of this Regulation.

Article 48- The Public Private PPP Projects Regulations No. (98) of the year 2015 shall be repealed .