

Law No. (12) of 2020 Regulating Public Private Partnerships

We, Tamim bin Hamad bin Khalifa Al Thani, Emir of the State of Qatar

Having reviewed the Constitution;

Law No. (10) of 1987, Concerning Public and Private State Property and the laws amending it;

The State's Fiscal System Law issued by Law No. (2) of 2015;

The Commercial Companies Law issued by Law No. (11) of 2015;

The Law on the Regulations of Tenders and Bids No. (24) of 2015 amended by Decree Law No. (18) of 2018;

Law No. (1) of 2019 Regulating the Investment of Non-Qatari Capital in the Economic Activity;

Emiri Decision No. (44) of 2008 Adopting the Comprehensive Development Vision "Qatar National Vision 2030"

Proposal submitted by the Minister of Commerce and Industry;

Draft Law submitted by the Council of Ministers;

And having consulted the Shura Council,

Do hereby enact the following law:

Article 1

In application of the provisions of the present law, the following terms and expressions shall have the meanings assigned against each of them, unless the context requires otherwise:

Minister: the Minister of Commerce and Industry.

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Competent Department: the competent administrative unit at the Ministry.

Government Entity: the Ministry or government agency or public authority or public corporation.

Private Sector: the private corporate person or the consortium of a group of corporate persons.

Partnership: an agreement between the Government Entity and the Private Sector for the implementation and financing of the works or the provision of services in accordance with the models set-out in article (3) of this law.

Contracting Authority: any Government Entity which concludes a Partnership Contract pursuant to this law.

Project: a project decided to be implemented or developed as a Partnership in accordance with this law.

Project Committee: the committee organised on each Project in accordance with article (6) of this law.

Project Company: an established company or a company to be established for the purpose of executing the Project.

Partnership Contract: a contract entered into between the Contracting Authority and the Project Company for the delivery of a Project.

General Partnership Policy: the general partnership principles developed by the Competent Department and adopted in accordance with this law.

Project Policy Document: a document outlining the main aspects of the Project Business Case prepared in accordance with this law, and includes supporting documentation for the Project.

Project Business Case: a detailed comprehensive study prepared in accordance with article (7) of this law.

Article 2

A Partnership between the Government Entity and the Private Sector is effected under the Partnership Contract, in accordance with the provisions of this law, and the General Partnership Policy as adopted by the Council of Ministers, upon the recommendation of the Minister.

A Project implemented as a Partnership may, with the approval of the Council of Ministers and following the proposal of the Minister, be exempted from the application of the provisions of this law.

Article 3

A Partnership shall be carried out in accordance with any of the following models:

1. Allocation of lands through a lease or a usufruct, for development by the Private Sector.
2. Build - Operate -Transfer (BOT)
3. Build – Transfer - Operate (BTO)
4. Build – Own - Operate -Transfer (BOOT)
5. Operation and Maintenance.
6. Any other model adopted by the Council of Ministers upon the proposal of the Minister.

Article 4

A Government Entity or the Competent Department may on its own or upon the proposal of the Private Sector, identify a project for implementation through a Partnership and submit it to the Minister for approval in principle.

Article 5

The Contracting Authority shall prepare a Project concept report that includes a brief overview of the Project, its suitability for execution as a Partnership and the roles and responsibilities of each party.

The report shall be presented to the Minister for submission to the Council of Ministers along with the Minister's recommendation for the Council of Ministers to consider its ratification ahead of preparing the Project Business Case.

Article 6

A separate committee shall be formed for each Project, upon a decision of the Minister, in coordination with the relevant Government Entities, provided that its composition includes representatives of the Contracting Authority, the Competent Department and the State Audit Bureau. The Project Committee shall undertake the following:

1. Prepare the Project Policy Document and submit it to the Minister for ratification.
2. Evaluate tenders.
3. Negotiate contracts.
4. Submit a recommendation to the Contracting Authority in relation to the successful bidder.

Article 7

The Contracting Authority shall, in coordination with the Project Committee, prepare the Project Business Case, which shall in particular include the following:

1. The strategic and operational advantages for the implementation of the Project.
2. A description of the Project, the contractual model, the term of the Partnership Contract and the roles of the Contracting Authority and the Project Company.
3. A detailed Project implementation plan including an implementation schedule.
4. The Government Entity whose participation may be required for the implementation of the Project and the lands that are necessary to be allocated for such implementation.
5. An estimate of the Project's capital costs and any necessary payments from any Government Entity and any government support in the form of guarantees or other mechanisms.
6. A description of the incentives that may be offered to the successful bidder or to the Project Company or its shareholders or its main contractors or subcontractors.
7. The financial and technical standards, controls and requirements that bidders must meet, and their capabilities and competence in the field of expertise.
8. A demonstration of the fiscal and technical benefits resulting from the implementation of the Project through a Partnership, and the risks to be borne by the Project Company.
9. The administrative, financial and technical capability of the Contracting Authority to comply with its obligations under the Partnership Contract and to monitor its execution.
10. A determination of the entity that will supervise the execution of the Partnership Contract.

The Project Business Case shall be presented to the Minister for submission to the Prime Minister, along with the Minister's recommendations, to consider its ratification.

Article 8

The Contracting Authority shall, in coordination with the Competent Department, announce the Project intended to be tendered and the announcement shall be by publishing in local or international newspapers or publication on their respective website and on the government procurement portal.

The tendering of the Project shall be in accordance with one of the following methods:

1. Two-phase tendering.
2. Restricted tendering pursuant to established lists or prequalification.
3. Procurement by negotiation.
4. Competition.
5. Auction.
6. Direct Agreement.
7. Such other mechanisms approved by the Council of Ministers upon the proposal of the Minister.

Article 9

The Contracting Authority shall prepare, in coordination with the Project Committee, the Project's tender documents, which shall in particular include the following:

1. General information relevant to the Project and necessary for the preparation and submission of the bid.
2. Technical and financial specifications of the Project and any other qualifications to be satisfied by the bidder.
3. Form of the Project Company and the conditions it should meet.
4. Principal terms and conditions of the Partnership Contract.
5. Incentives offered to the successful bidder, or the Project Company, or its shareholders or main contractors or sub-contractors, including fiscal and tax incentives, if applicable.

6. Criteria and method on the basis of which tenders are launched and bids are evaluated.
7. Forms and documents to be submitted by the bidder.
8. The value of the preliminary bond and the method of calculating the value of the final bond if required.
9. Timetable for the tender procedures including deadline for submission.

Article 10

A consortium comprised of more than one company may submit a bid and the bid shall be submitted in the name of the consortium, and none of the consortium members are permitted to submit another bid directly or indirectly, individually or through another consortium, unless specified otherwise in the tender documents, and no bid shall be accepted if submitted in contradiction thereto.

Article 11

Except in cases where contracting is through direct agreements, the Contracting Authority shall prior to commencing a tender process, carry out procedures for the qualification of companies, unless such procedures are excluded in accordance with the Project Business Case. The criteria and process for qualification shall be established by the Contracting Authority taking into account the nature of the Project.

Article 12

The process for the selection of a successful bidder shall be subject to the principles of transparency, freedom of competition, equal opportunities and fairness in accordance with the rules set forth in this law.

The successful bidder shall meet the approved financial and technical standards, conditions and requirements; as well as the capability and competency in its field of specialisation.

Article 13

Bids that are not compliant with the terms and conditions of the tender documents shall be disqualified.

Article 14

The Prime Minister may, upon the proposal of the Minister and a request of the Contracting Authority, cancel the tender procedures in the following cases:

1. If only one bid is submitted or if only one bid remains after the exclusion of disqualified bids.
2. If all bids contain reservations or conditions that are not compliant with the terms and conditions of the tender documents or cannot be evaluated.
3. Other cases specified in the tender documents.

Tender procedures shall also be cancelled by a decision of the Prime Minister if it is in the public interest to do so.

In all cases, the Contracting Authority shall notify the bidders of the cancellation decision by any means of notification.

Article 15

In the event of cancellation of the tender procedures, bidders shall not be entitled to claim any compensation or other costs, unless otherwise provided for in the tender documents.

Article 16

Prior to announcing the successful bidder or notifying it, the Project Committee shall present its recommendation regarding the selection of the successful bidder to the Minister for submission to the Prime Minister along with the Minister's recommendation, to obtain the approval of the award.

A copy of the Partnership Contract and any information or details that may be required for the approval of the award shall be enclosed with the recommendation.

Article 17

The Partnership Contract shall include in particular the following:

1. The nature and extent of the works or services that the Project Company must perform and the conditions for their execution.
2. The ownership of the resources and assets of the Project, and the obligations of the parties in relation to handing over and receiving the works and assets, and transfer of ownership provisions.
3. The responsibility for obtaining the licences, authorisations and permits.
4. The mutual financial obligations and their relationship with the method of financing.
5. Determining the price for selling the product or the provision of service under the Project, the principles and rules for determining and amending the price upwards or downwards, dealing with inflation rate and related change in interest rates, if applicable.
6. Quality control procedures as well as means of financial, administrative and technical control, supervision and follow-up for operating, benefiting from and maintaining the Project.
7. Regulating the Contracting Authority's right to vary the construction conditions, equipment, maintenance, operation and usage, as well as other Project Company's obligation, and the basis and process for compensating against such variation.
8. The types and amounts of Project insurance, operational and usage risks, and the performance bonds issued to the benefit of the Contracting Authority as well as the conditions and procedures for their return.
9. Determining the basis for risk allocation resulting from a change in law, unexpected events and force majeure, and relevant compensations.
10. The term of the Partnership Contract, the conditions for early or partial termination, and relevant parties' rights.
11. The situations in which the Contracting Authority has the right to unilaterally terminate the Project Contract, and the financial obligations resulting from the use of such right.
12. Regulating the processes for the transfer of the Project at the end of the term or as a result of unilateral or early or partial termination.

Article 18

The term of the Project Contract shall be determined by agreement of the parties but will not exceed thirty (30) years, however as an exception it is possible to enter into contracts for a longer period, or extend the term of existing contracts in accordance with the requirement of public interest, following the approval of the Prime Minister, at the recommendation of the Minister.

Article 19

The Contracting Authority may partner with the Private Sector in the establishment of the Project Company, however if the Contracting Authority does not wish to participate in the Project Company, the successful bidder shall establish the Project Company, provided that its sole purpose shall be the implementation of the Project under the Partnership Contract.

The Contracting Authority may, in accordance with the tender documents and the evaluation conditions listed therein, authorise the successful bidder to implement the Project without establishing the Project Company, if said bidder has the ability to implement the Project in its current situation and with the financial and technical capabilities available to it.

Article 20

The Project Company may, subject to the approval of the Contracting Authority and to the provision of sufficient security, obtain a loan from banks operating in or outside the State, by guaranteeing its contractual rights and assets.

Article 21

Subject to the provisions of article (25) of this law, the Project Company may charge fees or otherwise seek revenue or derive a financial return from the Project, its assets, or its end users pursuant to the agreement with the Contracting Authority under the Partnership Contract and in accordance with this law.

Article 22

It is possible to agree to amend the Partnership Contract, if unexpected events arise following its signature, including as a result of a change in the laws that are applicable at the time of its signature, and which affect the financial balance of the contract, in order to restore such balance.

Article 23

The Prime Minister may, upon the proposal of the Minister, exempt the Project Company from all or some of the restrictions imposed, in accordance with applicable law, on companies owned by non-Qatari nationals, including the ownership, usufruct or lease of real estate.

Article 24

In addition to the obligations set out in this law, the decisions that are issued in execution thereof and the Partnership Contract, the Project Company shall comply with the following:

1. Not to liquidate the Project Company, change its legal structure or reduce its capital before obtaining the Minister's approval and the articles of association of the Project Company shall include a prohibition on listing its shares before the date on which the construction, equipment or development are completed, and a prohibition on listing the shares owned by the majority shareholders after such date without obtaining the Minister's prior approval. In any event, the shares of the Project Company may not be pledged except for financing or refinancing the Project Company and any procedure or action in breach of the provisions of this article shall be void.
2. Preserve the assets and stock of the Project, maintain, look after and use them in accordance with the purpose for which they were intended.
3. Not sell what it may own in accordance with the Partnership Contract, including structures, properties, moveable and immovable assets that belong to the Project, except where such sale is in execution of a substitution or renewal program, in accordance with the terms of the Partnership Contract and after obtaining the approval of the Competent Department.
4. Provide all documents, information and details requested by the Competent Department or the Contracting Authority and co-operate with their employees and allow them to access its sites to conduct an inspection at any time.
5. Provide environmental, health and safety requirements for those who work at the Project and its users.
6. Not enter into sub-contracts except after obtaining the consent of the Contracting Authority, subject to not breaching the obligations of the Project Company set out in this law, the decisions issued in execution thereof and the Partnership Contract.

Article 25

The Project Company undertakes to continue to provide the contracted services and to maintain the quality of such services and to guarantee the equal treatment of all users of its services.

Article 26

The ownership of the Project, its assets and all of its equipment, shall revert to the State at the end of the term of the Partnership Contract without consideration or compensation, unless agreed otherwise in the Partnership Contract.

Article 27

The provisions of the Law on the Regulations of Tenders and Bids and the State's Fiscal System Law referred to above shall not apply to all tender and award processes and contracts and other procedures performed in accordance with the provisions of this law.

Article 28

A Partnership Contract shall be governed by the provisions of Qatari law and any agreement to the contrary shall be void.

Qatari courts shall be competent to decide on disputes resulting from the Partnership Contract and between its parties, and the contract may, with the approval of the Prime Minister following the recommendation of the Minister, include another dispute mechanism to settle such disputes.

Article 29

The Minister shall issue the necessary decisions for the execution of the provisions of this law and until their issuance and their implementation, all decisions previously issued shall continue in effect without contradicting the provisions of this law.

Article 30

All competent authorities, each within their respective jurisdiction, shall enforce this law which shall be published in the Official Gazette.

Tamim bin Hamad Al Thani
Emir of the State of Qatar

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