

# PPP Regulation in Jordan

We, Abdullah the Second Bin Al-Hussein, King of the Hashemite Kingdom of Jordan, pursuant to Article (31) of the Constitution and what was decided by the Council of Ministers on August 12th 2008, order the following Regulation to be implemented:

Regulation Number (80) of 2008

Regulation for Implementing Privatization Transactions

Issued in pursuance of Article (20) of The Privatization Law Number (25) of 2000

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## Article 1

This Regulation may be cited as the "Regulation for Implementing Privatization Transactions of 2008" and it shall come into force on the date of its publication in the Official Gazette.

## Article 2

The following words and expressions, wherever they appear in this Regulation, shall have the following meanings, unless the context otherwise requires:-

<b>The Law:</b>	The Privatization Law in force.
<b>The Council:</b>	The Privatization Council formed pursuant to the provisions of the Law.
<b>The Commission:</b>	The Executive Privatization Commission formed pursuant to the provisions of the Law.
<b>Privatization Transaction:</b>	A restructuring or privatization transaction of any public institution or project owned by the public sector by following one of the methods cited in the Law.
<b>Public - Private Partnership:</b>	A relatively long-term written agreement between the public and private sectors for the purpose of providing a service of a general nature or implementing a project or performing a certain task whereby project financing and allocation of risks arising therefrom shall be pursuant to the contract.
<b>Invitation for Expression of Interest:</b>	An invitation issued for the investor pursuant to the mechanism specified in this Regulation to express interest in participating in the Privatization Transaction.
<b>Expression of Interest:</b>	The offer submitted by the investor on the basis of an Invitation for Expression of Interest.
<b>Pre-Qualification:</b>	Validation of the availability of the necessary requirements in the investors pursuant to those required under the Invitation for

Expression of Interest.

**Bidder**

The Pre-Qualified investor who submitted the financial and technical proposals in order to bid.

**Article 3**

For the purposes of implementing the Privatization Transaction, the Commission will perform the following:

- A. Prepare studies and reports relating to the Privatization Transaction and submit the necessary recommendations thereon to the Council;
- B. Take the required measures to contract with a Consultant independent of the Commission if need be, and coordinate with the concerned entities;
- C. Implement promotional programs to set up the appropriate environment to execute the Privatization Transactions;
- D. Provide assistance and technical information to investors, the consultant and entities related to the Privatization Transaction;
- E. Recommend to the Council of Ministers to form steering committees for the Privatization Transaction, including the mandate and functions entrusted to such committees;
- F. Oversee the implementation of training programs of entities related to the Privatization Transaction.

**Article 4**

- A. A steering committee shall be formed for each Privatization Transaction of no more than seven members appointed by virtue of a decision of the Council of Ministers in which the committee's chairperson shall be named.
- B. The steering committee shall, in relation to the implementation of the Privatization Transaction, perform the following:
  1. Appoint a chairperson and members of the technical committee upon the recommendation of the Commission taking into consideration the required qualifications and experiences.
  2. Supervise the performance of the technical committee and take the necessary decisions in relation to recommendations submitted by the technical committee.
  3. Manage complaints submitted from any concerned entity.
  4. Open the financial and technical proposals.
  5. Take the appropriate decision with respect to:
    - The Expressions of Interest;
    - The Pre-Qualification and the endorsement of a short list;
    - The endorsement of the request for proposal document and specify whether a charge for the bid document's fee is required and if so determine the amount;
    - The recommendations of the technical committee with reference to the results of the evaluation of the technical and financial proposals submitted;
    - The announcement of the preferred bidder and conduct negotiations with him;
    - The recommendations to the Council to approve resorting to direct negotiation or solicitation of proposals to implement the Privatization Transaction.
  6. Any other matters referred to it by the Commission or its chairperson.
- C. The steering committee shall convene upon the invitation of its chairperson or his deputy in his absence, the quorum is considered valid if the majority of the members are present, decisions shall be taken by a majority vote of the members.
- D. The committee shall, from its members or members of the technical committee; select a repertoire to document all minutes of meetings of the steering committee whereby a copy of the same shall be kept at the Commission for a period of not less than three years.

#### **Article 5**

The steering committee shall prepare and submit to the Council progress reports on the Privatization Transaction indicating the following matters as appropriate:

- A. A cost estimate for implementing the project by the public sector;
- B. Description of financial and other obligations of the government in connection with privatization contracts.
- C. Description of the nature of investment risks associated with the Privatization Transaction and the party that will assume each risk;
- D. Description of the financial support if required from the government and the proposed mechanism for providing the same;
- E. Determining the service specifications or facilities which the private sector will abide by in the implementation of the Privatization Transaction;
- F. Specifications of performance indicators to measure the performance of the private sector in executing the privatization contracts;
- G. Expected schedule for completion of the Privatization Transaction;
- H. Determination of the estimated costs of awarding the Privatization Transaction including the consultant's fees and the steering, technical and other committees' rewards.

#### **Article 6**

- A. The steering committee shall submit its recommendations and decisions issued in accordance with the provisions of this Regulation in relation to restructuring and privatization to the Commission to complete the implementation of the Privatization Transactions.
- B. If the Council approved the recommendations of the Steering Committee, the matter will be referred to the Council of Ministers.

#### **Article 7**

- A. The Technical Committee shall perform the following functions:-
  - 1. Prepare documents necessary to implement the Pre-Qualification phase;
  - 2. Prepare bid documents;
  - 3. Evaluate the technical and financial proposals;
  - 4. Prepare final contracts and related documents;
  - 5. Set up the data room, which contains all the information related to the Privatization Transaction;
  - 6. Submit reports and recommendations to the steering committee on its work progress or about any hindrances to the Privatization Transaction;
  - 7. Any other issues assigned to it by the steering committee.
- B. The Technical Committee shall convene by invitation from its chairperson or, in his absence his deputy, the quorum is considered valid if the majority of the members are present, decisions shall be taken by a majority vote of its members.
- C. The chairperson of the technical committee shall appoint a repertoire from the committee's members to record minutes of meetings whereby a copy of the said shall be kept at the Commission for a period of not less than three years.

#### **Article 8**

The Privatization Transaction studies shall include the following elements:-In relation to restructuring and the privatization of public institutions:-

- 1. General study of the market and the sector concerned;
- 2. Justification for restructuring and privatization ;

3. Feasibility of the restructuring and privatization in relation to technical, economical, financial and social aspects;
  4. Evaluation of the initial impact on relevant competitiveness in accordance with the legislation in force;
  5. Description of necessary legal requirements;
  6. Analysis of sector requirement;
  7. Specify the privatization methods which can be applied, and recommend the best approach for implementation;
  8. Rationale for resorting to direct negotiations or solicitation of proposals for the implementation of the Privatization Transaction;
  9. listing of the bid documents to be issued;
  10. Identification of the conditions that must be met in investors;
  11. Any other issue deemed by the Commission necessary to be added to the study.
- A. With regard to projects involving Public - Private Partnerships:-
1. The impact of the implementation of the project on social, economic and environmental aspects;
  2. Preliminary analysis of the investment risks associated with the project and the proposed mechanism to address and handle the said;
  3. Requirements of the project in relation to funding, managerial and technical expertise and knowledge transfer;
  4. Financial pre-feasibility study of the project using financial indicators.
  5. Comparative cost analysis in case of implementation of the project through Public - Private Partnership with the cost of its implementation by the public sector;
  6. The best proposed option for the implementation mechanism of the Public - Private Partnership;
  7. Legal requirements of the project;
  8. Description of the economic justifications for government support for the project, if the project requires such support;
  9. Conditions that are to be met by the investors;
  10. Any other issues which in the view of the Commission need to be addressed in the study.

#### **Article 9**

- A. The Consultant shall be selected in accordance with cost and quality basis , except in the following cases:
1. Selecting the consultant in accordance with criteria based on quality only if the required tasks are of a complex nature or are highly specialized such that it is difficult to specify the precise terms of reference or to specify the tasks required from the consultant.
  2. Selecting an individual consultant by comparing the qualifications of at least three candidates in any of the following cases:
    - If the consulting services do not require a group of employees;
    - If the consulting services do not require additional professional support;
    - If the consulting services primarily require the specific qualifications and experience of the consultant;
    - If the cost of the consulting services does not exceed (25,000) twenty five thousand Jordanian Dinars.
- B. Consultants are selected through negotiation and direct purchase method in any of the following cases:
1. If it is not possible to obtain consulting services except from a single source which possesses specialized expertise required for the task;
  2. If consulting services are required to meet an urgent and emergency situation which can not be foreseen and does not allow for tendering process;
  3. If consulting services complete prior work performed by the consultant.

#### **Article 10**

It is prohibited for a consultant or any of its employees to be involved in any consulting work or activities that are in conflict with the interest of the Commission or any entity related to the Privatization Transaction.

**Article 11**

A bid shall be tendered for selection of an investor in one phase, the steering committee may, in specific cases, recommend tendering the bid in two phases.

**Article 12**

The steering committee must, when tendering a bid to select an investor in one phase, comply with the following:

- A. Publish an Expression of Interest Invitation for Pre-Qualification purposes in accordance with any of the following:
1. In case of local tendering, this announcement must be published in at least two local daily newspapers in two intermittent periods of time, it is permissible to publish the said on the website of the Commission or the entity concerned with the Privatization Transaction.
  2. In case of international tendering, this announcement must be published in, at least, two local daily newspapers in two intermittent periods of time, and in an advertising channel capable of international reach including the website of the Commission or entity concerned with the Privatization Transaction.
- B. The announcement of the Invitation for Expression of Interest must include preliminary information about the Privatization Transaction and the deadline for the submission of Expressions of Interest and the evaluation methodology to be followed, in addition to a request for information on the following:
1. Previous experience of the applicants in the implementation of similar Privatization Transactions;
  2. Financial capability;
  3. Legal status of applicant entities and any legal proceedings initiated against it;
  4. Any other information which the steering committee deems important.
- C. Expressions of Interest are evaluated in accordance with the evaluation criteria specified in the Expression of Interest Invitation, a short list of the names of all Pre-Qualified investors shall be formulated.
- D. The Commission shall, in coordination with the steering committee, notify the Pre-Qualified investors about the results of the Pre-Qualification including the names contained in the short list.

**Article 13**

The Commission shall, in coordination with the steering committee, provide Pre-Qualified investors with the request for proposals document, which consists of the following:  
Instructions for investors including:

1. Informative data relating to the Privatization Transaction;
2. Conditions and procedures for proposal submission, number of copies required, place of delivery and the deadline for submission;
3. Amount and duration of requested bonds;
4. Endorsed evaluation criteria for assessing the technical and financial proposals;
5. Requirements of regulatory bodies and relevant legislation;
6. Expected schedule to complete the bidding process in relation to the Privatization Transaction;
7. Specifying the conditions for the establishment of a special purpose vehicle, if necessary, in relation to paid-up capital, the company's debt to equity ratio, the company's obligations in the Privatization Transactions in relation to a Public - Private Partnership and any other conditions.

B. Information memorandum which include financial, technical and legal information related to the Privatization Transaction and any other information.

C. Suggested drafts for contracts including the following:

1. In restructuring and privatization transactions:

- Shareholders' agreement indicating the contractual relationship between the shareholders of the company that is undergoing restructuring or privatization to include: duties and responsibilities of each partner or shareholder, a mechanism for the protection of employees' rights, capital expenditure plans, disposal of assets, mechanism for raising the company's capital, dealing with taxes, judicial proceedings, protection of minority shareholders' rights, mechanism of managing the company, representation on the board of directors and the conditions of the sale of shares of shareholders.
- Agreement for the sale and transfer of government shares or any part thereof to the private sector including: terms and date of closing, sale price, payment mechanism, transfer of funds and the entity who bears the fees and taxes in the event of the sale of government shares or any part thereof.

2. In Public - Private Partnership transactions:

Partnership agreement encompassing the rights and obligations of parties to the contract including the following:

- Purpose of the partnership and the work or service specifications which will be provided;
- Mechanism to supervise the provision of service or the implementation of the work;
- Indicators that will be relied upon to ensure the quality of the implementation of the work or service;
- Financial obligations of each party;
- Financing mechanism for the implementation of the partnership transaction;
- Allocation of risk;
- Tariffs payable by the beneficiary of the service or work and a tariff adjustment mechanism and collection mechanism thereof;
- Specifying the requirements to relinquish ownership of the project to the public sector, if required by the contract;
- Any other items.

#### **Article 14**

It is permissible for the steering committee to make any amendments it deems necessary on the bid documents after meeting with the Bidders provided they are informed of such amendments.

#### **Article 15**

- A. It is not permitted to other than the investor or parties to a consortium who receive a copy of the bid documents to enter the bidding.
- B. The Bidder must provide the technical and financial proposals at the same time, in two separate envelopes indicating the name and address of the Bidder and the type of proposal, the name of the Project and entity presenting the bid.
- C. The technical proposal must not contain any reference or information relating to prices under jeopardy of being rejected.

- D. Financial proposals will be opened publicly if the steering committee so decides.
- E. If a proposal is submitted after the deadline, it is not permissible to open it and it shall be returned to the Bidder.

**Article 16**

- A. The technical committee shall evaluate technical proposals consistent with the bid documents by awarding points to each proposal in accordance with the evaluation criterion and relative weight of each criterion pursuant to the bid documents, whereby all proposals must be listed in order of highest to lowest evaluation points which each proposal received.
- B. The technical committee must report on the evaluation of the technical proposals to the steering committee including the results of the evaluation.

**Article 17**

The Commission, in coordination with the steering committee, and after the completion of the proposals' evaluation, must perform the following:

- A. Notify investors, whose technical proposals are rejected, of the rejection decision and return their financial proposals unopened;
- B. Notify investors, whose technical proposals are accepted, of the acceptance decision and determine a date and time for opening their financial proposals if the steering committee so decides;
- C. After evaluating the financial proposals, identify the preferred bidder, in terms of the aggregate result of scores for the financial and technical evaluation pursuant to the criteria specified in the bid documents.

**Article 18**

- A. The steering committee shall invite the preferred bidder for negotiations with a view to issue a decision to award the bid and sign the privatization contracts.
- B. If negotiations do not result in the signing of the privatization contract with the Preferred Bidder, it is permissible to terminate negotiations therewith provided the Bidder is notified of the reasons thereof, and the second Preferred Bidder shall be invited to negotiate in accordance with the set principles and conditions.
- C. In the light of the outcome of negotiations, the investor recommended to be awarded the bid by the steering committee will be announced.
- D. Negotiations must not result in a fundamental change in the submitted proposal or bid documents in a way that would breach the principles of competition and transparency among investors.
- E. The Commission must notify other short listed Bidders when negotiations are concluded and a privatization contract is signed.

**Article 19**

Where a decision is made to tender the bid in two phases, the steering committee must proceed with the selection of investors in the bidding process in the same manner used for single phase bids except as follows:

- A. In the first phase, the steering committee shall invite all Pre-Qualified investors to submit their technical proposals without submitting the financial proposal; it is permissible for the bid invitation to include any suggestions relating to the technical, qualitative aspects, contractual terms and conditions or any other aspects or any suggestions concerning the Privatization Transaction.
- B. In the second phase, the steering committee shall, after studying the observations and suggestions of the first phase, shall specify the final technical and contractual conditions for the second phase including any cancellation, amendment or addition to the technical and qualitative characteristics of the bid, and on such basis, it shall invite Bidders to submit a

technical and financial proposal in two separate envelopes pursuant to the request for proposal invitation.

**Article 20**

Bidders who submit proposals pursuant to the provisions of this Regulation may object to the outcome of the technical evaluation to the steering committee within five working days from the date of notification of the decision's subject matter whereby the steering committee must make a decision on the objection within ten working days from the date of receipt of the objection whereby its decision shall be final in this regard.

**Article 21**

The Council shall issue the necessary instructions to implement the provisions of this Regulation upon the recommendation of the Commission's chairperson whereby these instructions will be published in the Official Gazette.

See also this link:

<http://www.irbidworld.com/t87514-topic>